JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
111TH CONGRESS

January 2009

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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, the Pipeline and Hazardous Materials Safety Administration, 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 Subcommittee on Railroads, Pipelines, and Hazardous Materials include:

- Amtrak
- Federal Railroad Administration Reauthorization
- Hazardous Materials Endorsement Background Checks
- Hazardous Materials Transportation
- High-Speed 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
- 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 181 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 2007, there were 30 Class II railroads and 320 Class III railroads in the U.S.

Until the recent economic crisis, business for the railroad industry was booming. The Department of Transportation's (DOT) Freight Analysis Framework predicted that rail traffic would increase more than 50 percent, from 1.8 billion tons to 2.9 billion tons, by 2020, and the freight rail industry estimated that an investment of $148 billion (in 2007 dollars) for rail infrastructure expansion over the next 28 years would be required to keep pace with economic growth and meet DOT's forecast demand. Although rail volumes are now sliding, Wall Street analysts believe that the rail sector will hold up better than most industries and see a rebound as early as late 2009.

Demand for passenger rail, however, is increasing. During fiscal year 2007, Amtrak served more than 25.8 million passengers, representing the fifth 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.

Pipeline and hazardous materials transportation is also 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 freight traffic has an impact on safety. According to the Federal Railroad Administration (FRA), the number of train accidents has increased from 2,575 in 1998 to 2,647 in 2007 while the train accident rates have decreased: 3.77 train accidents per million miles in 1998 compared to 3.34 train accidents per million miles in 2007. Fatalities have increased from four in 1998 to eight in 2007. Injuries have also increased from 129 to 292 during the same time period. The major causes of train accidents are human factors and track conditions.

Grade-crossing incidents and incident rates have decreased over the past decade. According to the FRA, there were 3,508 grade-crossing incidents in 1998, or 3.54 incidents per million miles, which resulted in 431 fatalities and 1,303 injuries. In 2007, there were 2,752 incidents, or 3.48 incidents per million miles, which resulted in 335 fatalities and 1,047 injuries.

Significant incidents involving hazardous liquid pipelines have decreased over the past decade, but incidents involving natural gas transmission pipelines are on the rise. Since 1998, incidents involving gas transmission pipelines have increased from 51 to 76 incidents in 2007 resulting in two fatalities, seven injuries, and $53,907,130 in damages. Gas distribution pipeline incidents have decreased slightly from 97 incidents in 1998 to 92 incidents in 2005, resulting in nine fatalities, 36 injuries, and $23,434,503 in damages.

Total hazardous materials transportation accidents and incidents have increased from 15,495 in 1998 to 19,248 in 2007. Fatalities decreased from 13 in 1998 to 10 in 2007, while injuries increased from 195 to 220 during the same period. Most incidents occur on highways, followed by air, rail, and then water.

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, better known as "Amtrak", provides a majority of the nation's intercity passenger rail service. Amtrak was created with the enactment of the Rail Passenger Service Act of 1970. The congressionally chartered, non-governmental corporation was created to relieve private railroads of their legal mandate to operate money-losing intercity passenger rail service and to preserve and reinvigorate intercity passenger rail service throughout the country. When Amtrak commenced operations on May 1, 1971, the rail share of the intercity travel market was 0.4 percent. The number of daily intercity passenger trains had declined from 11,000 in 1964 to fewer than 300 in 1970.

Amtrak has grown considerably since then. In FY 2007, Amtrak served more than 25.8 million passengers at more than 500 stations in 46 States on approximately 22,000 route miles. Amtrak's FY 2007 ridership is the fifth straight year of record ridership and it increased ridership across all of its services in both corridor and long-distance routes. On average, more than 70,000 passengers ride on Amtrak trains each day. Amtrak also improved its financial performance due to improvements in its service and operations. In FY 2007, the railroad posted approximately $1.5 billion in ticket revenue, a gain of 10.8 percent over FY 2006 ticket revenues and the third consecutive year of ticket revenue gain.

Despite these impressive ridership and revenue achievements, Amtrak has consistently had to fight for sufficient capital and operating investment from Congress. There have been unrealistic expectations that Amtrak should be self-sufficient and profitable. Amtrak was charged to operate over routes and services that were generally unprofitable for the private railroads that preceded Amtrak service. In many of these cases, Amtrak provided this service with second-hand equipment acquired from private railroads and limited federal start-up support. In addition, the expectation of self-sufficient and profitable Amtrak service is unique in comparison to the Federal approach of financing the Nation's other major passenger transportation modes. The nation's highway, public transportation, and aviation systems all receive robust Federal investment, significantly financed by user fees. While this expectation helped justify efforts of significantly restricting or eliminating Federal investment for intercity passenger rail, it has also undermined efforts to develop a national intercity passenger rail system that is capable of meeting the needs of the nation in the 21st Century.

