



4910-9X

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Chapters I, II, III

23 CFR Chapters I, II, III

46 CFR Chapter II

48 CFR Chapter 12

49 CFR Chapters I, II, III, V, VI, VII, VIII, X, XI

[Docket No. DOT-OST-2017-0069]

Notification of Regulatory Review

AGENCY: Office of the Secretary of Transportation (OST); U.S. Department of Transportation (DOT).

ACTION: Regulatory review.

SUMMARY: The U.S. Department of Transportation (Department or DOT) is reviewing its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of these reviews, the Department invites the public to provide input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. The Department may also hold a public meeting to discuss and consider comments from members of the public.

DATES: Comments should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2017-0069 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* The Docket Management Facility is located on the West Building, Ground Floor, of the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12-140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

Instructions: You must include the agency name and the Docket Number DOT-OST-2017-0069 at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their

organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Jonathan Moss, Assistant General Counsel for Regulation, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-4723 (phone), jonathan.moss@dot.gov (email) or Barbara McCann, Director, Office of Policy Development, Strategic Planning and Performance, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-8016 (phone), barbara.mccann@dot.gov.

SUPPLEMENTARY INFORMATION:

DOT Responsibilities for Regulations and Transportation Infrastructure

The Department carries out its responsibilities through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration; (PHMSA); and St. Lawrence Seaway Development Corporation (SLSDC).

DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

Review of Regulations and other Agency Actions

Improvement of regulations is a continuous focus for the Department. There should be no more regulations than necessary, and those regulations should be straightforward, clear, and designed to minimize burdens. Further, DOT regulations and other agency actions should not unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. Once issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs for which they originally were designed, remain cost-effective and cost-justified. Further, regulations and other agency actions should promote clean and safe development of our Nation's vast energy resources, while avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

Accordingly, DOT regularly makes a conscientious effort to review its rules in accordance with the Department's 1979 Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979), Executive Order (E.O.) 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act. The Department follows a repeating 10-year plan for the review of existing regulations, which is set forth in the Department's semi-annual Regulatory Agenda published in the Federal Register (*see* Appendix D to "Department Regulatory Agenda; Semiannual Summary" most recently issued on July 20, 2017). The reviews conducted under this plan comply with section 610 of the Regulatory Flexibility Act. OST and OAs other than the Saint Lawrence Seaway Development Corporation (SLSDC) have also elected to use this repeating 10-year plan to comply with the review requirements of the Department's Regulatory Policies and Procedures and E.O. 12866. SLSDC does not follow this practice because the agency is responsible for only a small number of regulations that were reviewed in 2009. Generally, the OAs have divided their rules into 10 different groups and analyze one group each year, then start over again. The Department regularly invites public participation in those reviews and seeks general suggestions on rules that it should revise or revoke. In the fall Regulatory Agenda, the Department publishes information on the results of the examinations completed during the previous year.

Public Participation and Request for Comments

Through three new E.O.s, President Trump directed agencies to further scrutinize their regulations and other agency actions. On January 30, 2017, President Trump signed E.O. 13771, Reducing Regulation and Controlling Regulatory Costs. Under Section 2(a) of the E.O., unless prohibited by law, whenever an executive department or agency

publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed.

On February 24, 2017, President Trump signed E.O. 13777, Enforcing the Regulatory Reform Agenda. Under this Executive Order, each agency must establish a Regulatory Reform Task Force (RRTF) to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input/assistance from entities significantly affected by its regulations.

On March 28, 2017, President Trump signed E.O. 13783, Promoting Energy Independence and Economic Growth. Section 2 of E.O. 13783 requires agencies to review all existing regulations, orders, guidance documents, policies, and other similar agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. This review will result in a final report that describes the result of the required review and includes specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production. E.O. 13783 also requires that, for any specific recommendations made in the final report, the agency suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding those actions, as appropriate and consistent with law.

