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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 174

[Docket No. PHMSA-2017-0102]

Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

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

ACTION: Notification of availability; request for comments.

SUMMARY: This document provides notice that PHMSA and the Federal Railroad Administration (FRA) are publishing a revised Regulatory Impact Analysis (RIA) updating the original RIA associated with the electronically controlled pneumatic (ECP) brake provision of PHMSA's May 8, 2015, Final Rule titled "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" (Final Rule). The agencies are publishing the updated RIA in response to the mandate of the Fixing America's Surface Transportation (FAST) Act. The updated RIA incorporates new testing and analysis the National Academy of Sciences (NAS) reviewed, recommendations from two U.S. General Accountability Office (GAO) audits, and updates to the costs and benefits of the provision of the Final Rule based on current economic conditions. PHMSA invites comments on all aspects of the updated RIA and the agency will respond to all relevant comments received.

DATES: Comments must be received by November 1, 2017. Comments received after that date will be considered to the extent practicable, provided the comments do not result in additional delay or expense.

ADDRESSES: You may submit comments identified by the docket number PHMSA-2017-0102 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail or Hand Delivery: U.S. DOT Docket Management System, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- Instructions: If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

Privacy Act Statement

Under 5 U.S.C. 553(c), the Department of Transportation (DOT) solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL- 14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, Senior Economist, Pipeline and Hazardous Materials Safety Administration, by telephone at 202-366-4495 or by email at mark.johnson@dot.gov; or, Mark Anderson, Industry Economist, Federal Railroad Administration, by telephone at 202-493-6078 or by email at mark.anderson@dot.gov.

SUPPLEMENTARY INFORMATION: On May 8, 2015, PHMSA, in coordination with FRA, published a Final Rule adopting requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. See 80 FR 26643. The Final Rule defined certain trains transporting large volumes of flammable liquids as high-hazard flammable trains (HHFT)¹ and others as high-hazard flammable unit trains (HHFUT).² The Final Rule required HHFUTs transporting at least one flammable liquid classified as a packing group I material be operated with an ECP braking system by January 1, 2021, and all other HHFUTs be operated with an ECP braking system by May 1, 2023. See 49 CFR 174.310(a)(3).

In December 2015, Congress passed the FAST Act. Pub. L. 114-94, 129 Stat. 1686 (Dec. 4, 2015) (codified at 49 U.S.C. 20168). Section 7311 of the FAST Act (section 7311) established a process, including independent study and testing, for DOT to use in developing an updated RIA related to the Final Rule's ECP brake provision. The Secretary is also required to solicit public comment on the revised RIA, and issue a final updated RIA. Finally, Section 7311 requires the Secretary of Transportation to review the final updated RIA and determine if the final rule's ECP brake requirements are justified, based on whether the final updated RIA demonstrates that the benefits exceed the costs. The FAST Act requires this entire process to be completed no later than December 4, 2017.

Section 7311 required DOT to enter into an agreement with NAS to test ECP brakes and reevaluate the economic analysis supporting the ECP brake requirement of the Final Rule.³

¹ The Final Rule defined an HHFT as "a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist." See 49 CFR 171.8.

² The Final Rule defined an HHFUT as "a single train transporting 70 or more loaded tank cars containing Class 3 flammable liquid."

³ In a March 17, 2016, letter, NAS declined to perform the testing, citing preliminary cost estimates to perform the testing in excess of \$100 million and expressing concern about meeting the statutory deadline. As an alternative, to

Section 7311 required the testing to “objectively, accurately, and reliably measure[s] the performance of ECP brake systems relative to other braking technologies or systems, such as distributed power and 2-way end-of-train devices.” The FAST Act also provided for GAO review of the potential costs and benefits of ECP brakes. In response, GAO completed an evaluation of the business benefits, safety benefits, and costs that DOT estimated in the RIA for the final rule.⁴ Additionally, GAO recently completed a second evaluation comparing the forecasted values of certain data points that were used to support DOT’s ECP brake analysis.⁵ Both audits are discussed in the updated RIA.

PHMSA is providing the public with an opportunity to comment on the updated RIA. To enable PHMSA to meet section 7311’s deadline, all comments must be received in the docket referenced in the ADDRESSES section of this document by November 1, 2017. Comments received after that date will be considered to the extent practicable, provided the comments do not result in additional delay or expense. All documents and comments related to this matter, including the updated RIA, are available for review at <http://www.regulations.gov> in docket number PHMSA-2017-0102.

Issued in Washington, D.C. on October 10, 2017, under authority delegated in 49 CFR Part 1.97.

Drue Pearce,
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meet the intent of the FAST Act, DOT conducted the testing itself and contracted with NAS to review and monitor the test plan.

⁴ DOT’s Rulemaking on Electronically Controlled Pneumatic Brakes Could Benefit from Additional Data and Transparency, GAO-17-122, Oct 12, 2016.

⁵ 2015 Electronically Controlled Pneumatic Brake Rule: Comparison of DOT Forecasts for Selected Data Points for 2015 and 2016 to Preliminary Data for Those Years, GAO-17-567R, May 31, 2017

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