



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

Washington, DC 20515

John L. Mica
Chairman

Dick J. Rahall, III
Ranking Member

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James W. Coon II, Chief of Staff

James H. Zoia, Democrat Chief of Staff

SUMMARY OF SUBJECT MATTER

To: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials
From: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff
Subject: Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, March 17, 2011 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony on the Rail Safety Improvement Act of 2008 (P.L. 110-432, Division A), with particular focus on the Federal Railroad Administration's final rule implementing requirements for freight and passenger railroads to install positive train control systems by December 31, 2015.

BACKGROUND

The Rail Safety Improvement Act (RSIA) comprises Division A of the broad rail authorization bill signed by President Bush in October 2008. Division B of the rail authorization is the Passenger Rail Investment and Improvement Act, or PRIIA; the Subcommittee held an oversight hearing on implementation of this part of the law on March 11, 2011. RSIA included a number of major provisions meant to improve safety of freight and passenger rail operations for the benefit of rail passengers, railroad employees, and communities. Previous to RSIA, the last authorization of rail safety programs had been in the 1994 Swift Rail Development Act.

On September 12, 2008, a Union Pacific freight train and a Metrolink commuter train collided head-on in the Chatsworth district of Los Angeles, California. The scene of the accident was a curved section of single track on the Metrolink Ventura County Line just east of Stoney Point. According to the National Transportation Safety Board (NTSB), which investigated the cause of the collision, the Metrolink train ran through a red signal before entering a section of single track where the opposing freight train had been given the right of way by the train dispatcher. In the resulting collision, the Metrolink locomotive telescoped into the passenger compartment of the first passenger car and caught fire. All three locomotives, the leading Metrolink passenger car and seven freight cars, were derailed, and both lead locomotives and the passenger car fell over.

There were 25 fatalities and 135 other individuals were injured (46 of them critically). The accident was the deadliest passenger rail accident in the United States since the Big Bayou Canot Amtrak disaster in 1993.

The NTSB faulted the Metrolink train's engineer for the collision, concluding that he was distracted by text messages he was sending while on duty. This accident spurred the Congress to act quickly on completing the Rail Safety Improvement Act, which was enacted a month later, on October 16, 2008. In May 2010, the Secretary of Transportation announced a proposed rule to explicitly restrict and in some cases prohibit the use of cell phones and other handheld devices such as personal digital assistants (PDAs) by train engineers, conductors, switchmen, and other safety critical rail employees.

Positive Train Control

Legislative Mandate: Section 104 of RSIA amends title 49 of the United States Code to add a new section 20157, Implementation of positive train control systems. This section mandates that Class I railroad carriers¹ and intercity passenger rail and commuter rail entities must implement positive train control (PTC) systems by December 31, 2015, on: (1) lines over which intercity passenger rail or commuter rail are operated; (2) main freight lines over which poison- or toxic-by-inhalation hazardous materials are transported; and (3) such other tracks as the Secretary may prescribe by regulation or order. All affected Class I freight railroads and passenger railroads were required to submit to the Federal Railroad Administration (FRA) their implementation plans for positive train control systems 18 months after enactment of RSIA, or by May 16, 2010.

“Positive train control” describes technologies designed to automatically stop or slow a train before certain accidents caused by human error occur — specifically, train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and movement of a train through a track switch left in the wrong position. A fully functional PTC system must be able to precisely determine the location and speed of trains; warn train operators of potential problems; and take action if the operator does not respond to a warning. For example, if a train operator fails to stop a train at a stop signal, the PTC system would apply the brakes automatically. In January 2010, FRA published its final rule to implement the PTC mandate. This rule has raised great concern and strong objections from the rail community, for a number of reasons. Freight railroads, many Members of Congress, and some in the greater rail community believe that the FRA regulation has gone beyond the scope of the RSIA positive train control mandate.

Cost versus Benefits of PTC Installation: FRA’s own cost-benefit analysis of its final rule implementing PTC states that, “an immediate regulatory mandate for PGC could not be justified based upon normal cost-benefit principles relying on direct safety benefits The safety benefits of PTC systems were relatively small in comparison to the large capital and maintenance costs.” The FRA estimated a cost-benefit ratio of 15:1 for required installation of PTC systems when it issued its Notice of Proposed Rulemaking, and an even higher cost-benefit ratio of 22:1

¹ A Class I freight railroad is defined as a railroad with 2009 operating revenue of more than \$378.8 million.

in its final rule. The safety benefit associated with installation of PTC over 20 years is estimated by FRA to be \$674 million; the 20-year costs are estimated to be \$13.21 billion. Due to the very high cost to benefit ratio, the PTC rule has been targeted by the Obama Administration efforts under Executive Order 13563 on Improving Regulations and Regulatory Review, which requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness.

Base Year for PTC Route Determination: In its final rule, the FRA orders railroads to install PTC on rail lines that carried toxic-by-inhalation (TIH) materials in 2008. Nothing in section 104 of the RSIA either explicitly or implicitly calls for using 2008 as the base year — only 2015 is mentioned in the statute.

Using 2008 as the base year makes little sense because TIH traffic patterns in 2015 will be vastly different than they were in 2008. Hazardous materials rail traffic patterns are already changing because of marketplace dynamics and because of recent regulatory changes in hazardous materials transportation by rail made through other agencies. Marketplace changes include decisions by some manufacturers to generate chlorine on-site without requiring rail shipment or bulk storage. Two recent regulations, one through the Pipeline and Hazardous Materials Safety Administration and another through the Transportation Security Administration, have had an overall impact of consolidating TIH routing by rail. The PHMSA rule on rail hazmat routing requires that TIH be transported on rail routes posing the least overall safety and security risk. The 2008 TSA “secure chain of custody” rule reduces the amount of time that a rail hazmat shipment can sit in one place (“dwell time”), and requires a secure transfer of hazmat carrying rail cars when making an interchange.