To respond to the President's direction in E.O. 13771, E.O. 13777, and E.O. 13783, as well as other legal authorities, the Department seeks written input from the public on existing regulations and other agency actions that are good candidates for repeal, replacement, or modification. In addition to accepting written comments, the

Department may hold a public meeting. In recognition of the fact that safety is the Department's highest priority, the Department seeks comments on those existing regulations and other agency actions that may be repealed, replaced, or modified without compromising safety. The public is encouraged to identify regulations that (a) eliminate jobs or inhibit job creation; (b) are outdated, unnecessary, or ineffective; (c) impose costs that exceed benefits; (d) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (e) could be revised to use performance standards in lieu of design standards, or (f) potentially burden the development or use of domestically produced energy resources. The Department welcomes public comment on any and all of its regulations and other agency actions, although rules that impose significant costs on the public may provide greater opportunity for identifying and alleviating unnecessary burdens. For convenience, a list of economically significant rulemakings issued over the past several years is included in Appendix A.

When identifying regulations and other agency actions appropriate for suspension, repeal, replacement, or modification, the public is encouraged to consider whether there is an opportunity to: (1) simplify or clarify language in a regulation; (2) eliminate overlapping and duplicative regulations, including those that require repetitive filings for conducting business with the Department; (3) eliminate conflicts and inconsistencies in the Department's regulations and those of its agencies; (4) eliminate conflicts and inconsistencies with the rules of other Federal agencies or state, local, or tribal governments, (5) determine if matters in an existing regulation could be better handled fully by the states without Federal regulations; (6) revise regulations in which technology, economic conditions or other factors have changed in the area affected by the

regulation; (7) reconsider regulations that were based on scientific or other information that has been discredited or superseded; (8) reconsider the burdens imposed on those directly or indirectly affected by the regulation and, specifically, those that are costly when compared to the benefit provided; (9) reconsider burdens imposed on small entities; (10) foster innovation by revising regulations to include performance standards for regulatory compliance; and (11) reduce burdens by incorporating international or industry consensus standards into regulations.

Content of Comments.

The Department will review all comments submitted timely to the docket associated with this regulatory review, DOT-OST-2017-0069. To maximize the usefulness of comments, the Department encourages commenters to provide the following information:

1. *Specific reference.* A specific reference to the policy statement, guidance document, regulation, or other agency action that imposes the burden that the comment discusses. This should be a citation to the Code of Federal Regulations, a guidance document number, or an Internet link. A specific reference will assist the Department in identifying the requirement, the original source of the requirement, and relevant documentation that may describe the history and effects of the requirement.

2. *Description of burden.* A description of the burden that the identified policy statement, guidance document, regulation, or other agency action imposes. A comment that describes how the policy statement, guidance document, regulation, or other agency action is burdensome is more useful than a comment that merely asserts that it is burdensome. Comments that reflect experience with the requirement and provide data

describing that experience are more credible than comments that are not tied to direct experience. Verifiable, quantifiable data describing burdens are more useful than anecdotal descriptions.

3. *Description of less burdensome alternatives.* If the commenter believes that the objective that motivated the policy statement, guidance document, regulation, or other agency action may be achieved using a less burdensome alternative, the commenter should describe that alternative in detail. Likewise, if the commenter believes that there is not a less burdensome alternative or there is not a legitimate objective motivating the requirement, then that should be explained in the comment.

4. *Examples of affected entities or projects.* Examples of entities that are, have been, or will be negatively affected by the identified policy statement, guidance document, regulation, or other agency action and examples of entities that will benefit if the requirement is removed or revised. A comment listing specific entities is more useful because it will assist the Department in investigating the burden and how it may be most effectively addressed.

Scope of Comments.

The Department is interested in comments on any DOT regulation or other agency action that imposes unjustifiable burdens on regulated entities or on the use or production of domestic energy resources.

Issued on: September 26, 2017

James C. Owens,
Acting General Counsel.

