



*Support, Connection, Advocacy*

2001 K Street, NW | Suite 300 | Washington, DC 20006 | phone (202) 367-1126 | fax (202) 367-2210 | [www.rsiweb.org](http://www.rsiweb.org)

December 23, 2021

Via Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

Docket Management System  
U.S. Department of Transportation  
West Building, Ground Floor, Room W12-140  
Routing Symbol M-30  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

**RE: Comments of the Railway Supply Institute, Committee on Tank Cars, regarding PHMSA's Notice of Proposed Rulemaking "Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail," Docket No. PHMSA-2021-0058**

Dear Sir or Madam:

The Railway Supply Institute's ("RSI") Committee on Tank Cars ("RSI-CTC") appreciates the opportunity to comment on the United States Department of Transportation ("DOT"), Pipeline and Hazardous Materials Safety Administration's ("PHMSA's") notice of proposed rulemaking ("NPRM") regarding the suspension of the 2020 regulatory amendments that authorized transport of methane, refrigerated liquid, commonly known as liquefied natural gas ("LNG") by rail,<sup>1</sup> Docket No. PHMSA-2021-0058 (hereafter, the "2020 Amendments"). For the reasons set forth below, the RSI-CTC opposes PHMSA's efforts to amend the Hazardous Materials Regulations ("HMRs") to suspend authorization for the transportation of LNG by rail in a DOT-113C120W9 specification tank car.

RSI is the international trade association of the railway supply industry. Its members supply all types of goods and services to freight and passenger railroads, rail shippers and freight car manufacturers and lessors. The members of the RSI-CTC collectively build more than ninety-five percent (95%) of all new railroad tank cars and own and supply for lease over seventy percent (70%) of railroad tank cars operating in North America. Shippers use railroad tank cars to transport a wide range of products across the country that are critical to both commerce and everyday life. These comments are submitted on behalf of the following RSI-CTC members: American Industrial Transport; CIT Rail; GATX Corporation; The Greenbrier Companies; SMBC Rail Services, LLC; Trinity Rail Group, LLC; and Union Tank Car Company. RSI-CTC members have significant expertise in tank car engineering, design, manufacturing, maintenance, repair, and compliance practices and the RSI-CTC works closely

---

<sup>1</sup> See *Hazardous Materials: Liquefied Natural Gas by Rail*, 85 Fed. Reg. 44,994 (Jul. 24, 2020).

with railroads and shippers through the Association of American Railroads' ("AAR") Tank Car Committee.

The RSI-CTC has a demonstrated commitment to safe rail transportation by tank car. This includes its long-standing participation in the RSI-AAR Railroad Tank Car Safety Research and Test Project ("Tank Car Safety Project") with the North American Class I Railroads. Through the Tank Car Safety Project, the RSI-CTC contributes funding, technical resources and thought leadership to the detection, prevention, and mitigation of equipment-related factors in train accidents. In addition, the RSI-CTC has a long history of collaboration with regulators from both the United States and Canada to undertake various research initiatives and to enhance the regulations applicable to transport of hazardous materials by rail.

#### **I. The RSI-CTC Continues to Support the Transport of LNG by Rail in DOT-113C120W9 Tank Cars**

For the reasons discussed in detail in the comments previously filed by the RSI-CTC in support of the 2020 Amendments,<sup>2</sup> the RSI-CTC continues to support the transportation of LNG by rail in DOT-113C120W9 tank cars because it is appropriate to treat LNG like other cryogenic liquids which have similar properties and risk profiles, such as hydrogen, refrigerated liquid (UN1966) and ethylene, refrigerated liquid (UN1038). Shippers have safely offered, and carriers have safely transported, these cryogenic liquids in DOT-113 specification tank cars for several decades. The tank car designed to transport LNG, *i.e.*, the DOT-113C120W9 specification tank car, is the most robust of the cryogenic tank cars and is capable of transporting various cryogenic liquids. Furthermore, as discussed in our prior comments:

