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December 16, 2008

The Honorable Daniel K. Inouye
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Railroad Administration:
Electronically Controlled Pneumatic Brake Systems*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Federal Railroad Administration (FRA), entitled “Electronically Controlled Pneumatic Brake Systems” (RIN: 2130-AB84). It was published in the *Federal Register* as a final rule on October 16, 2008. 73 Fed. Reg. 61,512. A delay of effective date was published in the *Federal Register* on December 5, 2008. 73 Fed. Reg. 74,070. The final rule was received by the House of Representatives on November 7, 2008, and by the Senate on November 12, 2008. We received the rule on November 14, 2008.

The final rule adds a subpart governing electronically controlled pneumatic (ECP) brake systems to FRA’s regulations governing freight power brakes and equipment. The new subpart contains specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment, and periodic maintenance related to ECP brake systems.

Enclosed is our assessment of the FRA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that FRA, by issuing the delay of effective date to allow for 60 days between receipt by Congress and the rule’s effective date, complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

cc: Jason Schlosberg
Trial Attorney
Federal Railroad Administration
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION
ENTITLED
"ELECTRONICALLY CONTROLLED PNEUMATIC BRAKE SYSTEMS"
(RIN: 2130-AB84)

(i) Cost-benefit analysis

FRA prepared a cost-benefit analysis in conjunction with the final rule. FRA determined that if the industry were to implement ECP brakes to the extent estimated in the final rule, there would be an associated cost of \$1.7 billion (discounted at 7 percent), which includes the cost to convert freight cars to ECP brakes and costs relating to locomotive conversion and training. FRA estimates that the total benefits will be approximately \$9.7 billion (discounted at 7 percent), which includes regulatory relief, fuel savings, accident risk reductions, environmental cleanup savings, track out-of-service time reduction, wheel replacement savings, and network velocity improvements.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

FRA certifies that the final rule is not expected to have a significant economic impact on a substantial number of small entities under the Act.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule may result in the expenditure of more than \$132 million in any one year; however, FRA states that those expenses are not mandated and would only be incurred by the private sector if it wishes to take advantage of the regulatory relief offered by the final rule. FRA incorporated the cost-benefit analysis prepared under Executive Order 12,866 to meet the requirements of the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

FRA published a notice of proposed rulemaking in the *Federal Register* on September 4, 2007. 72 Fed. Reg. 50,820. FRA held a public hearing in Washington, D.C. on October 4, 2007, and a public hearing in conjunction with a public technical

roundtable in the Chicago, Illinois, area on October 19, 2007. FRA received comments from various organizations, including labor organizations, railroads, and brake manufacturers. FRA responded to the comments in the final rule. 73 Fed. Reg. 61,512.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The information collection requirements in the final rule were submitted to the Office of Management and Budget (OMB) for review. Under the Paperwork Reduction Act, the requirements are not enforceable until approved by OMB. FRA determined that the total PRA burden for all regulated entities would be approximately 990,000 hours.

Statutory authorization for the rule

The final rule is authorized by 49 U.S.C. §§ 20303 and 20306.

Executive Order No. 12,866

The final rule is an economically significant regulatory action under the Order and has been reviewed by the Office of Management and Budget. FRA prepared a regulatory assessment in conjunction with the Order.

Executive Order No. 13,132 (Federalism)

FRA determined that this final rule will not have any federalism implications other than the preemption of state laws covering the subject matter of the final rule, which occurs by operation of law under 49 U.S.C. § 20106 whenever FRA issues a rule or order.