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U.S. DOT Docket Management System,
West Building Ground Floor, Room W12-140,
1200 New Jersey Avenue SE,
Washington, DC 20590-0001

RE: Electronically Controlled Pneumatic Braking - Updated Regulatory Impact Analysis, Docket# PHMSA-2017-0102

The American Petroleum Institute offers the following comments to the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA) on their update of the original regulatory impact analysis (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 American Petroleum Institute (API) is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million jobs and nearly 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses and service and supply firms. API members also include tank car builders and owners, crude and hazardous material shippers and rail service companies.

Since the inclusion of the ECP braking requirement in the original Final Rule, API has stringently argued that the data supporting the safety benefits of ECP braking is insufficient to support the imposition of this requirement.¹ API has been very supportive of the additional testing and analysis requirements including in the FAST Act and appreciates the effort that FRA and PHMSA have put into fulfilling those obligations. However, despite the additional testing and modeling, we still believe that there is insufficient data demonstrating that ECP braking systems provide a demonstrable increase in safety over other more widely used braking systems.

Regarding the new cost-benefit analysis provided in this update RIA, API appreciates that a more accurate accounting of the costs of implementing the ECP braking requirement has been conducted. We support the overall conclusion of the RIA, that the costs of implementing the requirement far outweigh perceived benefits. However, we believe that there still may be costs that were not accounted for in the updated RIA.

¹ See API's comments on HM-251 submitted September 30, 2014 in Docket No. PHMSA-2012-0082

For example, PHMSA does not appear to consider the opportunity costs – the foregone revenue a tank car could have earned if had remained in service - of installing ECP brakes, apparently because it believes no costs are incurred since “replacements would take place during a tank car’s normal maintenance services”. While this might be the case, installing the brakes could lengthen the time a tank car would be out of service and the opportunity cost of that additional out-of-service time must be included.

Additionally, PHMSA likely underestimates the cost and availability of ECP brakes. Currently, there are only two providers of ECP brakes in North America. One provider currently manufactures about 300 to 400 car sets of ECP brakes per month, of which 100 percent are sold overseas. The second provider's production levels are similar.

Lastly, API remains concerned about the shop capacity for installing ECP brakes. All facilities that repair and maintain cars are required to be certified to perform particular activities including air brake maintenance. It is unclear in the updated analysis whether PHMSA has taken into consideration the availability of certified shop capacity to perform the necessary retrofits in a timely manner.

As described in the updated RIA, the primary reason that the benefits of the rule do not exceed the costs is that the predicted amount of crude by rail traffic has been greatly diminished. API agrees with this assessment. Rail has provided a very flexible and effective means for moving crude oil from areas of production. While the growth in pipeline capacity has diminished somewhat the need for crude by rail transportation it is likely that the optionality provided by the mode and limited current pipeline capacity to some regions, such as the West Coast will mean that significant amounts of crude will still move by rail but not at the levels forecasted in the Final Rule. We also appreciate that PHMSA includes in their analysis an alternative methodology for forecasting crude shipments that considers a boom and bust cycle of crude shipments. Without affirming the numbers submitted by PHMSA, API agrees with ultimate finding that crude shipments will be much lower than those forecasted in the Final Rule and therefore the perceived benefits of ECP braking are greatly diminished.²

² API does not undertake forecasting of goods and services itself and has not contracted any third-party analysis groups to develop a forecast for future crude-by-rail shipment volumes under current market conditions.



In conclusion, while disagreeing with some of the particular inputs in the analysis, primarily the exclusion of other factors that would add to the costs of the rule, we do agree with the overall finding that the costs of implementing the ECP braking requirement exceed any perceived benefits.

Sincerely,

A handwritten signature in black ink that reads "Robin Rorick". The signature is written in a cursive style with a large initial "R" and a distinct "R" at the end.

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American Petroleum Institute