

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

The Subcommittee on Railroads, Pipelines and Hazardous Materials exercises jurisdiction of the programs and activities of two U.S. Department of Transportation 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 transmission 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 Department of Transportation whose rail-related activities fall within the Subcommittee jurisdiction include:

- Surface Transportation Board
- Amtrak
- Railroad Retirement Board
- National Mediation Board

II. RAIL ECONOMIC REGULATION

A. Elements of Rail Economic Regulation

The economic regulation of railroads is administered by the Surface Transportation Board, a 3-member decisionally independent agency. Its three members are appointed by the President with the advice and consent of the Senate, serving staggered 5-year terms. The responsibilities of the Interstate Commerce Commission for economic regulation of rail carriers, already substantially reduced by the Staggers Rail Act of 1980, were further reduced by the ICC Termination Act of 1995 (P.L. 104-88), which abolished the ICC and established the STB. The ICC Termination Act authorized funding of the STB for an initial period of three fiscal years, through the end of FY 1998.

1. Inter-Carrier 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. STB approval may be conditioned on substantial modifications of the transaction as proposed by the applicant. Obtaining STB approval for a merger or acquisition is merely 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 6 years’ pay is required to be paid to

employees affected by a merger or acquisition between 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. Abandonments

For a railroad to remove a particular line from the rail network and cease providing rail service on that line, STB approval must be obtained through an abandonment proceeding. The agency is required to evaluate proposed abandonments 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, 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.

Common carrier rates, since the 1995 ICC Termination Act, are not required to be embodied in centrally filed written tariffs. Instead, rail carriers still have a common carrier obligation to quote reasonable rates and provide service on 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 per cent of variable cost. 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. Activities in the 111th Congress

The Subcommittee did not hold any hearings or consider any legislation regarding STB reauthorization or railroad economic regulatory issues during the 111th Congress.

II. AMTRAK

A. History and Background

Amtrak was created by the Rail Passenger Service Act of 1970 to assume responsibility for the money-losing passenger services of the nation's private sector railroads. Amtrak was established as a corporation under the laws of the District of Columbia. Its preferred voting stock was to be owned solely by the federal government (through the Department of Transportation.) 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 specified Amtrak's corporate structure, including its stock issuances and the position of chief executive officer. By statute, Amtrak's board of directors consists of seven appointees selected by the President with the advice and consent of the Senate, the Secretary of Transportation, and the President of Amtrak.

Amtrak is required by law to operate the basic route system inherited in 1970, except for routes that Amtrak discontinued under specific statutory notice and cost-recovery criteria, or in the event of financial emergency. Outside the Northeast Corridor (Washington-New York-Boston), Amtrak operates almost entirely on tracks owned by the private 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, the Surface Transportation Board is required to decide the conditions of access or the level of compensation.

The Northeast Corridor itself was part of the estate of the bankrupt Penn Central Railroad, and then became part of the property of its federally established successor, Conrail. However, the Railroad Revitalization and Regulatory Reform (4R) Act of 1976 required Conrail to transfer ownership of the Corridor to Amtrak. In that transaction, Conrail retained a permanent exclusive easement to operate freight rail traffic on the Corridor. About 90 per cent of the trains operating on the Corridor are commuter trains belonging to public sector commuter authorities. The compensation paid by commuters to Amtrak for use of Corridor facilities is established by a statutory formula. As with off-Corridor disputes over compensation, the STB is required to adjudicate such disputes between commuter authorities and Amtrak.

Prior law also specifies important aspects of Amtrak's labor relations. By statute, Amtrak has to provide for "labor protection" arrangements, under which any employee (labor or management) whose job is abolished or downgraded as a result of a service discontinuance receives up to 6 years of salary protection. (A service discontinuance includes any reduction in service below three trains weekly.) Federal law also forbids the contracting out of any work other than food service by Amtrak, if the contracting out affects any unionized employee.

Over Amtrak's almost 40-year lifespan, it has received over \$32 billion in federal support for operating expenses, capital funding, and major infrastructure improvements in the Northeast Corridor.

