



Billing Code: 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2016-0074 (Notice No. 2016-13)]

Hazardous Materials: FAST Act Insurance and Liability Study; Request for Comments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: On December 4, 2015, President Obama signed legislation entitled, “Fixing America’s Surface Transportation Act of 2015” (the FAST Act). The FAST Act includes the “Hazardous Materials Transportation Safety Improvement Act of 2015” in Sections 7001 through 7311, which provides direction for PHMSA’s hazardous materials safety program.

Section 7310 of the FAST Act requires the Secretary of Transportation to initiate a study of the levels and structure of insurance for railroad carriers transporting hazardous materials, which must be initiated within four months of the enactment of the FAST Act. Within a year of initiation, the Secretary must submit a report with the results of the study and recommendations for addressing liability issues with rail transportation of hazmat to Congress. PHMSA initiated this insurance study in March 2016 and is on schedule to complete it by April 2017. Specifically, PHMSA entered into an inter-agency agreement with the U.S. Department of Transportation (DOT) Office of Research and Technology’s Volpe National Transportation Systems Center to conduct the study, which is required to examine current and future levels and mechanisms to insure rail carriers transporting all hazardous materials. The study will evaluate the following: (1) The level and structure of insurance, including self-insurance, available in the private market against the full liability potential for

damages arising from an accident or incident involving a train transporting hazardous materials; (2) The level and structure of insurance necessary and appropriate to efficiently allocate risk and financial responsibility for claims; and to ensure that a railroad carrier transporting hazardous materials can continue to operate despite the risk of an accident or incident; and (3) The potential applicability for a train transporting hazardous materials, of an alternative insurance model, including a secondary liability coverage pool or pools to supplement commercial insurance; and other models administered by the Federal Government.

DATES: Comments on this notice will be accepted until [INSERT 45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the docket number (PHMSA-2016-0074) by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: (202) 493-2251.
- Mail: Docket Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.
- Hand Delivery: To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by DOT at: <http://www.regulations.gov>. Note that the comments received will be posted without change to: <http://www.regulations.gov> and will include any personal information provided. When providing comments, please identify the following:

- Organization Name,
- Type of Organization (e.g. rail carrier, shipper, insurer, trade organization, government, etc.), and
- An explanation of your interest in this study.

FOR FURTHER INFORMATION CONTACT: Robert Benedict, (202) 366-8553, Program Development Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

REQUEST FOR COMMENTS: As part of this study, PHMSA is conducting a review of existing data and literature with regard to current insurance liability levels and structure for rail carriers transporting hazardous materials. This review examines publically available insurance and liability data, including information released by the rail carriers, information released by industry trade associations, data and reports regarding the insurance industry, previous academic, government, or industry studies, and other public sources.

Given the large scope of this study, PHMSA is seeking public comment. Specifically, in an effort to provide an opportunity for stakeholder input on the study and potential sources

of data and literature, PHMSA is issuing this notice requesting comment on insurance and liability coverage for rail carriers transporting hazardous materials. PHMSA is requesting input that would inform the study, as well as any available insurance and liability literature and data that may be relevant to this topic.

In addition, PHMSA is seeking input and data related to the following specific questions.

Level and Structure of Insurance and Liability Coverage

1. Please comment on, or provide data relating to, the current level, structure, and type of liability insurance coverage (including self-insurance and retentions) available for hazardous materials transportation by rail. Specifically, please address the following:

- Cost and scope of coverage
- State and Federal Requirements
- Changes in the cost or availability of liability insurance
- Issues unique to your industry, commodity, and/or entity size

2. Are the current levels of liability insurance coverage for hazardous materials transportation by rail appropriate?

- If not, what would be considered an appropriate level?
- Are there policy or market changes that could alter your perspective on what is adequate?
- How do you anticipate this changing in the future?

3. What are the drivers of the current coverage limits for hazardous materials transportation liability insurance?

- Are there policy or market changes that could enable the availability of higher coverage limits?
 - How do you anticipate this changing in the future?
4. As hazardous materials transportation by rail is a cross-border enterprise, how, if at all, do foreign requirements related to insurance and liability coverage impact the level, structure and type of insurance and liability coverage held domestically?

Insurance and Liability Alternatives

5. Please comment on, or provide data relating to, any previous or current initiatives for sharing the cost of insurance and/or legal liability for hazardous material by rail incidents between shipper and carrier.
6. Please comment on, or provide data relating to, any other legislative, policy, or voluntary approaches from other industries that may be applicable to liability and insurance related to hazardous materials transportation by rail. To the extent possible, please comment on any potential economic, safety, and environmental considerations related to these alternative approaches.
7. Other industries and foreign governments have implemented programs that impose fees to fund secondary liability coverage and/or create liability caps. Is this a feasible alternative for hazardous materials transportation by rail?

Other Information

8. Please provide any potential studies and data sources that may inform this study.

9. Commenters are invited to address any other considerations related to liability and the rail transport of hazardous materials not addressed above.

Signed in Washington, DC, on July 21, 2016.

William Schoonover,

*Acting Associate Administrator for Hazardous Materials Safety,
Pipeline and Hazardous Materials Safety Administration*

[FR Doc. 2016-17615 Filed: 7/25/2016 8:45 am; Publication Date: 7/26/2016]