- (1) The RSI-CTC agrees with and supports PHMSA's prior analysis that transport by rail improves safety and fuel efficiency, and decreases emissions associated with transporting LNG when compared to transportation by truck;<sup>3</sup>
- (2) DOT-113 tank cars are specifically designed for the safe transportation of cryogenic materials like LNG and have a strong safety record in their more than five (5) decades of service;
- (3) The regulatory history of the DOT-113C120W specification indicates that DOT previously contemplated the use of this specification tank car for the transport of LNG and that the specification itself was designed to accommodate LNG;
- (4) Continued authorization of transportation of LNG by rail promotes harmonization as it aligns U.S. practices with those of Canada and Mexico; and,
- (5) Authorizing transportation of LNG by rail promotes U.S. energy independence.

---

<sup>2</sup> Railway Supply Institute, Comment Letter on *Hazardous Materials: Liquefied Natural Gas by Rail* (Dec. 23, 2019), <https://www.regulations.gov/comment/PHMSA-2018-0025-0161>.

<sup>3</sup> *Hazardous Materials: Liquefied Natural Gas by Rail*, 84 Fed. Reg. 56,964, 56,971 (Oct. 24, 2019).

## II. The RSI-CTC is Concerned about PHMSA's Basis for Suspension in the NPRM

### A. Relying on Market Uncertainties to Dictate Environmental and Safety Decision-making Sets a Troubling Precedent

A cornerstone of PHMSA's rationale for the proposed suspension is economic uncertainty in the LNG industry:

Uncertainties in the underlying economic dynamics driving the potential benefits and public safety and environmental risks considered in the LNG by Rail final rule have increased (e.g., the quantity of LNG that will move by rail, the routes involved, and whether new transportation capacity would induce more natural gas extraction). PHMSA believes these increased uncertainties cast doubt on the continued validity of the balance between potential benefits and public safety and environmental risks underpinning the LNG by Rail final rule.<sup>4</sup>

This approach seems to conflate market conditions with safety and environmental considerations. The RSI-CTC recognizes that economic conditions are relevant in a regulatory cost-benefit analysis, but PHMSA's stated explanation relies disproportionately on economic uncertainty. The RSI-CTC is concerned about the potential precedent set by this proposed suspension should shifting market conditions (or general economic uncertainty around commodity demands) serve as the basis for unwinding PHMSA's determination that a particular commodity may be safely authorized for transport under the HMR.

Equally troubling is the potential precedent that PHMSA may simply suspend its rules authorizing the transport of a particular commodity while it evaluates whether to modify the HMR in the future. PHMSA's approach here nearly presupposes the agency will amend the regulations governing transportation of LNG by rail in its forthcoming rulemaking, RIN 2137-AF54. This type of decision-making results in uncertainty for the regulated community if both shifting market conditions and future rulemaking activities may serve as the basis for suspension of *current* authorizations under the HMR. PHMSA cites its general rulemaking authority as its legal authority to suspend the 2020 Amendments.<sup>5</sup> Under this interpretation there are no limits or criteria that would prevent PHMSA from applying this same logic to reverse the authorization of any commodity or mode of transportation that may be subject to future regulatory action. If economic uncertainty or future rulemakings may justify a suspension of regulations allowing the transportation of LNG by rail, the same reasoning could lead to a suspension of any other authorized mode, such as transportation of LNG by trucks, effectively eliminating the ability to transport this commodity. Furthermore, a future administration may rely on this precedent to suspend any regulation it may eventually seek to revise, leading to significant uncertainty for the regulated community.

The RSI-CTC recognizes that PHMSA has the authority to suspend authorization of a particular commodity in certain circumstances where it can establish an imminent hazard. An "imminent hazard" is defined as "the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may

---

<sup>4</sup> 86 Fed. Reg. 61,735–36.