Federal investment in Amtrak is provided through the annual appropriations process from discretionary funds. This investment has varied significantly from year to year, depending on overall budget conditions and political support. As a result, Amtrak was forced to take on new debt to finance its basic system needs. Today, a majority of Amtrak's $3.2 billion long-term debt stems from equipment capital leases acquired during this period that allowed Amtrak to preserve its operations. This long-term debt is reduced somewhat by assets related to defeased leases. Amtrak spends approximately $300 million per year in servicing this debt.

In addition, this limited and inconsistent Congressional support also forced Amtrak to curtail or defer many needed capital projects that created a serious deferred maintenance problem. Poor train performance and reliability due to equipment and infrastructure deficiencies undermined Amtrak's operations and revenue potential. Today, Amtrak reports it has approximately $6 billion in deferred maintenance. Completing this maintenance would bring the Northeast Corridor ("NEC") to a state-of-good-repair (which is defined as replacing assets during their useful design life); make improvements to bridges and tunnels; and replace Amtrak's fleet of aging railcars. Amtrak has

refurbished nearly 70 percent of its rolling stock to a state-of-good-repair. However, most of these cars are over 25 years old and reaching the end of their useful design life. Completing this maintenance work will allow Amtrak to accommodate increased ridership, provide improved amenities and service, improve service reliability, and increase capacity on some of its corridors.

While Federal investment has increased since 2002, Amtrak has not received the necessary funding to address its deferred maintenance. In addition, Amtrak anticipates it will not be able to keep pace with the passenger ridership growth of the past five years unless it has the capital and operating resources necessary to provide a service that the public can depend on. While Amtrak is enjoying a period of passenger and revenue growth, the deferred maintenance, limited capital investment, and heavy debt hamper Amtrak's ability to continue to accommodate this growth with current funding levels.

To address these critical intercity passenger rail needs, in the 110th Congress, Committee on Transportation and Infrastructure Chairman James L. Oberstar, Ranking Member John Mica, Subcommittee on Railroads, Pipelines, and Hazardous Materials Chairwoman Corrine Brown, and Ranking Member Bill Shuster, and 34 other Members of the Committee introduced H.R. 6003, the "Passenger Rail Investment and Improvement Act of 2008," which authorized a total of $14.4 billion for Amtrak, state intercity passenger rail grants, and high-speed rail grants over five years. The Committee reported H.R. 6003 favorably to the House on June 5, 2008. The House passed the bill on June 11, 2008. The House and Senate negotiated a final bill, which combined H.R. 2095, the Federal Rail Safety Improvement Act of 2007, and H.R. 6003, and passed the House by voice vote on September 24, 2008 and the Senate 74-24 on October 1, 2008. The bill was signed into law by the President on October 16, 2008 (Public Law No. 110-432).

The Act reauthorizes Amtrak (the last authorization expired in 2002) and provides a total of $13.06 billion over five years to help bring the Northeast Corridor to a state-of-good-repair, and encourage the development of new and improved intercity passenger rail service through an 80-20 Federal/State matching grant program. It also provides $1.5 billion for the planning and development of high-speed rail corridors.

Specifically, the Act authorizes $5.315 billion over five years to Amtrak for capital grants and $2.949 billion over five years for operating grants. Past inconsistent Federal support has hampered Amtrak's ability to replace catenaries, passenger cars, bridges, ties, and other equipment necessary for Amtrak to provide service. These capital grants will help bring the Northeast Corridor to a state-of-good-repair, and allow Amtrak to procure new rolling stock, rehabilitate existing bridges, and make additional capital improvements on its entire network. In addition, the operating grants authorized under the bill will help Amtrak pay salaries, health costs, overtime pay, fuel costs, facilities, and train maintenance and operations. These operating grants will also ensure that Amtrak can meet its obligations under its recently negotiated labor contract.

