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February 1, 2010

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Railroad Administration: Positive Train Control Systems*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Transportation, Federal Railroad Administration (FRA), entitled “Positive Train Control Systems” (RIN: 2130-AC03). We received the rule on January 12, 2010. It was published in the *Federal Register* as a “final rule; request for comment on specific issues” on January 15, 2010, with a stated effective date of March 16, 2010. 75 Fed. Reg. 2598.

This final rule provides new performance standards for the implementation and operation of positive train control (PTC) systems as mandated by the Rail Safety Improvement Act of 2008. Pub. L. No. 110-432, div. A, 122 Stat. 4848 (Oct. 16, 2008). This final rule also details the process and identifies the documents that railroads and operators of passenger trains are to utilize and incorporate in their PTC implementation plans. The final rule further details the process and procedure for obtaining FRA approval of such plans.

Enclosed is our assessment of the FRA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that FRA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Jason Schlosberg
Trial Attorney
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION
ENTITLED
"POSITIVE TRAIN CONTROL SYSTEMS"
(RIN: 2130-AC03)

(i) Cost-benefit analysis

The Federal Railroad Administration (FRA) analyzed the costs and benefits of this final rule. The costs FRA anticipates to accrue from adopting this final rule include: (1) costs associated with developing implementation plans and administrative functions related to the implementation and operation of positive train control (PTC) systems, including the information technology and communication systems that make up the central office; (2) hardware costs for onboard locomotive system components, including installation; (3) hardware costs for wayside system components, including installation; and (4) maintenance costs for all system components. FRA estimates the total 20-year discounted costs to be \$13,205,614,091 at a 3-percent discount rate and \$9,547,522,721 at a 7-percent discount rate.

FRA expects two types of benefits to result from the implementation of this final rule—benefits from railroad accident reduction and business benefits from efficiency gains. The first type would include safety benefits or savings expected to accrue from the reduction in the number and severity of casualties arising from train accidents that would occur on lines equipped with PTC systems. FRA estimates the total 20-year discounted benefits to be \$673,801,919 at a 3-percent discount rate and \$439,705,397 at a 7-percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603–605, 607, and 609

FRA conducted a Final Regulatory Flexibility Analysis which covered the need for and objectives of the rule; significant issues raised by public comment and responses to those comments; a description and estimate of small entities affected; a description of reporting, recordkeeping, and other compliance requirements and their impact on small entities; and steps the agency took to minimize any adverse economic impact on small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

FRA determined that this final rule will not result in total expenditures by state, local, or tribal governments, in the aggregate, or by the private sector of \$100 million (\$141.3 million adjusted for inflation) or more in any one year. FRA noted that the vast bulk of costs associated with the rule are directly attributable to the statutory mandate.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On July 21, 2009, FRA published a notice of proposed rulemaking. 74 Fed. Reg. 35,950. FRA accepted public comment on the proposed rule until August 20, 2009. FRA also held a public hearing on the rule on August 13, 2009. FRA responded to comments in the final rule. 75 Fed. Reg. 2605–2684.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

FRA determined that this final rule contains information collection requirements under the Act. FRA has submitted the requirements to the Office of Management and Budget (OMB) for review. In the final rule FRA lists the total annual burden hours for over 100 separate information collection requirements.

Statutory authorization for the rule

FRA promulgated this final rule under the authority of section 2401 of title 28 and sections 20103, 20107, 20133, 20137–138, 20143, 20701–703, 21301–302, and 21304 of title 49, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f

FRA determined that this final rule is not a major federal action significantly affecting the quality of the human environment.

Executive Order No. 12,866 (Regulatory Planning and Review)

FRA determined that this final rule is an economically significant rule under the Order. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

FRA determined that this final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of

government. In addition, FRA has determined that this final rule will not impose any direct costs on state and local governments. However, FRA noted that this final rule will have preemptive effect over the state laws covering the subject matter of this final rule.

Executive Order No. 13,211 (Energy)

FRA determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy and is not a significant regulatory action under the Order.