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June 4, 2015

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter A. DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation: Pipeline and Hazardous Materials Safety Administration: Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) entitled “Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains” (RIN: 2137-AE91). We received the rule on May 20, 2015. It was published in the *Federal Register* as a final rule on May 8, 2015. 80 Fed. Reg. 26,644.

The final rule promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), adopts requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. The final rule defines certain trains transporting large volumes of flammable liquids as “high-hazard flammable trains” (HHFT) and regulates their operation in terms of speed restrictions, braking systems, and routing. The final rule also adopts safety improvements in tank car design standards, a sampling and classification program for unrefined petroleum-based products, and notification requirements. According to PHMSA, these operational and safety improvements are necessary to address the unique risks associated with the growing reliance on trains to transport large quantities of flammable liquids. They incorporate recommendations from the National Transportation Safety Board and from public comments and, as stated by PHMSA, are supported by a robust economic impact analysis.

Enclosed is our assessment of PHMSA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. With the exception of the

60-day delay requirement noted below, our review of the procedural steps taken indicates that PHMSA complied with the applicable requirements.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule has a stated effective date of July 7, 2015. The rule was published in the *Federal Register* on May 8, 2015, received by the House of Representatives on May 20, 2015, and by GAO on May 20, 2015. 80 Fed. Reg. 26,644; 161 Cong. Rec. H3572 (May 22, 2015). Therefore, the final rule does not have the required 60-day delay in its effective date.

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: Joseph Solomey
Assistant Chief Counsel for Hazmat
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
ENTITLED
"HAZARDOUS MATERIALS: ENHANCED TANK CAR
STANDARDS AND OPERATIONAL CONTROLS FOR
HIGH-HAZARD FLAMMABLE TRAINS"
(RIN: 2137-AE91)

(i) Cost-benefit analysis

PHMSA prepared a cost-benefit analysis in conjunction with the final rule. The final rule states that the analysis shows that expected damages based on the historical safety record are expected to exceed \$4.1 billion (undiscounted) and that damages from high-consequence events could reach \$12.6 billion (undiscounted) over a 20-year period in the absence of the rule. PHMSA explained that the revised regulatory impact assessment is in the docket and supports the amendments made in the final rule. PHMSA included a table that shows the costs and benefits by affected section and rule provision over a 20-year period, discounted at a 7 percent rate. The table also shows an explanation of the comprehensive benefits and costs (i.e., the combined effects of individual provisions), and the estimated benefits, costs, and net benefits of each amendment. PHMSA clarified that the uncertainty associated with the risks of HHFT shipments, and the table in the rule contains a range of benefits estimates. The low-end of the range of estimated benefits estimates risk from 2015 to 2034 based on the U.S. safety record for crude oil and ethanol from 2006 to 2013, adjusting for the projected increase in shipment volume over the next 20 years. The upper end of the range of estimated benefits is the 95th percentile from a Monte Carlo simulation.

PHMSA determined that for the provision which deals with Rail Routing (voluntary actions that will be taken by shippers and railroads) would provide a benefit that would be cost effective if routing were to reduce risk of an incident by 0.41 percent, with a cost of \$8.8 million. The Classification Plan provision would be cost effective if this requirement reduces risk by 1.29 percent, with a cost of \$18.9 million. The Speed Restriction (voluntary compliance regarding crude oil trains) plan with a 40 mph speed limit in high-threat urban areas would have a benefit of \$56 million–\$242 million, with the low end of the benefits range based solely on lower consequence events, while the high end of the range includes benefits from mitigating high consequence events, at a cost of \$180 million. The Advanced Brake Signal Propagation Systems provision would have a benefit of \$470.3 million–\$1,114 million (also with a range based on lower consequence events and a high range from mitigating high consequence events), and a cost of \$492 million. The Existing Tank Car Retrofit/Retirement provision would provide a benefit of \$426 million–\$1,706 million (with the range qualifiers as described above) at a cost of \$1,747 million. The New Car Construction provision would provide a benefit of \$23.9 million–\$97.4 million (with the range qualifiers as described above) at a cost of \$34.8 million. The cumulative total benefits of all of the provisions (with range qualifiers as described above) would be \$912 million–\$2,905 million at a total cost of \$2,482 million.

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

PHMSA stated that it was not able to certify that the final rule will not have a significant economic impact on a substantial number of small entities. PHMSA included a Final Regulatory Flexibility Analysis that discusses the requirement areas of the final rule and provided the rationale the agencies used for assessing what impacts will be borne by small entities, along with potential alternatives. PHMSA concluded that the final rule would impact 22 percent of the universe of 738 small railroads. PHMSA stated that although some small railroads will be directly impacted, they will not be impacted significantly as the impact will amount to significantly less than 1 percent of an average small railroad's annual operating revenue. Information available indicated that none of the offerors will be significantly affected by the burdens of the rule. Therefore, these requirements will likely not have a significant economic impact on any small entities' operations. In the notice of proposed rulemaking (NPRM), PHMSA had sought information and comments from the industry that might assist in quantifying the number of small offerors who may be economically impacted by the requirements set forth in the proposed rule, but did not receive any comments. PHMSA determined that there will be no burden on small offerors that are not shippers, except those who must classify mined liquids and gases. Those small entities will face a total cost, discounted at 7 percent over 20 years, of \$10,514 per small entity. The total impact per small shipper, before considering market forces, discounted at 7 percent over 20 years, will be \$1.134 million discounted at 7 percent, and \$1.672 million discounted at 3 percent, the costs of upgrading tank cars. However, PHMSA believes that small shippers can pass on those costs to other parties in the supply chain, because all shippers face the same cost constraints. The total impact per small railroad, discounted at 7 percent over 20 years, will be \$45,230, the cost of routing analysis. PHMSA stated that it identified no additional significant alternative to the final rule that met the agency's objective in promulgating the rule, and that would further reduce the economic impact of the rulemaking 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

