

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 20-1317 (consolidated with Nos. 20-1318, 20-1431, & 21-1009)

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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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SIERRA CLUB, et al.,  
*Petitioners,*

v.

U.S. DEPARTMENT OF TRANSPORTATION, et al.,  
*Respondents.*

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On Review of Agency Action of the  
Pipeline and Hazardous Materials Safety Administration

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**STATUS REPORT**

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## STATUS REPORT

These consolidated petitions challenge the regulation titled *Hazardous Materials: Liquefied Natural Gas by Rail*, 85 Fed. Reg. 44,994 (July 24, 2020) (Rule). Respondents, the United States; the United States Department of Transportation; Pete Buttigieg, U.S. Secretary of Transportation; the Pipeline and Hazardous Materials Safety Administration (PHMSA); and Tristan Brown, Acting Administrator of PHMSA (collectively, PHMSA), moved the Court to place these cases in abeyance pending PHMSA's implementation of Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 20, 2021). The Executive Order directs agencies to consider suspending, revising, or rescinding certain agency actions, including the Rule. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

The Court placed these cases into abeyance on March 16, 2021 and directed PHMSA to file status reports at 90-day intervals beginning on June 14, 2021. PHMSA filed the first status report on June 14, 2021, the second status report on September 13, 2021, the third status report on December 13, 2021, and this is the fourth status report.

In the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, PHMSA announced plans for one rulemaking to consider suspending the Rule and

one rulemaking to consider amending the Rule. The Unified Agenda is available

here: <https://www.reginfo.gov/public/do/eAgendaMain>. The relevant Unified

Agenda entries state:

*Hazardous Materials: Improving the Safety of Transporting Liquefied Natural Gas*

This rulemaking would amend the Hazardous Materials Regulations governing transportation of liquefied natural gas (LNG) in rail tank cars. This rulemaking action would incorporate the results of ongoing research efforts and collaboration with other Department of Transportation Operating Administrations and external technical experts; respond to a mandate in Executive Order 13990 for PHMSA to review recent actions that could be obstacles to Administration policies promoting public health and safety, the environment, climate change mitigation; and provide an opportunity for stakeholders to contribute their perspectives on rail transportation of LNG.

Spring 2021 Unified Agenda, Regulation Identifier Number 2137-AF54, available

here: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=>

[202104&RIN=2137-AF54](https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2137-AF54).

*Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail*

PHMSA proposes to amend the Hazardous Materials Regulations (HMR) to suspend authorization of liquefied natural gas (LNG) transportation by rail pending completion of the companion rulemaking under RIN 2137-AF54.

Spring 2021 Unified Agenda, Regulation Identifier Number 2137-AF55, available

here: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=>

[202104&RIN=2137-AF55](https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2137-AF55).

PHMSA is working diligently on these two rulemakings. PHMSA issued a notice of proposed rulemaking for the suspension rule on November 8, 2021, and the comment period closed on December 23, 2021. *Hazardous Materials: Suspension of HMR Amendments Authorizing Transportation of Liquefied Natural Gas by Rail*, 86 Fed. Reg. 61,731; *see also* <https://www.regulations.gov/document/PHMSA-2021-0058-0002>. In January 2022, the Department of Transportation issued a report on its rulemakings. <https://www.transportation.gov/sites/dot.gov/files/2022-01/January%202022%20Significant%20Rulemakingx.pdf>. In this report, the agency estimated that PHMSA would issue a final decision on the suspension rulemaking on June 30, 2022, and issue a notice of proposed rulemaking for the amendment rule on September 26, 2022. *Id.* nos. 98, 99.

PHMSA will file the next status report on June 9, 2022.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) this document contains 497 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

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