

JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
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I. EXECUTIVE SUMMARY

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over rail transportation, including rail economic regulation, rail safety, rail infrastructure, rail labor, and international rail issues. It also has jurisdiction over pipeline and hazardous materials transportation. This jurisdiction includes all aspects of the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Surface Transportation Board (STB), including the agencies' homeland security responsibilities. For example, the STB has statutory authority to deal with various national emergencies, including war, as they affect the nation's rail transport system. Under Sections 11123 and 11124 of Title 49, United States Code, the STB is authorized to take summary emergency action to deal with any rail transport emergency that threatens rail service, including according preferences and priority to military traffic, such as the transportation of war material, at the President's request.

The Subcommittee also has jurisdiction over the National Mediation Board, the Railroad Retirement Board, Amtrak, and other forms of non-highway ground transportation that run on rails and electromagnetic guideways, including commuter and other short-haul railroad passenger service and high-speed ground transportation systems. The Subcommittee does not have jurisdiction over public transportation issues, which are under the jurisdiction of the Subcommittee on Highways and Transit. Issues under the Railroads, Pipelines, and Hazardous Materials Subcommittee include:

- Amtrak
- Federal Railroad Administration reauthorization
- Hazardous Materials Endorsement Background Checks
- Hazardous Materials Transportation
- High-Speed Rail
- International Rail
- National Mediation Board
- National Transportation Safety Board
- Pipeline Transportation
- Rail Capacity
- Rail Infrastructure
- Rail Labor and Railway Labor Act
- Rail Mergers and Restructuring
- Rail Rates, Service and Economic Regulation in general
- Railroad Retirement Board
- Rail Safety and Security
- Surface Transportation Board

II. INTRODUCTION

Railroads are the backbone of North America's freight transportation network. From the building of our nation's first railroad in 1827 – the 13-mile Baltimore & Ohio Railroad – throughout the next 179 years, the U.S. freight rail industry has played a central role in our nation's economic development.

In the United States, railroads account for more than 40 percent of all freight transportation – more than trucks, boats, barges, or planes. They move 70 percent of all automobiles produced in the United States, 30 percent of our nation's grain harvest, and 65 percent of the coal, which in turn provides more than one-half of our nation's electricity. According to the railroad association, the railroads move enough wheat to provide every person in the United States a fresh loaf of bread six days a week; enough lumber to build almost three houses every minute of every day; and enough concrete to build 45 miles of new highway every day.

Structurally, the United States railroad system is comprised of 140,810 miles of track, 562 common carrier freight railroads, and one national passenger railroad (there are also a number of commuter railroads operating on the freight railroad network). Altogether, these railroads employ more than 200,000 workers.

Under regulations prescribed by the Surface Transportation Board, freight and passenger railroads are divided into three classes based on annual carrier operating revenues. Class I railroads are the largest railroads, with annual operating revenues of \$319.3 million or more. They account for 68 percent of the industry's mileage, 89 percent of its workforce, and 93 percent of its freight revenue. The seven Class I freight railroads are the BNSF Railway; CSX Transportation; Grand Trunk Corporation, which consists of the U.S. operations of Canadian National, including the former Grand Trunk Western, Illinois Central, and Wisconsin Central; Kansas City Southern; Norfolk Southern; the former Soo Line owned by Canadian Pacific; and Union Pacific. Amtrak, our nation's rail passenger transportation provider, is also a Class I railroad.

Class II railroads, known as regional railroads, are those with annual operating revenues of more than \$25.5 million but less than \$319.3 million. Class III railroads, known as local line-haul carriers, are those with annual operating revenues of \$25.5 million or less. In 2005, there were 30 Class II railroads and 320 Class III railroads in the U.S.

In recent years, business for the railroad industry has soared. Economic growth, booming international trade, and other factors have led to record rail traffic levels, which have created capacity constraints and service issues at many points and corridors on the rail network. According to the U.S. Department of Transportation's (DOT) Freight Analysis Framework, rail traffic is expected to increase more than 50 percent, from 1.8 billion tons to 2.9 billion tons, by 2020. Rail passenger service has also grown. During fiscal year 2005, Amtrak served more than 25.4 million passengers, representing the third straight fiscal year of record ridership. An average of more than 69,000 passengers ride on up to 300 Amtrak trains per day. Given that 70 percent of the miles traveled by Amtrak trains are on tracks owned by the freight railroads, this record Amtrak ridership, combined with record freight rail traffic levels, means that there is a tremendous amount of pressure on our nation's rail system.