APPENDIX A – DOT ECONOMICALLY SIGNIFICANT RULEMAKINGS

1. The FRA's final rule on Electronically Controlled Pneumatic Brake Systems (RIN: 2130-AC03) (published on October 16, 2008, at 73 FR 61511) (annualized costs of \$138 million);
2. The PHMSA's final rule on Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines (RIN: 2137-AE25) (published on October 17, 2008, at 73 FR 62147) (annualized costs of \$95 million);
3. The NHTSA's final rule on Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011 (RIN: 2127-AK29) (published on March 30, 2009, at 74 FR 14195) (annualized costs of \$1.46 billion);
4. The NHTSA's final rule on the Federal Motor Vehicle Safety Standards; Roof Crush Resistance; Phase-In Reporting Requirements (RIN: 2127-AG51) (published on May 12, 2009, at 74 FR 22347) (annualized costs of \$0.8-1.3 billion);
5. The PHMSA's final rule on Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines (RIN: 2137-AE15) (published on December 4, 2009, at 74 FR 63905) (annualized costs of \$95 million);
6. The NHTSA's final rule on Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (RIN: 2127-AK50) (published on May 7, 2010, at 75 FR 25323) (annualized costs of approximately \$10 billion);

7. The FAA's final rule on Automatic Dependent Surveillance – Broadcast
Equipage Mandate to Support Air Traffic Control Service (RIN: 2120-AI92)
(published May 28, 2010, at 75 FR 30159) (annualized costs of \$216 million);
8. The FHWA's final rule on Real-Time System Management Information
Program (RIN: 2125-AF19) (published on November 9, 2010, at 75 FR
68418) (annualized costs of \$135 million);
9. The NHTSA's final rule on Federal Motor Vehicle Safety Standards, Ejection
Mitigation; Phase-In Reporting Requirements; Incorporation by Reference
(RIN: 2127-AK23) (published on January 19, 2011, at 76 FR 3211)
(annualized costs of \$2.3 billion);
10. The FRA's final rule on Positive Train Control Systems (RRR) (RIN: 2130-
AC27) (published on May 14, 2012, at 77 FR 28285) (annualized costs of \$2
million);
11. The NHTSA's final rule on 2017 and Later Model Year Light-Duty Vehicle
Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards
(RIN: 2127-AK79) (published on October 15, 2012, at 77 FR 62623)
(annualized costs of \$2.2-3.6 billion);
12. The FTA's final rule on Major Capital Investment Projects - New/Small Starts
(RIN: 2132-AB02) (published on January 9, 2013, at 78 FR 1991)
(annualized costs of \$300,000);
13. The NHTSA's final rule on Federal Motor Vehicle Safety Standards;
Occupant Crash Protection (RIN: 2127-AK56) (published on November 25,
2013, at 78 FR 70415) (annualized costs of \$6 million);

14. The FMCSA's final rule on Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (DVIR) (RIN: 2126-AB46) (published on December 18, 2014, at 79 FR 75437) (annualized cost-savings of \$1.7 billion);
15. The NHTSA's final rule on Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems for Heavy Vehicles (RIN: 2127-AK97) (published on June 23, 2015, at 80 FR 36049) (annualized costs of \$46 million);
16. The PHMSA's final rule on Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (RIN: 2137-AE91) (published on July 7, 2015, at 80 FR 26643) (annualized costs of \$234 million);
17. The FMCSA's final rule on Electronic Logging Devices and Hours of Service Supporting Documents (RIN: 2126-AB20) (published on December 16, 2015, at 80 FR 78291) (annualized costs of \$1.8 billion);
18. The NHTSA's final rule on Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2 (RIN: 2127-AL52) (published on October 25, 2016, at 81 FR 73478) (annualized costs of \$4 billion);
19. The FMCSA's final rule on Commercial Driver's License Drug and Alcohol Clearinghouse (RIN: 2126-AB18) (published on December 5, 2016, at 81 FR 87686) (annualized costs of \$154 million); and

20. The FMCSA's final rule on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators (RIN: 2126-AB66) (published on December 8, 2016, at 81 FR 88732) (annualized costs of \$368 million).

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