<sup>5</sup> *Id.* at 61,737 ("Section 5103(b) of the [Hazardous Materials Transportation Act] authorizes the Secretary of Transportation to 'prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'").

occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.”<sup>6</sup> PHMSA may suspend the transportation of a hazardous material without a notice and comment if (1) it finds that there is an “imminent hazard” and (2) PHMSA successfully obtains a court order from a U.S. District Court judge suspending the transportation of that material.<sup>7</sup> In this case, PHMSA is not claiming an “imminent hazard,” but also has not made *any* safety findings beyond hypothetical concerns to justify its suspension.

### **B. Slow Adoption of LNG by Rail Affords PHMSA Sufficient Opportunity to Evaluate Requirements without Suspending Existing Rules**

As PHMSA notes in the NPRM, no quantities of LNG have been transported by rail in the U.S. pursuant to the 2020 Amendments since these rules were enacted.<sup>8</sup> PHMSA also acknowledges that the 2020 Amendments called for continued research by the Transportation Research Board (“TRB”) and potential revision of the LNG by rail standards in light of the TRB’s findings. Given the lack of LNG rail traffic to date, there is limited risk associated with the continued transport of LNG by rail should PHMSA allow the regulations to remain in force while the agency evaluates the TRB’s research and findings. PHMSA cites concerns about the safety and environmental effects and risks of large-scale LNG transportation and wide-spread adoption but also asserts there have been no movements of LNG by rail pursuant to the 2020 Amendments. As such, PHMSA has adequate time to analyze the TRB’s research and determine whether it wants to pursue amendments to the existing rules without imposing a suspension of its current authorization.

### **C. Suspending Authorization for DOT-113C120W9 Tank Cars May Have Unintended Consequences for the Cryogenic Materials Industry**

PHMSA asserts that a temporary suspension of the LNG by Rail final rule may in fact reduce the “economic burden” by discouraging a shipper from ordering a DOT-113C120W9 tank car when its future rulemaking may adopt different requirements. Presently, a tank car designed to meet the current requirements for the transport of LNG (i.e., the DOT-113C120W9 specification) may be authorized to transport ethylene refrigerated liquid (UN1038), which is the second most common cryogenic material transported by rail. The DOT-113C120W9 specification tank car is the most robust tank car currently available for the transport of cryogenic liquids. The RSI-CTC is concerned that suspending the authorization for these tank cars potentially holds the cryogenic industry back from advancing safety and facilitating the use of the DOT-113C120W9 specification tank cars for other cryogenic material transport.

PHMSA further opines that the suspension of the LNG by Rail final rule “guarantees avoidance of potential adverse public safety and environmental impacts. . . [and] the limited duration of the proposed suspension would also mitigate any adverse economic, public safety, or adverse environmental impacts that could arise.” There are no such *guarantees* of economic, safety, or environmental benefits. Should the demand for LNG increase, shippers would likely choose between seeking a special permit to transport LNG by rail or moving the commodity by highway cargo tanks. The special permit route will always carry a degree of economic uncertainty for the shipper because it is

---

<sup>6</sup> 49 C.F.R. § 107.1.

<sup>7</sup> 49 C.F.R. § 107.339.

<sup>8</sup> 86 Fed. Reg. 61,735–36. RSI-CTC notes that contrary to the PHMSA’s statement, tank car manufacturers have begun to construct a limited number of DOT-113C120W9 tank cars since the 2020 Amendments came into force. At this time, these tank cars have not yet received a Certificate of Conformity from AAR.

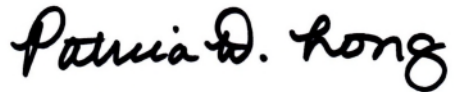
a temporary authorization while a potential increase in highway shipments may result in other transportation safety risks and environmental impacts from truck emissions, previously identified by PHMSA.

### **III. Conclusion**

The RSI-CTC appreciates the opportunity to comment on PHMSA's NPRM regarding the suspension of the regulations that currently authorize transportation of LNG by rail. The RSI-CTC remains committed to working with DOT to ensure the safe transportation of hazardous materials by rail.

Please contact me should you have any questions about the foregoing.

Sincerely,

A handwritten signature in black ink that reads "Patricia D. Long". The signature is written in a cursive, flowing style.

Patricia Long  
President, RSI