Similar to the railroads, pipeline and hazardous materials transportation is soaring. Pipelines transport the oil and gas needed to fuel our cars, trucks, ships, and planes and to heat our homes. They also deliver the crude oil that refineries convert into essential materials for core American industries such as plastics, pharmaceuticals, and agriculture. According to DOT, there are more than 200,000 miles of oil pipelines and two million miles of natural gas pipelines in the United States. With regard to hazardous materials transportation, DOT reports that freight shipments of hazardous materials across all modes total 2.2 billion tons, a majority of which were transported by commercial motor vehicles.

All of this increased freight traffic has an impact on safety. According to the Federal Railroad Administration (FRA), the number of train accidents has increased from 3,023 in 2001 to 3,223 in 2005. And even though the railroads are running more frequencies and miles due to economic growth, the train accident rates have remained somewhat stagnant: 4.25 train accidents per million miles in 2001 compared to 3.99 train accidents per million miles in 2005. Fatalities have also increased from six in 2001 to 33 in 2005; injuries increased from 310 to 734 in the same time period. The major causes of train accidents are human factors and track conditions.

Grade-crossing incidents and incident rates have decreased slightly over the past five years. According to the FRA, there were 3,287 grade-crossing incidents in 2001, or 4.55 incidents per million miles, which resulted in 421 fatalities and 1,157 injuries. In 2005, there were 3,041 incidents, or 3.85 incidents per million miles, which resulted in 357 fatalities and 1,010 injuries.

Accidents involving hazardous liquid pipelines have decreased, but accidents involving natural gas distribution and transmission pipelines are on the rise. Since enactment of the Pipeline Safety Improvement Act in 2002, natural gas distribution pipeline accidents have increased from 102 accidents in 2002 to 171 accidents in 2005 resulting in 17 fatalities, 48 injuries, and \$27 million in damages. Natural gas transmission pipeline incidents have increased from 82 incidents in 2002 to 180 incidents in 2005.

Total hazardous materials transportation accidents and incidents have decreased from 17,792 in 2001 to 15,841 in 2005 (although there was a slight increase from 2004 to 2005). Fatalities and injuries, however, have increased significantly; fatalities increased from 12 in 2001 to 34 in 2005 and injuries increased from 168 to 965 in the same time period.

III. AMTRAK

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over the activities of Amtrak and other forms of non-highway ground transportation that run on rails and electromagnetic guideways, including commuter and other short-haul railroad passenger service and high-speed ground transportation systems. The Subcommittee does not have jurisdiction over public transportation issues, which are under the jurisdiction of the Subcommittee on Highways and Transit.

A. Overview

The National Railroad Passenger Corporation, more commonly known as Amtrak, provides intercity passenger rail service to 46 States and the District of Columbia, in addition to serving as a contractor in various capacities for several commuter rail agencies. In fiscal year 2005, Amtrak served more than 25.4 million passengers, representing the third straight fiscal year of record ridership. An average of more than 69,000 passengers ride on up to 300 Amtrak trains per day.

Amtrak was created by Congress in the Rail Passenger Service Act of 1970 (“1970 Act”) to assume responsibility for rail passenger services from the private railroads, which found rail passenger service to be generally unprofitable. To ensure Amtrak had equipment for its initial operations, the private railroads were required under the 1970 Act to contribute passenger rolling stock to Amtrak. In return, the railroads received (at the individual railroad’s option) either common non-voting stock in Amtrak or a federal tax credit. Today, the common shareholders of Amtrak and their proportionate interests are American Premier Underwriters (53 percent), BNSF Railway (35 percent), Canadian Pacific Railroad (7 percent), and Canadian National Railroad (5 percent). All preferred stock, which had a liquidation preference against all Amtrak assets and the only voting rights, remained with the U.S. Department of Transportation. The Amtrak Reform and Accountability Act of 1997 eliminated DOT’s voting rights and liquidation preference against Amtrak assets.

Amtrak operates a nationwide rail network, serving more than 500 destinations, with approximately 19,000 workers. Seventy percent of the miles traveled by Amtrak trains are on tracks owned by the freight railroads. Under the 1970 Act, Amtrak was provided priority access rights to the freight railroads’ tracks and facilities for an incremental cost. In fiscal year 2005, Amtrak paid more than \$92 million for access rights of more than 25 million train miles. Under current law, in the event of disputes over access or compensation, the Surface Transportation Board is required to decide the conditions of access or the level of compensation.

Five years after Amtrak commenced operations, the 363-mile Boston-Washington Northeast Corridor (NEC), was transferred to Amtrak (DOT is the mortgage holder). The NEC remains the busiest rail passenger line in the country. In addition, Amtrak owns a 60.5-mile track segment from New Haven, Connecticut to Springfield, Massachusetts; 104 miles of track in Pennsylvania; and a 97-mile segment of track in Michigan.

