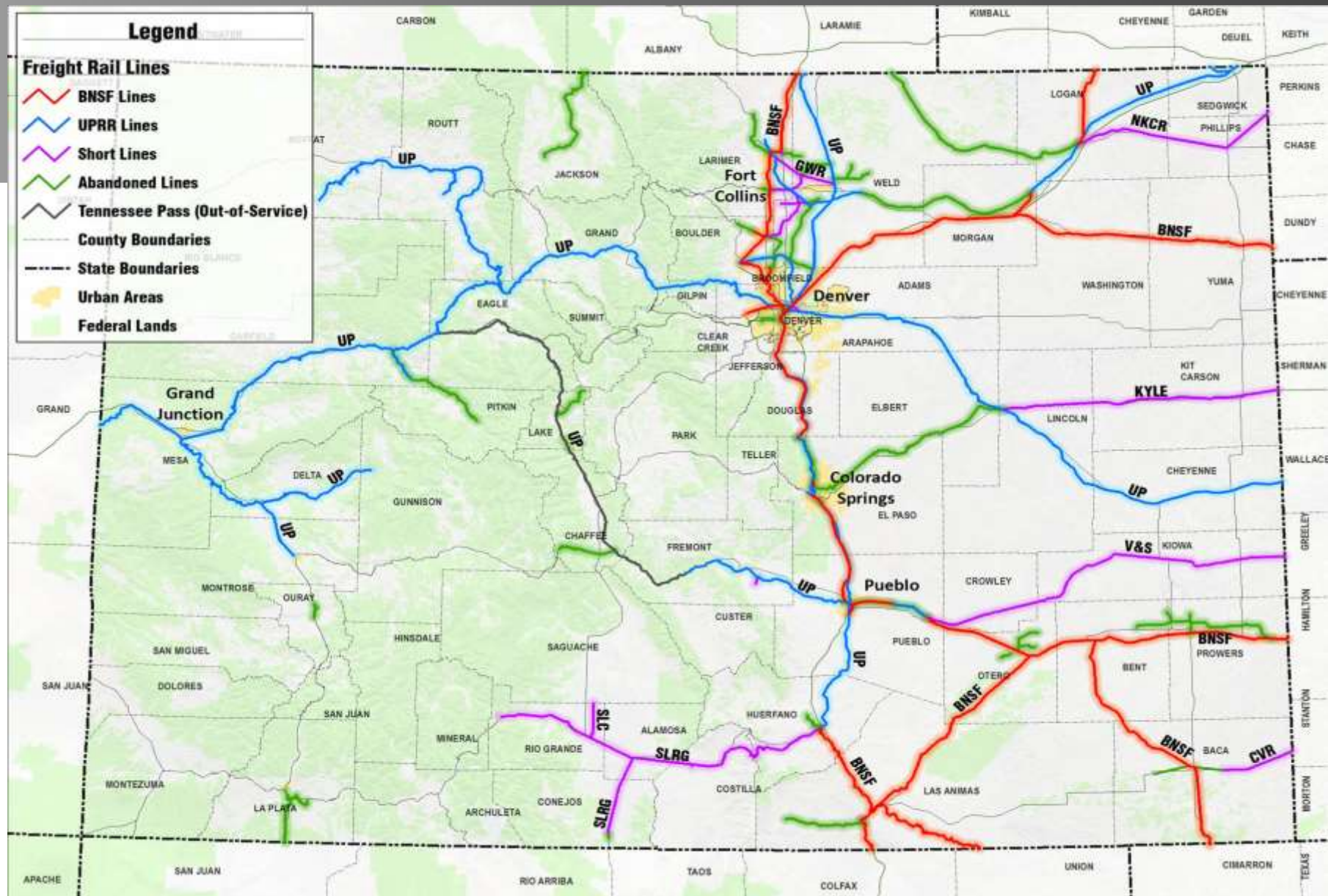


OIL AND HAZARDOUS MATERIALS TRAINS IN YOUR COMMUNITY

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Key Terms

- **Surface Transportation Board (STB)**
 - 49 U.S.C. Subtitle IV
- **Rail carrier**
 - 49 U.S.C. § 10102(5)
- **Federal Railroad Administration (FRA)**
 - 49 U.S.C. §§ 103 et seq.
- **Pipeline and Hazardous Materials Administration (PHMSA)**
 - 49 USC §§ 60101 et seq.

