



Committee on Transportation and Infrastructure
U.S. House of Representatives

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Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

October 6, 2016

Katherine W. Dedrick, Democratic Staff Director

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Secretary:

I write regarding the pending Notice of Proposed Rulemaking (NPRM) entitled “Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains,” published by the Pipeline and Hazardous Materials Safety Administration (PHMSA) for public comment in the Federal Register on July 29, 2016 (Docket No. PHMSA-2014-0105 (HM-251B)).

As you know, I championed a number of provisions in the “Fixing America’s Surface Transportation Act” (Public Law 114-94) (FAST Act) aimed at improving the safety of transporting crude by rail, including a requirement that the Secretary of Transportation report to the House Committee on Transportation and Infrastructure on the status of this rulemaking every 90 days until a final rule is issued. I am pleased that the Secretary is finally moving forward with the rulemaking process, and I look forward to its swift conclusion.

I also included an important provision in the Act, which you propose to implement in this rulemaking, requiring each Class I railroad to provide advanced notification and information on high-hazard flammable trains (HHFT) to each State emergency response commission (SERC), including reasonable estimates of the number of implicated trains that are expected to travel, per week, through each county within the applicable State; updates to the estimates prior to making any material changes to any volumes or frequencies of trains traveling through a county; identification and a description of the Class 3 flammable liquid being transported on such trains; applicable emergency response information; identification of the routes over which such liquid will be transported; and a point of contact at the Class I railroad responsible for serving as the point of contact for SERC’s and local emergency responders related to the Class I railroad’s transportation of such liquid.

The Honorable Anthony Foxx

October 6, 2016

Page 2

The NPRM expands the FAST Act notification requirement to require **all** railroads transporting a HHFT, defined as a single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist, to develop and implement a comprehensive oil spill response plan and to ensure such railroads provide the information to SERCs, tribal emergency response commissions, and other appropriate state designated entities to improve community preparedness for potential accidents. I applaud these changes and believe they improve upon the requirements of the FAST Act.

I also support PHMSA's proposal to require railroads to submit their oil spill response plans to PHMSA for review and approval, as recommended by the National Transportation Safety Board, and as is currently required for pipeline oil spill response plans. I would urge that PHMSA go one step further and maintain on file a copy of each most recent response plan and provide copies of such plans to persons, upon written request, as is required by law for pipeline oil spill response plans (see Section 60138 of title 49, United States Code). I do, however, want to stress that it is crucial that States obtain unredacted versions of the response plans so that they are prepared to take appropriate and immediate action should an accident occur.

Of particular concern to me, however, are two main components of the NPRM: the proposed threshold for developing comprehensive oil spill response plans and the proposed establishment of 12-hour response zones.

The NPRM proposes to require a railroad to develop and implement a comprehensive oil spill response plan only if such railroad transports: (1) 42,000 or more gallons of crude oil in a tank car; or (2) transports an HHFT. The threshold of 42,000 in a single package is already the requirement for comprehensive oil spill response plans under the Clean Water Act (CWA), but by PHMSA's own admission, because a typical rail tank car has a capacity of just about 30,000 gallons, few, if any, rail carriers are currently subject to the comprehensive oil spill response plan requirements of the CWA.

This means the NPRM just expands the comprehensive oil spill response plan requirements to railroads that transport HHFT trains (again, a single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist). This threshold is far too limiting. We have seen numerous rail incidents in the recent past where only one or two tank cars were punctured and the release caused substantial damage to surrounding areas, including environmentally sensitive areas. That can easily occur on a non-HHFT. Several short line railroads on the West Coast, for example, transport multiple tank cars of liquid petroleum oil within their consist, yet they will not be required to develop a comprehensive oil spill response plan because they transport less than 20 loaded tank cars of liquid petroleum oil on a single train. As the State of Oregon noted in comments to the Advanced NPRM, I urge you to consider requiring a comprehensive oil spill response plan for railroads that transport 42,000 gallons or more of crude oil in any train consist, not just in a single tank car.

The Honorable Anthony Foxx

October 6, 2016

Page 3

I am also concerned about the proposal for development of response zones in the NPRM. PHMSA asked commenters whether allowing railroads to cache their equipment in a manner that requires them to be able to respond to an accident within 12 hours is sufficient. Twelve hours is far too long. It should be at least half that time, particularly where an accident could affect a high consequence area, such as a navigable waterway, an environmentally sensitive area like the Columbia River or other marine coastal area, or a high population area. Local communities do not have the ability to effectively address large scale incidents. It's important that the railroads be ready to respond as early as possible to effectively minimize damages. I strongly urge you to re-consider this proposal in the final rule.

Thank you in advance for your consideration of this important matter. Should you have any questions or need additional information, please contact Jennifer Homendy at 202-225-3274.

Sincerely,



PETER DeFAZIO
Ranking Member