Structurally, the 1970 Act created Amtrak as a quasi-public corporation, governed under the laws of the District of Columbia. While Amtrak was declared to be a “for-profit” corporation under the law, it was expected to pursue conflicting goals from the outset. Amtrak was supposed to provide a national rail passenger service. The service was previously unprofitable for the private railroads and these railroads had specifically sought Congressional relief from this continued service obligation. At the same time, Amtrak was supposed to operate as a commercial enterprise. To this day, it is unclear whether anyone really expected that Amtrak would be profitable. A recent review by the Congressional Research Service found only a single statement by then-Transportation Secretary Volpe, in which he asserted that Amtrak could eventually become profitable if the Federal Government provided significant capital funding to Amtrak to produce high-speed trains in short-haul corridors and the remaining network was cutback to what could be subsidized by high-speed trains. Those conditions were never met.

Today, Amtrak's President and Chief Executive Officer and a board of seven voting members govern Amtrak. The Board members are appointed by the President, with the advice and consent of the United States Senate, for five-year terms. They are required to "have technical qualifications, professional standing, and demonstrated expertise in the fields of transportation or corporate or financial management." Amtrak's President and CEO, Alexander Kummant, is an ex-officio, nonvoting board member. The other members of the Board are David M. Laney, who serves as Chairman, R. Hunter Biden, Floyd Hall, Donna McLean, Enrique Sosa, and Secretary of Transportation Mary Peters.

B. Funding

The authorization for Amtrak expired at the end of fiscal year 2002. It is currently funded through the annual appropriations process in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act. The Federal Railroad Administration is responsible for administering the Federal grants to Amtrak. The following table summarizes Amtrak's funding levels for the past five years.

(in millions)

	FY2002 Enacted	FY2003 Enacted	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted
Amtrak	\$1,136.0	\$1,050.0	\$1,218.0	\$1,217.0	\$1,315.0

*The enacted funding levels reflect program funding levels that are prior to the across-the-board rescissions included in various appropriations acts.

C. Activities in the 109th Congress

On November 8, 2005, the Committee on Transportation and Infrastructure reported H.R. 1630, the Amtrak Reauthorization Act of 2005, which reauthorized Amtrak at \$2 billion a year for each of fiscal years 2006 through 2008. No further action was taken on the bill. On May 11, 2005, the Subcommittee on Railroads held a hearing to investigate the brake failure on Amtrak's Acela trains and to determine the steps needed to restore the trains to full service. On June 9, 2005, the Subcommittee held a hearing to investigate the monetary losses associated with Amtrak's food and beverage operations as reported by the Amtrak Inspector General. On September 21, 2005, the Subcommittee held a hearing to survey various proposals for reforming or restructuring Amtrak. On November 15, 2005, the Subcommittee held a hearing to explore the governance at Amtrak and the Amtrak Board of Director's firing of Amtrak's Chief Executive Officer, David Gunn. On September 28, 2006, the Subcommittee held a hearing with Amtrak's new CEO, Alexander Kummant, to explore his plans and management strategy for Amtrak.

IV. FEDERAL RAILROAD ADMINISTRATION

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over the Federal rail safety program and the activities of the Federal Railroad Administration, including the agency's homeland security responsibilities.

A. Overview

The Federal Railroad Administration is one of 10 agencies within the U.S. Department of Transportation. It was created in 1966 through the Department of Transportation Act, when all safety responsibilities of the Interstate Commerce Commission were transferred to DOT. The FRA's safety responsibilities were further enhanced through enactment of the Federal Railroad Safety Act of 1970, the Federal Railroad Safety Authorization Act of 1973, the Federal Railroad Safety and Hazardous Materials Transportation Amendments of 1974, the Federal Railroad Safety Authorization Act of 1976, the Federal Railroad Safety Amendments Act of 1978, the Federal Railroad Safety Authorization Act of 1980, the Railroad Safety and Service Improvement Act of 1982, the Rail Safety Improvement Act of 1988, the Railroad Safety Enforcement and Review Act of 1991, and the Federal Railroad Safety Authorization Act of 1994.

The purpose of the FRA is to promulgate and enforce railroad safety regulations; administer railroad financial assistance programs; conduct research and development in support of improved railroad safety and national rail transportation policy; provide for the rehabilitation of Northeast Corridor rail passenger service; and consolidate government support of rail transportation activities. The FRA also has a number of responsibilities relating to rail security, including assessing civil and criminal penalties for actions that impair or impede the operation of railroad equipment. Since the events of September 11, 2001, the FRA has overseen the industry-wide security efforts of the railroad industry to maintain 24-hour alert capabilities and has helped conduct national risk assessments of the vulnerabilities of various potential rail infrastructure targets.