In an effort to encourage the development of new and improved intercity passenger rail services, the Act creates a new State Capital Grant program for intercity passenger rail projects. The bill provides $1.9 billion over five years for grants to States to pay for the capital costs of facilities and equipment necessary to provide new or improved intercity passenger rail. Out of these funds, $325 million is reserved for grants to States and to Amtrak for projects that increase capacity along certain rail lines in order to reduce congestion and facilitate ridership growth.

The Act also authorizes $1.5 billion over five years for grants to States and/or Amtrak to finance the construction and equipment for 11 authorized high-speed rail corridors. In addition, the Act requires the Secretary of Transportation to issue a request for proposals for projects for the financing, design, construction, and operation of 10 federally-designated high-speed rail corridors and the Northeast Corridor. Proposals would need to meet certain financial, labor, and planning criteria, as well as a detailed description to account for any impacts on existing passenger, commuter, and freight rail traffic to be considered. If the Secretary receives a qualifying proposal, she would be directed to form a Commission to study any proposals received. The Secretary would issue a report to the Congress on the Commission's findings and her recommendations for each of the corridors. Any further action on a proposal would need legislative approval by Congress.

Finally, the Act authorizes $1.5 billion for fiscal years 2009 through 2019 for capital preventive maintenance grants for the Washington Metropolitan Area Transit Authority, and includes a number of measures to reform Amtrak's operations and Amtrak's financial and accounting procedures; improve Amtrak's on-time performance; reduce Amtrak's debt; and resolve disputes between commuter and freight railroads. The Act also extends the number of years a recipient of a Railroad Rehabilitation and Improvement Financing ("RRIF") loan would have to be repaid from 25 years to 35 years. These loans will help railroads, States, government-sponsored authorities, and shippers improve capacity. Funding from the RRIF program can also be used to develop intercity and high-speed rail systems and purchase and install positive train control systems.

B. Funding

Federal investment in Amtrak is provided through the annual appropriations process from discretionary funds 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)

	FY 2004 Enacted	FY 2005 Enacted	FY 2006 Enacted	FY 2007 Enacted	FY 2008 Enacted
Amtrak	$1,218	$1,217	$1,294	$1,294	$1,325

*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 110th Congress

On June 12, 2007, the Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing to review Amtrak's fiscal year ("FY") 2008 Strategic Plan ("Plan"). On June 26, 2007, the Subcommittee held a hearing to examine the benefits of intercity passenger rail. On July 11, 2007, the Subcommittee held a hearing to examine Amtrak's capital needs, as part of a larger effort to introduce Amtrak reauthorization legislation. On February 11, 2008, the Subcommittee held a field hearing in New Orleans, Louisiana to receive testimony on the role of intercity passenger rail during national emergencies. On April 23, 2008, the Subcommittee held a hearing to examine current and projected demand on the nation's freight, intercity passenger, and commuter rail infrastructure. On

May 14, 2008, the Subcommittee held a hearing to receive testimony on Amtrak reauthorization legislation, H.R. 6003, the Passenger Rail Investment and Improvement Act of 2008.

On June 11, 2008, the Committee on Transportation and Infrastructure reported H.R. 6003, the Passenger Rail Investment and Improvement Act of 2008 favorably to the House. The House passed the bill on June 11, 2008. The House and Senate negotiated a final bill, which combined H.R. 2095, the Federal Rail Safety Improvement Act of 2007, and H.R. 6003, and passed the House by voice vote on September 24, 2008 and the Senate 74-24 on October 1, 2008. The bill was signed into law by the President on October 16, 2008 (Public Law No. 110-432).

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 ("FRA"), including the agency's homeland security responsibilities.

A. Overview

The FRA 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 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 of Safety 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.

During the 110th Congress, the Committee on Transportation and Infrastructure developed major legislation, H.R. 2095, the "Federal Railroad Safety Improvement Act of 2007," which reauthorized the Federal rail safety program. That authorization had expired in 1998. The Committee reported H.R. 2095 favorably to the House on September 19, 2007. The House passed the bill 377-38 on October 17, 2007. The House and Senate negotiated a final bill, which combined H.R. 2095 and H.R. 6003, and passed the House by voice vote on September 24, 2008 and the Senate 74-24 on October 1, 2008. The bill was signed into law by the President on October 16, 2008 (Public Law No. 110-432).