B. Amtrak Reform and Accountability Act of 1997

The Amtrak Reform and Accountability Act of 1997 (P.L. 105-134) authorized federal funding for Amtrak from fiscal year 1998-2002. The Act was designed to free Amtrak of many of the statutory requirements that had inhibited it from operating as a business. Under the law, Amtrak was authorized for the first time to adjust its route system to meet customer demand. The law also established a global liability cap of \$200 million for the death or injury of a passenger, or damage to the property of passengers in passenger rail accidents and incidents. Amtrak is required to maintain liability coverage for claims of at least \$200 million. This liability cap is also instrumental in facilitating negotiations to establish commuter rail services on freight-owned right of way.

C. Passenger Rail Investment and Improvement Act of 2008

The next federal authorization bill for Amtrak was passed in October 2008, the Passenger Rail Investment and Improvement Act (P.L. 110-432). This Act, known as PRIIA, authorizes capital and operating grants for Amtrak from fiscal year 2008-2013. A number of improvements to Amtrak management were incorporated in the PRIIA authorization, including:

- requiring Amtrak to establish an improved financial accounting system;
- requiring Amtrak to prepare and submit to Congress a transparent 5-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 money-losing long distance routes;
- establishing the Northeast Corridor Advisory Commission to coordinate Amtrak's operations in the multi-state corridor and to evaluate options and make recommendations for future passenger rail improvements; and
- requiring the development and implementation of improved Amtrak's on-board services such as food and beverage service.

In addition to these internal management reforms, PRIIA included two provisions that open the operation of intercity passenger rail service to competition. The first provision, codified at 49 U.S.C. 24711, creates a pilot program whereby two of Amtrak's current intercity routes can be operated by another rail operator. Section 502 of PRIIA established an open request for proposals process for entities to bid for contracts to design, build, operate, maintain and finance high-speed rail corridors designated under the law.

D. Activities in the 111th Congress

The Subcommittee did not hold any hearings or consider any legislation specifically

regarding Amtrak during the 111th Congress, though Amtrak officials participated in Subcommittee hearings regarding the program management of the newly established State capital grant programs for intercity passenger rail improvements and for high-speed rail corridor development. In addition, the Full Committee held oversight hearings on spending under the American Recovery and Reinvestment Act. Amtrak testified on how it utilized the \$1.3 billion in funding.

III. 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) and amended by the Safe Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU). Under this program the FRA Administrator is authorized to provide direct loans and loan guarantees up to \$35.0 billion. Up to \$7.0 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;
 - Refinance outstanding debt incurred for the purposes listed above; and
 - Develop or establish new intermodal or railroad facilities
- Direct loans can fund up to 100% of a railroad project with repayment periods of up to 35 years and 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 freight shippers who intend to construct a new rail connection. Of the \$35 billion in loan authority authorized under the RRIF program, currently the Department has \$400 million in outstanding loans. In calendar year 2010, two loans were approved. The Department received nine loan applications; two were approved, one was withdrawn, and six are under consideration. Since the program was created, the Department has disapproved four loan applications.

B. State Intercity Rail Capital Grants and High-Speed Rail Corridor Grants

Two new capital grant programs were authorized in PRIIA, the intercity passenger rail service grants to states (49 U.S.C. 24402), and the high-speed rail corridor development grants (49 U.S.C. 26106). The state capital grants were authorized for a total of \$1.9 billion over five years; the high-speed rail grants were authorized for a total of \$1.5 billion over five years (fiscal year 2009-2013). These combined programs were appropriated a total of \$10.5 billion in the American Reinvestment and Recovery Act and the fiscal year 2010 Consolidated Appropriations Act, greatly exceeding the authorized funding levels under PRIIA. In these appropriations, funding was provided in a consolidated program called "High Speed and Intercity Passenger

Rail" (HSIPR) grants. The program is often spoken of as "high-speed rail", but only a few of the grants awarded by the Department of Transportation using these funds are truly high-speed, as defined in the underlying authorization.

There has not been a clear connection demonstrated by the Department of Transportation between the evaluation process for the HSIPR grant program and the projects that were awarded federal funding. While the Department's evaluation process was clearly based on project evaluation considerations contained in PRIIA, the Department did not publish the ratings each application received, so there is no way to ascertain that the highest rated projects were the projects that were awarded federal funding. Some projects that were awarded funding have already been terminated by state leadership amid concerns that the projects would not generate enough benefits to offset the cost of building and subsidizing the ongoing operations of the improved passenger rail service.