If the 2008 base year is retained for determining which routes will require PTC installation, the FRA estimates that 65,000 miles of Class I freight rail lines will meet these requirements, though rail industry figures suggest more than 73,000 route-miles (and 17,000 locomotives) will require PTC installation. If left unchanged, the 2008 baseline year will mean railroads may have to spend hundreds of millions of dollars to deploy PTC on thousands of miles of rail lines on which neither passengers nor TIH materials will be moving in 2015.

AAR’s court case and settlement: In November 2010, the Association of American Railroads (AAR) filed a petition in the U.S. Court of Appeals challenging FRA’s PTC final rule, both on the basis of the 2008 base year and on the basis of exceeding the Congressional mandate by requiring that PTC information be displayed on two monitors in each locomotive (one for the engineer, and a second for the conductor). Last week, the AAR and FRA agreed to petition the court to hold the case in abeyance, pending a new rulemaking or rulemakings to address four issues that remain remaining under discussion in connection with the lawsuit:

- (1) 2008 base year issue
- (2) limited train operations carrying TIH (a “de minimus” exception)
- (3) PTC failures en-route (rule requires a 20 mph limit to destination if PTC fails)
- (4) PTC in yard operations

FRA and AAR have reached an agreement on the issue of PTC monitors in the locomotive, agreeing that the second screen would exist but it need not be interactive.

PTC Mandate Impact on Commuter Railroads: Commuter railroads operate over the general railway system and the safety of these railroads is overseen by the FRA. There are currently 23 commuter railroads operating in the United States. Commuter railroads are not challenging the FRA's implementation of the PTC mandate, but have serious concerns about the underlying mandate itself, particularly given the financial straits that many of these public agencies are in during the economic recession. Commuter railroads are managed at the local level by transit agencies and receive federal capital grant funds through the Federal Transit Administration (FTA). The FTA formula grant funds are required for ongoing system maintenance and modernization, and the additional estimated \$2 billion price tag for implementation of PTC on commuter rail systems is not within reach for commuter rail agencies. In fact, most transit agencies in the United States have had to cut service or increase fares to make up for declining local and state support over the last two years. Commuter railroads argue that the PTC mandate could have the unintended consequence of degrading system safety by requiring the deferral of needed state of good repair projects in order to fund initial phases of PTC.

Commuter railroads are also concerned about the issues of interoperability and spectrum allocation. Because commuter railroads often run over tracks owned by a Class I freight railroad, their PTC systems must be interoperable with the system installed by the freight railroad. Additionally, radio spectrum is necessary to allow the wireless communications between train locomotives, wayside equipment, dispatch centers, and communications subsystems that make up a PTC network. The freight railroads have been successful in securing enough spectrum bandwidth for the freight PTC installation, but commuter rail systems operate in and near cities, where there is already strong demand for radio spectrum. The commuter railroads are concerned that there will not be sufficient spectrum, or that it will come at too high a cost, for effective PTC implementation.

PTC Mandate Impact on Short Line Railroads: Short line and regional railroads are explicitly not required to install PTC equipment on their lines under section 104 of RSIA. However, the PTC mandate affects short lines because interchanges of freight between a short line railroad and a Class I railroad take place on Class I rail track, and in many cases, such interchanges will occur on sections of track that are PTC-equipped. FRA's final rule will allow some limited interchanges by short lines on Class I PTC-equipped track, up to four times daily and within 20 miles of the short line's entry point, but short line and regional railroads are concerned about the of equipping their older locomotives with PTC technology in order to make interchanges. There has not been a cost analysis of the impact of PTC requirements on short line and regional railroads, though industry representatives estimates that as many as 140 smaller railroads will be required to upgrade their equipment to be PTC-compatible.

Hours of Service

In an effort to reduce fatigue-related rail accidents, the RSIA significantly revised Hours of Service (HOS) requirements for rail and signal employees. The law also included a provision that would exempt commuter rail operators from the new HOS regime if the FRA develops a satisfactory alternative within three years.

HOS changes in P.L 110-432 include:

- Limiting the total on-duty and limbo time for rail and signal employees to 276 hours per month;
- Limiting the total allowable shift time for employees to 12 consecutive hours;
- Increasing uninterrupted off-duty hours from 8 to 10 hours in a 24 hour period;
- Requiring 2 consecutive days off after 6 consecutive days worked and 3 consecutive days off after 7 consecutive days worked; and
- Reducing allowable "limbo" time to 40 hours per month, then 30 hours per month after one year.

INVITED WITNESSES

Rep. Elton Gallegly (California 24th district)

Ms. Mackenzie Souser
Camarillo, California

Ms. Jo Strang
Associate Administrator, Office of Safety
Federal Railroad Administration

Mr. Mark Manion
Executive Vice President & Chief Operation Officer
Norfolk Southern Corporation
Accompanied by Mr. Ed Hamberger, CEO and President
Association of American Railroads

Mr. Joseph J. Giulietti
Executive Director
South Florida Regional Transportation Authority

Paul Victor
President
Anacostia & Pacific Railroad Company, Inc.

Dennis R. Pierce
National President
Brotherhood of Locomotive Engineers & Trainmen