The FRA operates through seven divisions: the Office of Financial Management and Administration, which directs and coordinates the administrative programs and services of the FRA; the Office of Chief Counsel, which develops and drafts the agency's safety regulations, assesses civil penalties for violations of the railroad safety statutes and FRA safety regulations, and provides other legal support for the FRA's safety program; the Office of Civil Rights, which provides policy guidance, support, and coordination to the FRA's various offices and external customers to ensure effective and consistent diversity and civil rights programs; the Office of Policy, which provides support, analysis, and recommendations on broad subjects relating to the railroad industry such as financial health, traffic patterns, intermodalism, and labor-management issues; and the Office of Public Affairs, which works closely with all departments within the agency in developing information for release to the general public through print and electronic news outlets.

The FRA's two main offices are the Office of Railroad Development and the Office of Rail Safety. The Office of Railroad Development is responsible for the development and implementation of Administration policy concerning intercity rail passenger service and high-speed rail. The Office administers Federal grants to Amtrak and the Alaska Railroad and supports the Secretary of Transportation in her capacity as a member of Amtrak's Board of Directors. The Office administers the Maglev Deployment Program, which was established to build a magnetic

levitation line for passenger service, and sponsors high-speed rail technology development. It provides technical assistance for passenger rail planning and conducts environmental reviews of rail projects that would be implemented with Federal assistance or approval. It also provides other financial assistance to freight railroad projects, primarily through the Railroad Rehabilitation and Improvement Financing (RRIF) program, and conducts research, development, and testing to support the FRA's safety mission and to enhance the railroad system as a national transportation resource. The research and development activities are carried out through grants, cooperative agreements, and contracts with public or private organizations, including institutions of higher learning through the FRA's University Grants Program.

The FRA's Office of Safety promotes and regulates safety throughout the Nation's railroad industry. It also manages a substantial regulatory agenda, which includes Congressional mandates, as well as the FRA's own regulatory initiatives and issues raised by various entities within the railroad community.

The Office employs 421 Federal safety inspectors and 16 grade-crossing field staff, who operate out of eight regional offices. The inspectors are divided into five safety disciplines – Track and Structures, Signal and Train Control, Motive Power and Equipment, Operating Practices, Hazardous Materials, and Industrial Hygiene – and promote numerous initiatives under the Highway-Rail Grade Crossing and Trespasser Prevention Programs. The Office also trains and certifies State safety inspectors to enforce Federal rail safety regulations. Today, the State Rail Safety Participation Program consists of 30 States employing 160 safety inspectors in the five rail safety disciplines. The Federal and State inspectors are responsible for conducting site-specific safety inspections of railroads and monitoring their compliance with federally mandated safety standards.

Central to the success of the rail safety effort is the ability to understand the nature of rail-related accidents and to analyze trends in railroad safety. To do this, the Office of Safety collects rail accident/incident data from the railroads and converts this information into statistical tables, charts, and reports, which are available to the public on their Internet website.

The current FRA Administrator is Joseph H. Boardman.

B. Funding

The authorization for the FRA's safety activities expired at the end of fiscal year 1998. It is currently funded through the annual appropriations process in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act. The following table summarizes FRA funding levels for the past five years.

(in millions)

	FY2002 Enacted	FY2003 Enacted	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted
Safety and Operations	\$115.0	\$117.4	\$130.8	\$140.0	\$146.0
Research and Development	29.0	29.3	34.0	36.0	55.0
Next Generation High Speed Rail	32.0	30.5	37.4	19.7	0
Alaska Railroad	20.0	22.0	25.0	25.0	10.0
Pennsylvania Station	20.0	20.0	0	0	0
Other	0	0	6.0	0	0
Total	\$216.0	\$219.2	\$233.2	\$220.7	\$211.0

*The enacted funding levels reflect program funding levels that are prior to the across-the-board rescissions included in various appropriations acts.

C. Activities in the 109th Congress

On November 18, 2005, the Committee on Transportation and Infrastructure reported H.R. 1631, the Rail Infrastructure Development and Expansion Act for the 21st Century (RIDE 21), which authorized approximately \$60 billion in infrastructure funding for high-speed rail corridors and other rail infrastructure. During its consideration of the bill, the Committee on Ways and Means struck the provisions of RIDE 21 providing tax-exempt and tax-credit bonding authority for states to construct high-speed rail corridors and other rail infrastructure. Although no further action was taken on the bill, those sections of RIDE 21 that expanded the RRIF program and reauthorized the Swift Rail Development Act were included in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