PHMSA determined that the final rule will not impose enforceable duties on state, local, or Native American Indian tribal governments. However, the final rule would result in costs to the private sector that exceeds \$151 million in any one year. PHMSA stated that the Regulatory Impact Assessment (RIA) is available in the public docket for this rule. In addition, it stated that the RIA provides a detailed analysis of the public sector costs associated with the proposed requirements. PHMSA invited comments on these considerations, including any unfunded mandates related to this rulemaking.

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

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

PHMSA published the NPRM on August 1, 2014. 79 Fed. Reg. 45,015. The Department also has issued emergency orders in certain instances and taken action on safety issues that constitute an imminent hazard to the safe transportation of hazardous materials. 49 U.S.C. § 5121(d). In the final rule, PHMSA included a table summarizing relevant emergency orders that were included in the NPRM and the additional emergency order issued since the NPRM publication. PHMSA and FRA received over 3,200 public comments representing over 182,000 signatories in response to the NPRM and initial RIA. PHMSA responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Act. Under the PRA, no person is required to respond to an information collection unless it has been approved by the Office of Management and Budget (OMB) and displays a valid OMB control number. In the August 1, 2014, NPRM, PHMSA requested a new information collection from the OMB under OMB Control No. 2137-0628 entitled “Flammable Hazardous Materials by Rail Transportation.” PHMSA stated that the NPRM and this final rule may result in an increase in annual burden and costs under OMB Control No. 2137-0628 due to proposed requirements pertaining to the creation of a sampling and testing program for mined gas or liquid and rail routing for HHFTs, routing requirements for rail operators, and the reporting of incidents that may occur from HHFTs. In the NPRM, PHMSA requested comment on whether it should require reporting of data on the total damages that occur as a result of train accidents involving releases of hazardous material, including damages related to fatalities, injuries, property damage, environmental damage and clean-up costs, loss of business and other economic activity, and evacuation-related costs. Currently, PHMSA only collects some of this information and data verification is inconsistent. Further, PHMSA requested comments on whether it should require reporting on every car carrying hazardous material that derails, whether that car loses product or not. Such reporting would assist PHMSA in assessing the effectiveness of different kinds of cars in containing the hazardous materials that they carry. In response to the NPRM, PHMSA received general comments related to information collection from the individuals which were highlighted in the rule. PHMSA estimated that the total information collection and recordkeeping burden for the requirements as specified in this final rule will be as follows:

- First Year Annual Burden: total annual number of respondents: 1,989; total annual responses: 2,559; total annual burden hours: 103,789; total annual burden cost: \$7,384,533.55.
- Subsequent Year Burden: total annual number of respondents: 1,989; total annual responses: 2,559; total annual burden hours: 29,029; total annual burden cost: \$2,037,988.

Statutory authorization for the rule

This final rule is issued under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to “prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” The amendments in this rule address safety and security vulnerabilities regarding the transportation of hazardous materials in commerce.

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

This final rule is considered an economically significant regulatory action under section 3(f) of Executive Order 12,866 and was reviewed by OMB because it has an expected annual impact of more than \$100 million. A Regulatory Impact Analysis was prepared addressing the economic impact of this final rule.

Executive Order No. 13,132 (Federalism)

PHMSA concluded that the amendments in the final rule will not have any direct effect on the states, or their political subdivisions; it will not impose any compliance costs; and it will not affect

the relationships between the national government and the states, or political subdivisions, or the distribution of power and responsibilities among the various levels of government. PHMSA stated that several of the issues addressed in this final rule are subject to preemption authority, i.e., classification, packaging, and rail routing. In regard to rail routing, for example, a March 25, 2003, final rule (68 Fed. Reg. 14,509) concluded that the specifics of routing rail shipments of hazardous materials preempts all states, their political subdivisions, and Indian tribes from prescribing or restricting routes for rail shipments of hazardous materials, under federal hazardous material transportation law (49 U.S.C. § 5125) and the Federal Rail Safety Act (49 U.S.C. § 20106). PHMSA stated that it would expect the same preemptive effect as a result of this rulemaking, and thus, the consultation and funding requirements of Executive Order 13,132 would not apply. Nonetheless, PHMSA invited state and local governments with an interest in this rulemaking to comment on any effect that proposed requirements could have on them, if adopted, and received comments from state and local governments representing approximately 200 signatories. PHMSA stated that state and local governments unanimously supported the goal of this rulemaking to enhance safety of rail transportation for flammable liquids, and that many local and state governments acknowledged the preemption authority of the federal government. Local and state governments also provided comments on specific proposals in the NPRM.