The Act provides a total of $1.625 billion for our nation's rail safety program over the period encompassing fiscal years 2009 through 2013. The Act clarifies that the mission of the FRA is to ensure that safety is the highest priority; creates a new position of Chief Safety Officer; requires the Secretary of Transportation to develop a long-term strategy for improving rail safety, which must include an annual plan and schedule for, among other things, reducing the number and rates of accidents, injuries, and fatalities involving railroads; and requires annual reporting from the Secretary on the Department's progress in implementing unmet statutory mandates and open safety recommendations by the Department of Transportation's Inspector General and the National Transportation Safety Board ("NTSB").

The Act implements a number of long-standing NTSB safety recommendations by requiring all Class I railroads and intercity passenger and commuter railroads to install a positive train control system by December 31, 2015, on all main-line track where intercity passenger railroads and commuter railroads operate and where toxic-by-inhalation hazardous materials are transported; reforming hours-of-service standards to provide train crews with more rest time; requiring Class I railroads to provide emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials; and strengthening track and grade crossing safety.

The Act also enhances railroad worker training; prohibits railroads from denying, delaying, or interfering with the medical treatment of injured workers; increases civil penalties for certain rail safety violations; enhances bridge and tunnel safety; establishes a program at the NTSB to assist victims and their families involved in a passenger rail accident, modeled after a similar aviation disaster program; and ensures that State governments are able to protect their citizens against environmental hazards, such as noxious fumes or leaks into groundwater, which could result from operation of a waste processing facility by a railroad.

B. Funding

The FRA 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. In FY 2008, Congress appropriated $206.1 million to the FRA, including $150.1 million for safety and operations, $35.9 for railroad research and development, and $20.1 million for the rail line relocation and improvement program.

C. Activities in the 110th Congress

On January 30, 2007, the Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing on the Federal rail safety program and proposals for reauthorization of the FRA. On January 31, 2007, the Subcommittee reconvened to continue receiving testimony on the Federal rail safety program and to discuss proposals for reauthorization of the FRA. On February 13, 2007, the Subcommittee held a hearing on fatigue in the rail industry. On March 7, 2007, the Subcommittee held a hearing to examine current issues in transit and rail security, including roles and responsibilities of the Department of Homeland Security, the Federal Transit Administration, and the Federal Railroad Administration; the state of preparedness in the transit, rail, and over-the-road bus industries; and federal programs and activities that help meet the security needs and funding priorities for mitigation of security threats against the Nation's transit, rail, and over-the-road bus systems. On March 16, 2007, the Subcommittee held a field hearing in San Antonio, Texas to

receive testimony on the role of human factors in rail accidents. On May 8, 2007, the Subcommittee held a hearing on pending rail safety legislation. On August 9, 2007, the Subcommittee held a field hearing in Norwalk, California on Federal, State, and local roles in rail safety. On October 16, 2007, the Subcommittee held a hearing on railroad-owned solid waste transload facilities.

On September 19, 2007, the Committee on Transportation and Infrastructure reported H.R. 2095 favorably to the House. The House passed the bill by a vote of 377-38 on October 17, 2007. The House and Senate negotiated a final bill, which combined H.R. 2095 and H.R. 6003, and passed the House by voice vote on September 24, 2008 and the Senate 74-24 on October 1, 2008. The bill was signed into law by the President on October 16, 2008 (Public Law No. 110-432).

The Subcommittee, working with the Homeland Security Committee, developed a rail and transit security bill to implement the recommendations of the 9/11 Commission, which became public law on August 3, 2007 (P.L. 110-53). The Act directs the Secretary of Homeland Security to establish a task force to complete a nationwide risk assessment of a terrorist attack on railroads; directs the Secretary to develop and implement the National Strategy for Railroad Transportation Security, which must include prioritized goals, actions, and schedules for enhancing rail security; requires certain railroads to conduct vulnerability assessments; authorizes funding for railroad carriers and Amtrak to improve rail security; requires railroads to provide security training to front-line employees; strengthens whistleblower protections for rail employees providing information about perceived security threats; and requires railroads to take the safest and most secure route for transporting high hazard materials.

V. SURFACE TRANSPORTATION BOARD

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over the activities of the Surface Transportation Board ("STB"), 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 STB was established 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 ("DOT"), 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, who are appointed by the President and confirmed with the advice and consent of the United States Senate for five-year terms.

The STB has four offices: the Office of Public Assistance, Governmental Affairs, and Compliance, which monitors rail operations throughout the United States, enforces regulations over rail and certain non-rail common carriers in the United States, 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, and addresses operational and service issues among all Board stakeholders, as well as questions pertaining to Board procedures; 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 2008, the STB issued approximately 1,200 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, Housing and Urban Development and Related Agencies Appropriations Act. In fiscal year 2008, Congress appropriated $26.3 million to the STB.