On April 28, 2005, the Subcommittee on Railroads held a hearing to evaluate new technologies being developed to enhance the safety and security of freight and passenger trains. On July 21, 2005, the Subcommittee held a hearing on grade-crossing safety and efforts to reduce grade-crossing accidents and incidents. On March 15, 2006, the Subcommittee held a hearing on implementation of the SAFETEA-LU amendments to the Railroad Rehabilitation and Improvement Financing program. On April 26, 2006, the Subcommittee held a hearing on the current shortage of railroad capacity in the United States. On June 13, 2006, the Subcommittee held a hearing on the transportation of hazardous materials by rail. On June 27, 2006, the Subcommittee held a hearing on current FRA rail safety initiatives and discussed the Secretary of Transportation's Rail Safety Action Plan. On July 25, 2006, the Subcommittee held a hearing to examine human factor-caused accidents and incidents and to consider possibly policy options for addressing those concerns, including amending the hours-of-service statutory requirements.

V. SURFACE TRANSPORTATION BOARD

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over the activities of the Surface Transportation Board, including the STB's homeland security responsibilities. The STB has statutory authority to deal with various national emergencies, including war, as they affect the nation's rail transport system. For example, under Sections 11123 and 11124 of Title 49, United States Code, the Board is authorized to take summary emergency action to deal with any rail transport emergency that threatens rail service, including according preferences and priority to military traffic, such as the transportation of war material, at the President's request.

A. Overview

The Surface Transportation Board was created by the ICC Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress charged with the fundamental missions of resolving railroad rate, service, and practice disputes, and reviewing proposed railroad mergers. The STB is decisionally independent from the Department of Transportation, although it is administratively affiliated with DOT.

The STB serves as both an adjudicatory and a regulatory body. The agency has jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales, line construction, and line abandonments); certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

B. Structure and Operations

The STB is headed by three commissioners, which are appointed by the President and confirmed with the advice and consent of the United States Senate for five-year terms. The commissioners are Chairman Charles D. "Chip" Nottingham, Vice Chairman Francis P. Mulvey, and Commissioner W. Douglas Buttrey.

The STB has five offices: the Office of Compliance and Consumer Affairs, which monitors rail operations throughout the United States and enforces regulations over rail and certain non-rail common carriers in the United States; the Office of Congressional and Public Services, which works with Members of Congress, the public, and the media to answer questions and provide information about the STB's procedures and actions and about transportation regulation in general; the Office of Economics, Environmental Analysis and Administration, which is responsible for undertaking environmental reviews of proposed STB actions in accordance with the National Environmental Policy Act and other environmental laws, making environmental recommendations to the STB, analyzing rate cases, and conducting economic and financial analyses of the railroad industry and audits of the Class I railroads; the Office of Proceedings, which researches and prepares draft decisions; and the Office of General Counsel, which provides legal advice to the STB and defends agency actions that are challenged in court. In calendar year 2006, the STB issued approximately 780 decisions.

C. Funding

The authorization for the STB expired at the end of fiscal year 1998. It is currently funded through the annual appropriations process in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act. The following table summarizes STB funding levels for the past five years.

(in millions)

	FY2002 Enacted	FY2003 Enacted	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted
Surface Transportation Board	\$18.5	\$19.5	\$19.5	\$21.3	\$26.5

* The enacted funding levels reflect program funding levels that are prior to the across-the-board rescissions included in various appropriations acts.

D. Activities of the 109th Congress

On May 23, 2006, the Subcommittee held a hearing on the state and local impact of railroad-owned waste facilities, which are protected from certain forms of state and local regulation by the preemptive federal jurisdiction of the Surface Transportation Board.

VI. NATIONAL MEDIATION BOARD

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over the activities of the National Mediation Board.

A. Overview

The National Mediation Board (NMB), was established by the 1934 amendments to the Railway Labor Act of 1926 (RLA), to mediate collective bargaining disputes in the airline and railroad industries. The NMB also provides grievance mediation and grievance arbitration to assist parties in the interpretation or application of an existing collective bargaining agreement.

Parties are encouraged to resolve their disputes through direct negotiations. However, if an agreement is not reached in direct negotiations, the dispute is required by law to be submitted to the NMB for mediation as part of the contract negotiation process.

In mediation, the amount of time it will take to help the parties complete negotiations and produce a tentative contract agreement generally depends on the number of issues to resolve. The NMB has no authority to force agreement upon the parties or to dictate the terms of settlement. Strikes, lock-outs, and other forms of self-help may occur but only after the procedures set forth by the RLA have been exhausted, including a determination by the NMB that further mediation would not facilitate agreement between the parties.

