

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Union Pacific Railroad Company v. Pipeline and Hazardous
Materials Safety Administration

No. No. 19-1075, United States Court of Appeals for the District of Columbia Circuit (March 17, 2020)

SUMMARY

****Union Pacific Railroad Co. v. Pipeline and Hazardous Materials Safety Administration****, 2020, D.C. Cir. — The court upheld a PHMSA regulation under the FAST Act requiring railroads to flag aggregated hazardous material data as sensitive to state emergency response commissions, rather than imposing direct federal confidentiality protections. The majority held the regulation was not arbitrary or capricious because the agency reasonably found the flagging mechanism sufficient to prevent inadvertent public disclosure, and the railroad failed to provide evidence that aggregated data could be exploited. The dissent argued the agency improperly delegated its statutory duty to "establish security and confidentiality protections" to state law, violating the plain text of § 7302(a)(6).

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Williams, Senior Circuit Judge; Henderson, Circuit Judge; Garland, Circuit Judge
JURISDICTION	Federal
DECIDED	March 17, 2020
DOCKET	No. 19-1075
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of an order of the United States Department of Transportation
STANDARD OF REVIEW	The court reviews the agency's action under the Administrative Procedure Act, upholding the regulation unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The court also considers the agency's interpretation of the statute under Chevron deference, though the majority opinion does not explicitly invoke Chevron but discusses statutory interpretation and arbitrary and capricious review.

PRECEDENTIAL VALUE	Published
PARTIES	Union Pacific Railroad Company v. Pipeline and Hazardous Materials Safety Administration, et al.

TOPICS

administrative law administrative procedure act judicial review of agency action standard of review
 statutory interpretation

PRACTICE AREAS

Administrative Law Transportation Law

QUESTIONS PRESENTED

1. Whether the agency's regulation complies with the FAST Act's requirement to 'establish security and confidentiality protections' for the advanced notification information provided by Class I railroads.

HOLDINGS

1. The regulation is neither dependent on a misreading of the statute nor arbitrary and capricious. The agency's mechanism of flagging information to states, combined with state law protections, is sufficient to ensure confidentiality and security, given the lack of evidence of harm from disclosure.

KEY QUOTATIONS

"Because the regulation is neither dependent on a misreading of the statute nor arbitrary and capricious, we deny the petition for review." (4)

"something (an agency's finding) beats nothing (Union Pacific's unsupported assertion) every time." (8)

"The FAST Act unambiguously commands the Secretary to 'establish' something and, as the majority observes, 'something . . . beats nothing . . . every time.'" (2 (dissent))

FACTUAL BACKGROUND

The Fixing America's Surface Transportation Act (FAST Act) requires the Pipeline and Hazardous Materials Safety Administration (PHMSA) to issue regulations requiring railroads to provide information to state emergency response commissions. The information includes a reasonable estimate of the weekly number of high-hazard flammable trains passing through each county and identification of the flammable liquid. The Act also requires the agency to establish security and confidentiality protections to prevent release to unauthorized persons. PHMSA promulgated a regulation requiring railroads to indicate to the state commissions whether they believe any part of the information is security sensitive or proprietary and exempt from public disclosure. The agency concluded that this flagging mechanism, combined with state law protections, is sufficient to ensure confidentiality and security.

PROCEDURAL HISTORY

On Petition for Review of an Order of the United States Department of Transportation. The Pipeline and Hazardous Materials Safety Administration promulgated a regulation under the Fixing America's Surface Transportation Act requiring railroads to provide aggregated data on hazardous materials transport to state emergency response commissions. Union Pacific challenges the regulation as insufficiently protecting the confidentiality of the information.

DISPOSITION

other

CASES CITED

- Halperin v. CIA, 629 F.2d 144 (D.C. Cir. 1980)
- City of Vernon v. FERC, 845 F.2d 1042 (D.C. Cir. 1988)
- General American Transportation Corp. v. ICC, 872 F.2d 1048 (D.C. Cir. 1989)
- City of Olmsted Falls v. FAA, 292 F.3d 261 (D.C. Cir. 2002)
- Abington Crest Nursing & Rehab. Ctr. v. Sebelius, 575 F.3d 717 (D.C. Cir. 2009)
- U.S. Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004)
- In re Aiken Cty., 725 F.3d 255 (D.C. Cir. 2013)
- Carter v. Carter Coal Co., 298 U.S. 238 (1936)
- EEOC v. Arabian American Oil Co., 499 U.S. 244 (1991)
- United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989)
- Inhabitants of Montclair Twp. v. Ramsdell, 107 U.S. 147 (1883)
- Caminetti v. United States, 242 U.S. 470 (1917)