D. Activities of the 110th Congress

On October 16, 2007, the Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing on railroad-owned solid waste transload facilities. On March 5, 2008, the Subcommittee held a hearing on Wall Street investment trends in the railroad industry.

On September 9, 2008, the Committee on Transportation and Infrastructure held a hearing to discuss H.R. 6707, the "Taking Responsible Action for Community Safety Act." H.R. 6707 enables the STB to thoroughly consider the public interest when evaluating a proposed railroad merger or consolidation that includes at least one Class I railroad. Under current law, the STB is required to approve all mergers and consolidations between a Class I railroad and a Class II or Class III railroad unless the Board finds that the merger is likely to cause a substantial lessening of competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States; and that the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Specifically, the bill requires the STB to consider, in a merger or consolidation proceeding, the safety and environmental effects of the proposed transaction, including the effects on local

communities, such as public safety, grade crossing safety, hazardous materials transportation safety, emergency response time, noise, and socioeconomic impacts. It also requires the STB to consider the effects of the proposed transaction on intercity passenger rail and commuter rail.

The bill prohibits the STB from approving or authorizing a merger or consolidation if it finds that the transaction is inconsistent with the public interest because the transaction's impacts on safety and on all the affected communities outweigh the transaction's benefits. Further, the bill authorizes the STB to impose conditions to mitigate the effects of the transaction on local communities when such conditions are in the public interest.

On September 26, 2008, the Committee reported H.R. 6707 favorably to the House. The bill was considered under suspension of the rules on September 27, 2008, and failed 243 – 175. No further action was taken on the legislation.

VI. NATIONAL MEDIATION BOARD

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

A. Overview

The 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.

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, and Related Agencies Appropriations Act. In fiscal year 2008, Congress appropriated $12.9 million to the NMB.

D. Activities in the 110th Congress

During the 110th Congress, the Subcommittee on Railroads, Pipelines, and Hazardous Materials worked with the National Mediation Board and interested parties to resolve the long-standing contract dispute between Amtrak management and labor.

VII. RAILROAD RETIREMENT BOARD

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

A. Overview

The 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 ("the 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 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 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 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 12.1 percent tax. In fiscal year 2007, a total of $9.9 billion was paid in retirement and survivor benefits to 641,000 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 2007, a total of $74 million was paid in unemployment and sickness benefits to 29,000 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 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, and Related Agencies Appropriations Act. In fiscal year 2008, Congress appropriated $103.6 million for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, $79 million for the Duel Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, and $7.2 million (to be derived from the railroad retirement accounts and railroad unemployment insurance account) for the Office of Inspector General.

D. Activities in the 110th Congress

The Subcommittee on Railroads, Pipelines, and Hazardous Materials did not conduct any activities relating to the Railroad Retirement Board in the 110th Congress.

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 overseas 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. 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 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 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 is authorized through fiscal year 2010; its hazardous materials transportation safety program expired at the end of fiscal year 2008. The Committee expects to reauthorize the hazardous materials transportation safety program in the 111th Congress. 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 2008, Congress appropriated $154.2 million for PHMSA, including $18.1 million for administrative expenses, $79.8 million for pipeline safety, $28 million for the agency's hazardous materials safety program, and $28.3 million for emergency preparedness grants.

E. Activities in the 110th Congress

On June 25, 2008, the Subcommittee on Railroads, Pipelines, and Hazardous Materials held a hearing to examine the implementation of the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 (The "PIPES Act").

The Subcommittee also negotiated several provisions in the "Implementing Recommendations of the 9/11 Commission Act of 2007" (P.L. 110-53) related to pipeline and hazardous materials security. This Act includes several provisions to address vulnerabilities related to hazardous materials transportation including: requiring physical testing of rail cars used to transport highly toxic chemicals material; evaluating the security risks of transportation routes of security sensitive materials; equipping rail cars transporting high hazard materials with communications technology; documenting existing highway routes for hazardous materials transported by truck; and tracking technologies for motor carrier shipments of certain security-sensitive hazardous materials. The Act also addresses pipeline security by requiring DHS to develop a pipeline security and incident recovery protocols plan, to review pipeline operators' security plans, and to inspect the 100 most critical pipeline operators.