If mediation efforts fail, the parties are offered binding arbitration. The refusal of either party to go to binding arbitration triggers a 30-day “cooling-off” period, at the end of which either party may engage in self-help, including a work stoppage. If the Board determines that a work stoppage would cause significant disruption to essential transportation services for any section of the country, the NMB must notify the President, who may choose to appoint a Presidential Emergency Board (PEB). A PEB has 30 days in which to recommend a settlement to the President. Either party may reject the PEB's recommendations, leading to a final, cooling-off period of 30 days. Even during a PEB appointment or cooling-off period, the NMB may continue “public interest” meetings with the parties, often resulting in an agreement. Nothing in this process prevents the parties from reaching agreement on their own accord at any time.

Ninety-seven percent of all mediation cases in the history of the NMB have been successfully resolved without interruptions to public service. However, in the cases where the PEBs 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. A national strike on most major freight railroads was threatened in 1996, but the dispute was resolved without legislation.

B. Structure and Operations

The NMB consists of three members who are appointed by the President, with the advice and consent of the United States Senate for three-year terms. By law, not more than two of the members may be from the same political party. The chairman is selected among the members on a rotating annual basis. The current members are Elizabeth Dougherty, Harry Hoglander, and Read Van de Water. The current chair is Elizabeth Dougherty.

C. Funding

The NMB is permanently authorized and is funded through the annual appropriations process in the Departments of Labor, Health and Human Services, and Education Appropriations Act. The following table summarizes NMB funding levels for the past five years.

(in millions)

	FY2002 Enacted	FY2003 Enacted	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted
National Mediation Board	\$10.6	\$11.3	\$11.4	\$11.7	\$11.6

* The enacted funding levels reflect program funding levels that are prior to the across-the-board rescissions included in various appropriations acts.

D. Activities in the 109th Congress

The Subcommittee on Railroads did not conduct any activities relating to the National Mediation Board in the 109th Congress.

VII. RAILROAD RETIREMENT BOARD

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over activities of the Railroad Retirement Board.

A. Overview

The Railroad Retirement Board (RRB) was created by Congress in the 1930s to establish a retirement benefit program for the nation's railroad workers. The railroad industry pioneered private industrial pension plans; the first industrial pension plan in North America was established on a railroad in 1874. By the 1930s, pension plans were far more developed in the railroad industry than in most other businesses or industries, but the plans had serious defects, which were magnified by the Great Depression.

The economic conditions of the 1930s demonstrated the need for retirement plans on a national basis. While the social security system was in the planning stage, railroad workers sought a separate railroad retirement system that would continue and broaden the existing railroad retirement programs under a uniform national plan. Given that the proposed social security system was not scheduled to begin monthly benefit payments for several years and would not give credit to workers for service performed prior to 1937, Congress enacted legislation in 1934, 1935, and 1937 to establish a railroad retirement system, separate from the social security program, that provided railroad retirees with immediate benefit payments based on their pre-1937 service.

While the railroad retirement system has remained separate from the social security system, the two systems are closely coordinated with regard to earnings' credits, benefit payments, and taxes. The financing of the two systems is linked through a financial interchange under which, in effect, the portion of railroad retirement annuities that is equivalent to social security benefits is coordinated with the social security system. The purpose of this financial coordination is to place the social security trust funds in the same position they would be in if railroad workers were covered by the social security program instead of the railroad retirement program.

Legislation enacted in 1974 restructured railroad retirement benefits into two tiers to coordinate them more fully with social security benefits. "Tier I" benefits are almost identical to social security benefits, and "Tier II" benefits are railroad retirement benefit payments over and above social security benefit levels. 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 in the old system and the federal government continues to pay these benefits out of general revenues to some 155,000 individuals. In the 1980s, Congress passed a series of laws to ensure 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.

In 2001, Congress enacted the Railroad Retirement and Survivors' Improvement Act ("2001 Act"). The Act provided the first major benefit improvements in the Railroad Retirement System in more than two decades. The Act reduced the age at which railroad workers could retire with full benefits from 62 years to 60 years with 30 years of service. The number of years required for

vesting in the Railroad Retirement System was reduced from ten years to five years, which is a common vesting period for most other pension plans. The benefits for widows and widowers were improved so that a surviving spouse's annuity would be guaranteed to be no less than the amount the retiree was receiving in the month before his or her death. Prior to enactment of the 2001 Act, a widow or widower of a deceased railroad worker was eligible for only 50 percent of the late retirees' Tier II benefit. The Act also significantly reduced the payroll taxes paid by railroads. By the third year following passage of the Act, it was estimated that the railroads would pay \$400 million less in payroll taxes each year. These savings could be reinvested in railroad infrastructure and equipment and be used to improve employee wages and working conditions.

