

Transportation Update

March 2023

Congress Takes Action on Rail Safety Following East Palestine Derailment

Senators Introduce the Railway Safety Act of 2023

On March 1, 2023, a bipartisan group of U.S. senators introduced the [Railway Safety Act of 2023](#), which would direct the U.S. Department of Transportation (DOT) to increase safety regulation of railroads and freight-rail shippers. The proposed bill is an effort to prevent future train derailments like the recent derailment in East Palestine, Ohio.

To enhance safety requirements, the proposed bill mandates rules requiring shippers and rail carriers to provide advanced notice to state and tribal emergency response officials regarding the transportation of hazardous materials. The proposed bill also requires the secretary of transportation to issue new rules that increase railcar inspection requirements and reduce or eliminate blocked crossings resulting from delays in train movements. Additionally, the bill moves up the prohibition of using DOT-111 tank cars to transport all Class 3 flammable liquids to May 1, 2025. Furthermore, while the East Palestine train had a three-person crew, the bill would end a long-standing effort of the railroads to allow for a one-person train crew and require railroads to operate with at least two-person crews.

The proposed bill also requires the secretary of transportation to issue rules establishing requirements for installation, repair and maintenance of wayside defect detectors for rail carriers transporting hazardous materials. Another requirement is the installation of a hotbox detector

every 10 miles on tracks that transport hazardous materials. These rules endeavor to prevent wheel bearings from overheating, which the National Transportation Safety Board determined contributed to the crash in East Palestine, Ohio.

Currently, persons that knowingly violate laws regarding the transportation of hazardous materials that result in death, serious illness or serious injury are subject to civil penalties up to \$175,000. The proposed bill would increase these penalties from \$175,000 to \$1,750,000, or one percent of the person's annual income, whichever is greater. The bill would not change the persons that are subject to these penalties, which applies to rail carriers and shippers of the commodity alike.

The proposed bill also establishes two grant programs. The first will provide hazardous materials training to local law enforcement and emergency first responders and will be funded by a \$1 million registration fee for all Class I rail carriers that transport hazardous materials. The second grant program will provide the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration (PHMSA) with unappropriated funds to research wayside defect detectors, prevent future train derailments involving hazardous materials and develop safer tank cars.

House Introduces Decreasing Emergency Railroad Accident Instances Locally (DERAIL) Act

On March 1, 2023, Representatives Ro Khanna (D-CA) and Chris Deluzio (D-PA) introduced the [Decreasing Emergency Railroad Accident Instances Locally Act \(DERAIL Act\)](#). The proposed bill is smaller in scope than the Senate's Railway Safety Act, and it focuses on two key aspects of railway safety.

First, the proposed legislation expands the definition of high-hazard flammable trains (HHFT) to include any train with one or more cars carrying a Class 3 flammable liquid or a Class 2 flammable gas. Currently, trains with 20 or more consecutive rail tank cars, or 35 or more rail tank cars interspersed throughout a train that are carrying Class 3 flammable liquids are considered HHFTs. Carriers transporting HHFTs are subject to speed and routing restrictions. If the definition of an HHFT is modified by reducing the number of cars necessary to qualify a train as an HHFT, it will lead to more trains being considered HHFTs and subject to the speed and routing restrictions.

Second, the bill requires a rail carrier involved in the derailment of a train carrying toxic-by-inhalation materials to report to the National Response Center and state, tribal and local officials within 24 hours of such derailment. When notifying such entities, the involved rail carrier must disclose the type of toxic-by-inhalation material.

FOR MORE INFORMATION

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