



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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December 22, 2021

Tristan Brown
Acting Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, DC 20590

Re: Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, Docket No. PHMSA-2021-0058 (HM-264A)

Dear Acting Administrator Brown:

We are writing today to express our serious concerns with the Biden Administration's proposed rule to suspend recently finalized regulations that authorize the safe transportation of liquefied natural gas (LNG) by freight rail.¹ LNG has a proven safety record, is the most environmentally friendly fossil fuel option, and contributes to the United States', and our allies' energy independence.² As our country faces significant supply chain issues and rising energy prices, we should be incentivizing critical infrastructure that can provide additional capacity to the Nation's ability to safely transport energy and ease some of these challenges. Yet, the rollback of this rule once again places additional regulatory burdens to stifle key transportation infrastructure.

On November 8, 2021, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking to rescind the final rule issued on July 24,

¹ Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, 86 Fed. Reg. 61,731, (Nov. 8, 2021), *available at* <https://www.federalregister.gov/documents/2021/11/08/2021-23132/hazardous-materials-suspension-of-hmr-amendments-authorizing-transportation-of-liquefied-natural-gas>.

² Hazardous Materials: Liquefied Natural Gas by Rail, 85 Fed. Reg. 44,994, (Jul. 24, 2020), [hereinafter 2020 LNG Final Rule], *available at* <https://www.federalregister.gov/documents/2020/07/24/2020-13604/hazardous-materials-liquefied-natural-gas-by-rail>; *see also* FortisBC, *The facts about LNG safety*, *available at* <https://talkingenergy.ca/facts-about-lng-safety> (last visited Dec. 15, 2021); *see also* SP 20534 Special Permit to transport LNG by rail in DOT113C120W rail tank cars, Final Environmental Assessment, Docket No. PHMSA-2019-0100, (Dec. 5, 2019), *available at* <https://www.regulations.gov/document/PHMSA-2018-0025-0077>.

2020 (2020 rule)³ that authorized the bulk transportation of LNG in DOT-113C120W9 (DOT-113) specification tank cars.⁴ This 2020 rule followed a notice of proposed rulemaking on October 24, 2019, published in response to a petition for rulemaking from the American Association of Railroads (AAR).⁵ Before the 2020 rulemaking, the only ways to transport LNG were by special permit issued by PHMSA for freight shipment, or by highway transport on large tanker trucks.⁶ The 2020 rule created an organized framework for PHMSA to authorize LNG transport by rail under hazardous materials regulations (HMR).⁷ We are deeply concerned about the Administration's seemingly arbitrary and capricious decision to ignore this work and rescind this regulation so soon after it was finalized. We must question whether the agency's explanation for proposing this rollback constitutes a reasonable decision.⁸ No evidence exists for PHMSA to reasonably conclude that the 2020 rule should be changed so soon after taking effect, and therefore this newly proposed rule is arbitrary, capricious, and unwarranted.⁹

For instance, there are many misconceptions concerning the safety of transporting LNG by rail car. First, LNG is not an explosive liquid and will only ignite when it encounters temperatures greater than 1,000 degrees Fahrenheit.¹⁰ The DOT-113 tank cars used to ship LNG by rail have safely transported several other types of flammable cryogenic materials for years.¹¹ These tank cars are specially designed to safely transport these materials and mitigate the chances of explosions or fire.¹² In the 2020 rule, PHMSA required these tank cars to go beyond HMR and ensure they have a thicker outer layer made of steel with a greater puncture resistance so as to further prevent any damage if derailment were to occur, as well as other specific requirements to enhance safety.¹³

LNG has also been shipped by other modes of transportation for decades, including by marine vessels and trucks for over 40 years in the United States, and over 50 years internationally.¹⁴ Over 435 million shipments of hazardous materials are transported every year under HMR and an average of only 20 hazardous material incidents have resulted in death and serious injury each year, most of which occur in the highway mode.¹⁵ Transportation by rail car

³ 2020 LNG Final Rule, *supra* note 2.

⁴ Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail, 86 Fed. Reg. 61,731, (Nov. 8, 2021), *available at* <https://www.federalregister.gov/documents/2021/11/08/2021-23132/hazardous-materials-suspension-of-hmr-amendments-authorizing-transportation-of-liquefied-natural-gas>.

⁵ Hazardous Materials: Liquefied Natural Gas by Rail, 84 Fed. Reg. 56,964, (Oct. 24, 2019), *available at* <https://www.federalregister.gov/documents/2019/10/24/2019-22949/hazardous-materials-liquefied-natural-gas-by-rail>; *see also* U.S. DOT/PHMSA - P-1697 - Petition for Rulemaking, PHMSA-2017-0020-0002, *available at* <https://www.regulations.gov/document/PHMSA-2017-0020-0002>.