C. Activities in the 111th Congress

The Subcommittee held a number of hearings in the 111th on the Department of Transportation's implementation of the intercity passenger rail and high-speed rail corridor grant programs. On June 22, 2009, the Subcommittee held a field hearing in Pittsburgh, Pennsylvania on expanding and increasing passenger rail service, particularly on the Keystone Corridor from Philadelphia to Harrisburg and westward through Pittsburgh. The Keystone Corridor is a good example of a State-supported corridor service where a State pays some or all of the operating costs associated with Amtrak intercity service within the State. There are a total of 15 States supporting 22 Amtrak intercity routes. Section 209 of PRIIA requires the participating States and Amtrak to jointly develop a standardized methodology on how to allocate these costs, which may result in some States being charged significantly more to continue current State-supported Amtrak services.

The Subcommittee also held a hearing on October 14, 2009 focusing on the opportunities and challenges of developing high-speed rail in the United States. The \$8 billion for "high-speed and intercity passenger rail grants" appropriated in the American Recovery and Reinvestment Act had not yet been awarded at this time, and some Members of the Subcommittee expressed that the opportunity to bring high-speed rail to the U.S. required a focused strategy to create one or two successful high-speed projects that a viable federal program could be built around.

On April 20, 2010, the Subcommittee held a field hearing in Chicago on high-speed rail grants awarded under the American Recovery and Reinvestment Act. Another Subcommittee field hearing was held in Miami, Florida on intermodal high-speed rail connections, focusing on the importance of strong transit services and convenient, seamless connections at high-speed rail stations.

The Subcommittee did not consider any legislation regarding intercity passenger rail or high-speed rail programs during the 111th Congress. However, the Highways and Transit Subcommittee held a markup of its draft Surface Transportation Authorization Act on June 24, 2009, which included a Rail Title with some modifications and technical corrections to the

passenger rail sections of PRIIA. This legislation was never considered by the full Transportation and Infrastructure Committee.

IV. THE FEDERAL RAIL SAFETY PROGRAM

A. Rail Safety Jurisdiction

The Federal Railroad Administration is the component of the Department of Transportation responsible for administering Federal railroad safety laws. The broad safety authority of the FRA encompasses railroad safety practices, equipment, and reporting. 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, U.S. Code. In addition, 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 Interstate Commerce Commission. When the Department of Transportation was created in 1966, all safety responsibilities of the ICC were transferred to DOT. In 1970, the Federal Railroad Safety Act was enacted, giving DOT comprehensive authority over rail carriers' safety practices and equipment.

Prior to 1988, 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 to give FRA direct jurisdiction over railroad employees in safety-sensitive positions. The 1988 legislation also required 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 Test Center (TTC) near Pueblo, Colorado, where much of the research and development activities take place. The TTC is operated by the Association of American Railroads under a long-term contract.

B. Rail Safety Improvement Act of 2008

In October 2008, the Rail Safety Improvement Act of 2008 was enacted (P.L. 110-432), the first rail safety reauthorization bill since the expiration of the authorization for FRA's safety activities at the end of fiscal year 1998. Probably the most important provision of the RSIA was a mandate for railroads to implement Positive Train Control systems by January 1, 2016 on rail routes carrying passengers or certain poison or toxic-by-inhalation hazardous materials. Other

provisions in the Act 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 raising the minimum off-duty hours to 10 consecutive hours. Whistleblower protections were strengthened, and a National Transportation Safety Board 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 FRA rail safety programs was authorized under RSIA from fiscal year 2009-2013.

C. Activities in the 111th Congress

The Subcommittee did not hold any rail safety hearings or consider rail safety-related legislation in the 111th Congress. However, the Highways and Transit Subcommittee held a markup of its draft Surface Transportation Authorization Act on June 24, 2009, which included a Rail Title with some technical corrections to the Rail Safety Improvement Act. This legislation was never considered by the full Transportation and Infrastructure Committee.

V. RAIL RETIREMENT, UNEMPLOYMENT AND LABOR LAW

A. Railroad Retirement

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

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 was enacted, and that would begin paying benefits immediately.

In 1946, the Retirement Act 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 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 government-administered industry-wide 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 continues to pay these benefits out of general revenues to some 155,000 individuals. 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 employer and employees pay a 6.2% payroll tax for Tier I, while for Tier II, employees pay a 4.9% payroll tax and employers pay a 16.1% tax. In fiscal year 1998, a total of \$8.2 billion was paid in retirement, survivor and disability benefits to 772,305 annuitants.