The 2001 Act also made Tier II funds eligible for investment in assets other than government securities. Prior to enactment of the 2001 Act, the Railroad Retirement Trust Funds were limited to investment in government securities exclusively. Under the 2001 Act, the Tier I funds continue to be invested in government securities, but the Tier II funds may be invested in other financial instruments. However, the 2001 Act continues to protect retirees' pensions. If the Tier II investments fail to perform as well as expected, the Act requires that the railroads absorb any future tax increases that are necessary to keep the System solvent. If the Trust Funds become overfunded, benefits are automatically improved and employer payroll taxes are further reduced.

The Railroad Retirement System is funded through a payroll tax paid by railroad employers and employees. Currently, both employers and employees pay a 6.2 percent payroll tax for Tier I, while for Tier II, employees pay a 3.9 percent payroll tax and employers pay a 12.10 percent tax. In fiscal year 2006, a total of \$9.4 billion was paid in retirement, survivor, and disability benefits to 619,000 annuitants.

In addition to managing the railroad retirement system, the RRB 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 railroad carriers. However, RUI taxes are not fixed by statute, as are retirement taxes, but instead are "experience-rated" (i.e., each railroad's annual premiums reflect its actual unemployment claims experience from the prior year). During fiscal year 2006, a total of \$73 million was paid in unemployment and sickness benefits to 28,000 claimants.

B. Structure and Operations

The RRB is headed by three members who are appointed by the President, with the advice and consent of the Senate for five-year terms. One member is appointed upon the recommendation of railroad employers, one is appointed upon the recommendation of railroad labor organizations and the third, who serves as Chairman, is appointed to represent the public interest. The current railroad employer member is Jerome Keever. The railroad labor member is V.M. Speakman and the current Chair is Michael Schwartz. The President also appoints an Inspector General for the RRB.

The RRB's headquarters is in Chicago, Illinois, and there are numerous field offices throughout the country that are designed to assist railroad personnel and their families in filing claims for benefits. The RRB employs examiners to adjudicate the claims, and information technology staff, equipment and programs to maintain earnings records, calculate benefits and

process payments. The RRB also employs actuaries to predict the future income and outlays of the railroad retirement system, statisticians and economists to provide vital data, and attorneys to interpret legislation and represent the RRB in litigation. Internal administration requires a procurement staff, a budget and accounting staff, and personnel specialists. The Inspector General employs auditors and investigators to detect any waste or fraud in the benefit programs.

C. Funding

The Board is permanently authorized and is funded through the annual appropriations process in the Departments of Labor, Health and Human Services, and Education Appropriations Act. The following table summarizes RRB funding levels for the past five years.

(in millions)

	FY2002 Enacted	FY2003 Enacted	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted
Administration	\$97.7	\$100.0	\$101.3	\$103.4	\$102.5
Office of Inspector General*	6.3	6.4	6.6	7.3	7.2
Railroad Unemployment Insurance Trust Fund*	134.0	124.0	126.0	117.0	107.0
Rail Industry Pension Fund*	4,945.0	3,686.0	4,230.0	3,630.0	3,693.0
Dual Benefits Payments Account	146.0	132	119.0	108.0	97.0
Total	\$5,385.7	\$4,084.4	\$4,582.9	\$3,965.7	\$4,006.7

*Funded from Railroad Retirement Trust Fund.

D. Activities in the 109th Congress

On July 17, 2006, the Committee on Transportation and Infrastructure reported H.R. 5074, the Railroad Retirement Technical Improvement Act of 2006, which provided for continued payment of railroad retirement annuities by the U.S. Department of Treasury. H.R. 5074 passed the House on July 26, 2006, and the United States Senate on September 25, 2006. It was signed by the President on October 6, 2006. On September 19, 2006, the Committee reported H.R. 5483, the Railroad Retirement Disability Earnings Act, which increased the outside earnings limit for disabled workers from \$400 to \$700 per month beginning in 2007. H.R. 5483 passed the House on September 27, 2006, and the United States Senate on December 9, 2006. At the time this document was written, it had not yet been signed by the President.

On May 10, 2006, the Subcommittee held a hearing to evaluate the performance of the Railroad Retirement Trust Fund since the enactment of the Railroad Retirement and Survivors' Improvement Act.

VIII. FEDERAL EMPLOYERS' LIABILITY ACT

The Federal Employers' Liability Act (FELA) is a worker-compensation statute applicable only to the railroad industry, which was enacted in 1908, before state workers-compensation laws were widely adopted. FELA authorizes railroad workers to sue their employers for 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 is possible that no damages would be awarded to the employee. This fault-based liability system contrasts sharply with the no-fault workers' compensation statutes applicable in most 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.

