

Questions Submitted for the Record
Submitted by the Honorable Rick Larsen
Ranking Member
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Subcommittee Hearing on “Examining the State of Rail Safety in the Aftermath of the
Derailment in East Palestine, Ohio”
Tuesday, July 23, 2024

Questions for Mr. Tristan Brown, Deputy Administrator, Pipeline and Hazardous Materials Safety Administration:

1. One of the NTSB’s recommendations was to establish a tank car replacement schedule to ensure all tank cars meet or exceed DOT-117 standards. What legislative authority does PHMSA need to update the current schedule?

Response: Federal hazardous materials transportation law (Hazardous Materials Transportation Act; 49 U.S.C. 5101 et seq.) at 49 U.S.C. 5103 gives the Secretary of Transportation general authority to establish regulations for the safe and secure transportation of hazardous materials in commerce, including the authority to set the standards for hazardous materials packagings, including rail tank cars.¹ The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b).² In 2015, as part of PHMSA’s High Hazard Flammable Train Rule, PHMSA finalized requirements to phase out DOT-111 rail cars carrying hazardous materials under its general statutory authorities. However, Congress superseded this with a lengthier phase-out schedule for DOT-111 tank cars in flammable liquid service in paragraph (b) of Section 7304 of the FAST Act³. As noted in the hearing, Secretary Buttigieg expressed support for bipartisan legislation accelerating the current May 1, 2029, end date for DOT-111s in flammable liquid service. In order to establish an accelerated tank car replacement schedule for the DOT-111 cars covered by the FAST Act phase-out schedule, PHMSA would require assistance from Congress in amending or updating that schedule. For tank cars not covered by the FAST Act, i.e., all cars that are not in Class 3 flammable liquid service, legislation that establishes Congress’ intent would help avoid a similar scenario that occurred in 2015 where PHMSA implemented strong new rail safety requirements and Congress nearly immediately superseded PHMSA’s actions. Therefore, PHMSA welcomes additional clarity from Congress to respond to NTSB’s recommendations. For example, Congress could direct PHMSA to require the phase-out of the DOT-111 specification tank car and create a new, superior general service tank car specification that is predicated on the DOT-117 specification for flammable liquid service (e.g., corrosive, combustible, and oxidizing materials).

¹ <https://www.govinfo.gov/content/pkg/USCODE-2011-title49/pdf/USCODE-2011-title49-subtitleIII-chap51-sec5103.pdf>

² <https://www.ecfr.gov/current/title-49/section-1.97>

³ <https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf>

2. Do you need legislative authority to revise the definition of a High-Hazard Flammable Train?

Response: Yes. “High Hazard Flammable Train” (HHFT) is defined in Section 7302 of the FAST Act ⁴ as “a single train transporting 20 or more tank cars loaded with a Class 3 flammable liquid in a continuous block or a single train transporting 35 or more tank cars loaded with a Class 3 flammable liquid throughout the train consist.” Any expansion or revision of that definition of “High Hazard Flammable Train” would require additional authority from Congress.

As stated above, PHMSA has general authority to establish regulations for the safe and secure transportation of hazardous materials in commerce, including the authority to set the standards for hazardous materials packagings, including rail tank cars. Therefore, PHMSA’s general authority would allow it to issue regulations and implement regulatory requirements on a larger set of newly-designated High-Hazard Trains that cover other types of trains, e.g. those carrying flammable gases, combustible liquids, explosives, poison-by-inhalation material, and other hazardous materials, and such regulations could take into account differences in tank car survivability – as recommended by the NTSB.⁵ However, PHMSA would welcome additional clarity from Congress in these areas.

⁴ <https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf>

⁵ See [NTSB Safety Recommendation R-24-14](#).