The Railroad Retirement System is administered by the U.S. Railroad Retirement Board, 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, IL, and there are numerous field offices throughout the country. The board has approximately 1,400 employees and an annual budget for administration of about \$90 million.

B. Railroad Unemployment

The Railroad Retirement Board 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 instead have been since 1988 "experience-rated," so that each railroad's annual premiums reflect its actual unemployment claims experience from the prior year. During fiscal year 1998, a total of \$59 million was paid in unemployment and sickness benefits to 31,000 claimants.

C. Railway Labor Act

The Railway Labor Act governs labor relations in the railroad and airline industries, and only those industries. The Railroad Subcommittee has jurisdiction over those aspects of the Act that apply to the railroad industry.

The National Mediation Board is the independent Federal agency responsible for administering the Railway Labor Act. The National Mediation Board 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 National Mediation Board has approximately 52 employees and an annual budget of about \$8 million.

The Board 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 Board 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. In general, Congress has chosen to intervene because of the potentially devastating effect that a national rail strike can have on the economy. A national strike on most major freight railroads was threatened in 1996, but the dispute was resolved without legislation.

D. 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 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 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% of claims are handled without litigation and without employee legal representation. Nonetheless, rail management claims that FELA is a more costly system than the state workers compensation systems that apply to their major competitor, the truckers. In addition, they claim that FELA creates an adversarial environment that promotes distrust between employer and employee. Rail labor maintains that FELA is fair and that the higher compensation levels provide an incentive to the railroads to maintain a safe system.

VI. PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

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 2.5 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, 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.

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 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.

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 increased the number of Federal pipeline safety inspectors from 90 in 2006 to 135 in 2010.

The Act strengthens PHMSA's authority to help facilitate the restoration of pipeline operations during man-made or natural disasters and strengthens the Administration'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. In addition, the Act implements a number of National Transportation Safety Board recommendations regarding pipeline safety.

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.

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 the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" ("SAFETEA-LU"); (P.L. 109-59).

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 expired at the end of fiscal year 2010; its hazardous materials transportation safety program expired at the end of fiscal year 2008. The Committee expects to reauthorize the pipeline safety and hazardous materials transportation safety programs in the 112th Congress. Both programs are funded through the Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Act. In fiscal year 2010, Congress appropriated \$21 million for PHMSA administrative expenses, \$105 million for pipeline safety, \$38 million for the agency's hazardous materials safety program, and \$28.3 million for emergency preparedness grants.

E. Activities in the 111th Congress

1. Pipeline Safety Activities:

On May 20, 2010, the Subcommittee held a hearing to receive testimony on the efforts of PHMSA to implement the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006.

On June 29, 2010 the Subcommittee held a hearing to receive testimony on the safety of regulated and unregulated pipelines.

On July 15, 2010 the Subcommittee held a hearing on integrity management of hazardous liquid pipelines.

On July 21, 2010 the Subcommittee held a hearing on the public awareness and education programs of pipeline operators.

On September 15, 2010, the Committee on Transportation and Infrastructure held a hearing on the Enbridge pipeline failure that occurred on July 25, 2010, in Marshall, Michigan.

2. Hazardous Materials Transportation Safety Activities:

On May 14, 2009, the Subcommittee held a hearing on reauthorization of the Hazardous Materials Safety Program.

On September 10, 2009, the Committee on Transportation and Infrastructure held a hearing on concerns with hazardous materials safety in the U.S.

On November 16, 2009, the Subcommittee held a field hearing in Baltimore, Maryland on reauthorization of the Hazardous Materials Safety Program.

On April 22, 2010, the Subcommittee held a hearing on the Department of Transportation's oversight and management of hazardous materials special permits and approvals.

The Committee on Transportation and Infrastructure considered H.R. 4016, introduced by Chairman James Oberstar, in a full committee markup on November 19, 2009. There were two recorded votes on amendments, which were defeated on party line votes. Three areas of the bill were especially controversial within the Committee: (1) restrictions on the transportation of lithium batteries; (2) a prohibition on the use of "wetlines" (external product piping on tank trucks); and (3) the fitness determination process for shippers and carriers applying for PHMSA special permits and approvals. The bill and report were not filed for consideration by the full House of Representatives.