IX. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over activities involving the Pipeline and Hazardous Materials Safety Administration, including the agency's homeland security responsibilities.

A. Overview

The Pipeline and Hazardous Materials Safety Administration (PHMSA) was created by the Norman Y. Mineta Research and Special Programs Improvement Act of 2004. Prior to enactment of the Act, the Department of Transportation'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 2.2 million miles of gas and hazardous liquid pipelines, which account for 64 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. The current PHMSA Administrator is Vice Admiral Thomas Barrett. By law, 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 the Administration's goals. PHMSA's current Chief Safety Officer is Stacey Gerard.

B. Pipeline Safety Program Structure

Pipeline safety is governed by the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, which have now been codified in Subtitle VIII of Title 49, U.S. Code. Chapters 601, 603, and 605 of Title 49 were amended in 2002 and again at the end of the 109th Congress.

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.

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, 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. PHMSA also conducts a pipeline safety technology program with an emphasis on applied research.

Congress reauthorized and strengthened the pipeline safety program in the 109th Congress with enactment of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.

The Act requires DOT to promulgate a rulemaking, which ensures that all low-stress hazardous liquid pipelines are subject to the same standards and regulations as other hazardous liquid pipelines. It also strengthens DOT enforcement by increasing the number of Federal pipeline safety inspectors from 90 to 100 in 2007, 111 in fiscal year 2008, 123 in fiscal year 2009, and 135 in fiscal year 2010 – a 50 percent increase in the number of inspectors by 2010.

The Act strengthens PHMSA's authority to order pipeline operators to take corrective action to remedy a condition that poses a threat to public safety, property, or the environment. It also strengthens the Administration's authority to help facilitate the restoration of pipeline operations during man-made or natural disasters. In addition, the Act implements a number of National Transportation Safety Board recommendations regarding worker training, fatigue, and the installation of excess flow valves.

The Act also requires operators of natural gas distribution pipelines to implement a pipeline integrity management program with the same or similar integrity management elements as the hazardous liquid and natural gas transmission pipelines. Distribution pipelines make up 1.8 million miles of the 2.2 million miles of pipelines in the United States. They distribute gas to local towns, businesses, and homes, and are responsible for the majority of pipeline deaths and injuries. This

legislation will help reduce the number of deaths and injuries attributable to natural gas pipeline failures in the future.

To increase accountability among pipeline operators and their senior executives, the law requires the certification and signature of annual and semi-annual pipeline integrity management program performance reports by a senior executive officer of the company operating the pipeline. In addition, the Act will increase transparency by requiring monthly public summaries of all gas and hazardous liquid pipeline enforcement actions taken by DOT, and will require the Secretary to review incident reporting requirements for operators of natural gas pipelines to ensure that the data collected is accurate.

With regard to pipeline security, the Act requires the Inspector General of the Department of Transportation to conduct an assessment of DOT's actions to implement the pipeline security annex to the memorandum of understanding between the Department of Transportation and the Department of Homeland Security.

C. Hazardous Materials Transportation Program Structure

The Hazardous Materials Transportation Act was enacted in 1975 and amended in 1990, 1994, and 2005. The 2005 amendments were enacted in SAFETEA-LU.

These Acts provide the Secretary of Transportation 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 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. SAFETEA-LU strengthens hazmat training requirements and significantly increases funding for hazmat training programs. In addition, SAFETEA-LU retains the statutory provision that ensures that any action taken by the Secretary with respect to loading, unloading, handling, storing, and transporting hazardous materials does not preempt the Occupational Safety and Health Administration's authority to prescribe standards or regulations affecting occupational safety or health.

SAFETEA-LU also maintains the planning and training grant program for states to train emergency response personnel and for PHMSA to issue the emergency response guidebook to assist the states in their planning and training activities.

D. Funding

PHMSA's pipeline safety program is authorized through fiscal year 2010; its hazardous materials transportation safety program is authorized through fiscal year 2008. Both programs are funded through the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act. In fiscal year 2006, Congress appropriated \$130.3 million for PHMSA, including \$73 million for pipeline safety, \$26.6 million for the agency's hazardous materials safety program, and \$14.3 million for emergency preparedness grants.

E. Actions in the 109th Congress

As described above, in the 109th Congress, the Committee on Transportation and Infrastructure successfully reported measures to reauthorize the hazardous materials and pipeline safety programs, which were subsequently enacted. In addition, on May 11, 2005, the Subcommittee on Highways, Transit, and Pipelines held a hearing on hazardous materials endorsement background checks. The Subcommittee held a hearing on pipeline safety reauthorization on March 16, 2006, and the British Petroleum low-stress oil pipeline spills in Alaska on September 13, 2006.