⁶ 2020 LNG Final Rule, *supra* note 2.

⁷ *Id.*

⁸ *See* Motor Veh. Mfrs. Ass'n v. State Farm Ins., 463 U.S. 29, 52 (1983).

⁹ *See id.* at 43, (explaining "Normally, an agency rule would be arbitrary and capricious if the agency . . . offered an explanation for its decision that runs counter to the evidence before the agency. . .").

¹⁰ Plum Energy, *Liquefied Natural Gas FAQ*, *available at* <https://plumenergy.com/liquefied-natural-gas-faq/> (last visited Dec. 15, 2021).

¹¹ 2020 LNG Final Rule, *supra* note 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

will provide a safer, more efficient, and more environmentally friendly method of transportation for LNG.¹⁶ Alternatively, more LNG will be forced onto highways in large, more dangerous trucks.

The use of LNG itself is also an environmentally friendly alternative for energy consumption and the Administration should be encouraging use of this fuel both in the United States and abroad. Compared to other sources of fossil fuel energy, especially foreign sources, LNG releases considerably fewer greenhouse gas emissions.¹⁷ The Energy Information Administration (EIA) recently announced that the United States is on track to have the largest LNG export capacity by 2022.¹⁸ The Administration should be supporting this progress by providing regulatory certainty for those wishing to advance additional energy transportation and infrastructure in the United States that can serve both this Nation and foreign markets. Additional sources and methods of transportation of LNG support greater American energy independence, thereby reducing our reliance on foreign energy and providing our allies with cleaner sources of American energy.

In light of our current rising energy prices, it is misguided for this Administration to so quickly rollback the 2020 rule that supports clean and safe energy infrastructure in our country. The 2020 regulation was finalized roughly a year ago. Given this, it is far too premature to fully and reasonably assess whether it must be changed. Moreover, the need for increased energy access has not disappeared in this short time. This rushed and arbitrary proposed rule will only contribute to our existing supply chain and energy issues. Accordingly, we strongly urge the Administration and PHMSA to abandon this flawed proposal and keep in place the existing 2020 LNG by rail regulation.

Sincerely,



Sam Graves
Ranking Member
Committee on Transportation
and Infrastructure

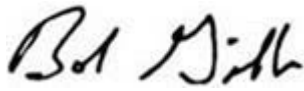


Eric A. "Rick" Crawford
Ranking Member
Subcommittee on Rail, Pipelines, and
Hazardous Materials

¹⁶ *Id.*

¹⁷ API, STUDY: NEW LIFECYCLE ANALYSIS OF U.S. LNG EXPORTS, available at <https://www.api.org/news-policy-and-issues/lng-exports/new-lifecycle-analysis-of-us-lng-exports>.

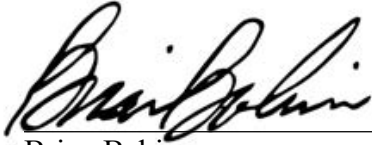
¹⁸ Ben Lefebvre, *US set to become world leader in liquefied natural gas export capacity in 2022*, EIA says, POLITICO, (Dec. 9, 2021), available at <https://subscriber.politicopro.com/article/2021/12/us-set-to-become-worlds-leader-in-lng-export-capacity-in-2022-eia-says-3992873?source=email>.




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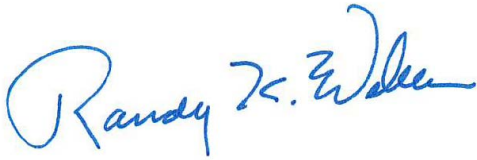
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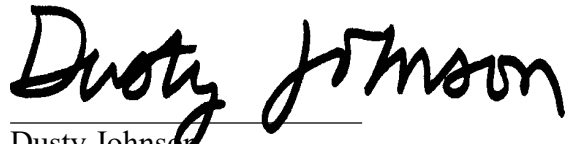
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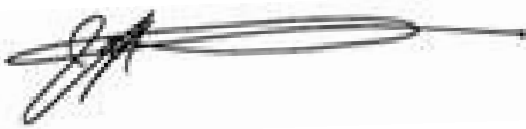
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Cc:

The Honorable Peter A. DeFazio, Chair
Committee on Transportation and Infrastructure

The Honorable Donald Payne, Chair
Subcommittee on Railroads, Pipelines, and Hazardous Materials
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