Federal Preemption

- **Interstate Commerce Commission Termination Act of 1995 (ICCTA)** – 49 U.S.C. Subtitle IV
- STB has “exclusive” jurisdiction over:
 - “Transportation by a rail carrier” (49 U.S.C. § 10501)
 - Construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks or facilities (49 U.S.C. § 10501)
- “Transportation” broadly encompasses real property, equipment and activities (49 U.S.C. § 10102(9))

Federal Preemption

- **All remedies provided under ICCTA are exclusive and preempt the remedies provided under Federal or State law (49 U.S.C. § 10501(b))**
- For preemption to apply:
 - Activity must constitute “transportation” 49 U.S.C. § 10501(a)(1)
 - Must be performed by a “rail carrier” 49 U.S.C. § 10501(b)

Federal Preemption

- State or local regulation or action preempted if -
 - Such action would unreasonably interfere with railroad operations or interstate commerce, or
 - Would constitute regulation of the railroad's operations
- Any action requiring “preclearance” by local entity preempted – zoning regulation, building permit
- Railroads have condemnation power in many states

Federal Preemption

- **NOT preempted:**
 - Local laws of general applicability governing public health, safety and welfare
 - Example: Oil production or transloading facilities not owned by a railroad may be subject to local zoning and building codes – analysis will be fact-specific
 - Federal environmental laws

National Rail Network

- **Freight railroads are the backbone**
- **Competing demands – freight and passenger operations**
- **Competing demands among freight commodities**
- **Limitations**
 - **Space/scheduling**
 - **Speed restrictions**

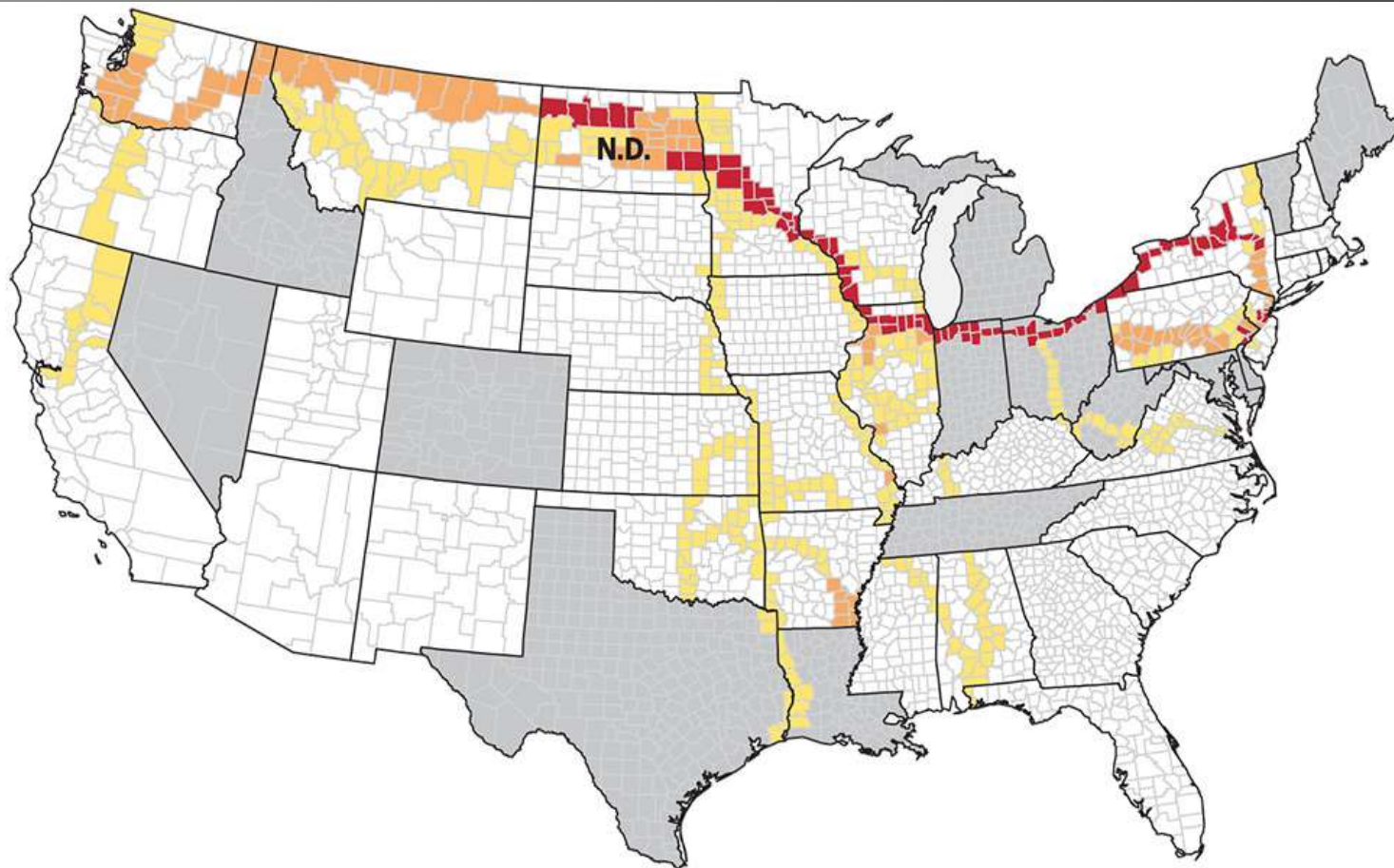
Rail Safety – General

- **FRA - rail safety**
 - **Track**
 - **Equipment**
 - **Workers**
 - **Final rule – Risk Reduction Program, 80 Fed. Reg. 10,949 (Feb. 27, 2015) – to be codified at 49 CFR Part 271**
- **PHMSA – hazardous materials transportation – any mode**
- **FRA enforces**
 - **PHMSA requirements within the rail industry**
 - **FRA's own regulations**

Rail Safety – Grade Crossings

- Regulated at state level
- FRA app – includes accident history: Rail Crossing Locator
 - www.fra.dot.gov/Page/P0703
- Federal regulation:
 - Use of locomotive horns
 - Establishment of quiet zones – exception to otherwise-applicable requirements
- FRA compendium of state and local grade crossing regulations: www.fra.dot.gov/Page/P0693
- Important role for local law enforcement

Rail Safety – Crude Oil & Ethanol



Rail Safety – Crude Oil & Ethanol



Rail Safety – Crude Oil & Ethanol

- CSX 109-car train
- All CPC-1232 tank cars
- 25 cars derailed, 20 cars ignited
- 2 local communities evacuated – 1 home destroyed



Rail Safety – Crude Oil & Ethanol

- Oil train incidents - issues and impacts
- Volatility of crude oil
- PHMSA Final Rule – Oil Tank Cars, May 8, 2015
- Federal preemption

Not just Bakken crude:

- Since 2006 –
 - 20 derailments involving crude oil
 - 30 derailments involving ethanol



Rail Safety – Crude Oil & Ethanol

Issues and impacts:

- Externalized risk for railroads – imposition of risk on communities
- Local first responders on front lines
- Explosions, fires spills – injuries, death, property damage, environmental damage



Rail Safety – Crude Oil & Ethanol

- Volatility of crude oil
 - North Dakota Industrial Commission Order #25417 – producers must strip out volatile compounds prior to shipment



Rail Safety – Crude Oil & Ethanol

**PHMSA Docket No. HM-251 – Final Rule , 80 Fed. Reg. 26643
(May 8, 2015)**

- **High-hazard flammable train; high-hazard flammable unit train**
- **Tank car standards**
- **Classification of unrefined petroleum-based products**
- **Rail routing – risk assessment and notification**
- **Reduced operating speeds**
- **Enhanced braking requirements**

Rail Safety – Crude Oil & Ethanol

Tank car standards –

- Phase-out of existing DOT-111 and industry-adopted CPC-1232 cars – retrofit or replacement
- New cars – DOT-117
- Retrofit cars – DOT-117R
- New cars must meet standard as of Oct. 1, 2015
- All existing cars to be retrofitted by May 1, 2025



Rail Safety – Crude Oil & Ethanol

Classification of unrefined petroleum-based products:

- **Class 3 flammable liquid – most flammable classification**
- **Packing Group I product – requires most robust packaging for shipment**
- **Producers must institute testing program and make testing information available to DOT**
- **Contrast federal position with vigorous risk-reduction effort by ND**

Rail Safety – Crude Oil & Ethanol

Rail routing – risk assessment and notification

- PHMSA final rule only requires RRs to directly notify state, tribal and local first responders upon specific request from state, tribal or local officials
- Required to notify Fusion Centers

Rail Safety – Crude Oil & Ethanol

Reduced operating speeds:

- HHFTs limited to 50 mph
- 40 mph limit within high-threat urban areas (city limits and 10-mile buffer zone – 40 CFR 1580.3)
- 30 mph if not equipped with two-way end of train device or distributed power system
- Speeds are those the railroad industry had voluntarily agreed to – represent balancing of safety and efficient operation, not optimal safety approach

Rail Safety – Crude Oil & Ethanol

Enhanced braking requirements:

- Final rule phases in braking improvements
- Immediately requires two-way end-of-train device or distributed power system to perform more even braking throughout train
- By Jan. 1, 2021, all HHFUTs with at least one tank car loaded with a Packing Group I material must have electronically-controlled pneumatic brakes to travel above 30 mph

Rail Safety – Crude Oil & Ethanol



Federal preemption:

- Municipalities cannot prohibit or limit what railroads may ship or handle within municipal boundaries (49 U.S.C. 10501)
- Facilities owned by non-railroads likely subject to state and local regulation – highly fact-specific analysis

Rail Safety – Crude Oil & Ethanol

Additional Regulatory efforts:

- **Volatility**
 - North Dakota Industrial Commission Oil Conditioning Order #25417 effective April 1, 2015
- **Rail System Risk Reduction**
 - 80 Fed. Reg. 10,949 (Feb. 27, 2015) – to be codified at 49 CFR Part 271
- **Crew size**
- **Securement of equipment**
 - FRA

Rail Safety – Crude Oil & Ethanol

Spill response – current requirements:

- **No review by FRA of response plans for use of DOT-111 tank cars**
 - 49 C.F.R. part 130
- **Release of oil – National Oil and Hazardous Substances Pollution Contingency Plan**
 - 40 C.F.R. Part 112
- **Oil discharge into navigable waterways, shorelines or natural resources under control of U.S. – Clean Water Act and CERCLA**
 - 33 U.S.C. § 1321
 - 42 U.S.C. Ch. 103
- **PHMSA ANPRM – proposes to lower thresholds for applicability of OSRP requirements**
 - 79 Fed. Reg. 45,079, Aug. 1, 2014

Photo credit: John L. Wathen

Recent Developments

- **FAST (Fixing America's Surface Transportation) Act**, December 4, 2015 – Title VII, Subtitle C: Safe Transportation of Flammable Liquids by Rail
 - Grants for safety training and outreach
 - Real-time emergency response information to state and local first responders
 - Retrofit requirements
 - Studies: Crude oil characteristics, liability/insurance, electronically-controlled pneumatic brakes

Recent Developments

- **DOT Audit Report – FRA Oversight of Hazardous Materials Shipments, February 24, 2016**
 - Comprehensive, nationwide evaluation of risk required
 - Recommends criminal investigation and penalties in some cases
 - Inspectors need better access to inspection data and outcomes

Questions?

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