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Honorable Anthony Foxx
Secretary of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Foxx:

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The North Dakota Petroleum Council (NDPC) is a trade association which represents over 500 companies involved in all aspects of the oil and gas industry including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Our members produce 98% of the more than one million barrels of oil produced every day in North Dakota.

The Independent Petroleum Association of America (IPAA) represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the proposed regulatory actions. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas.

The government can and should take steps to ensure greater safety without stalling the energy renaissance that is creating good jobs, growing our economy and improving America's energy security. New proposals for safety improvements should be data-driven, involve all stakeholders and produce measurable improvements to safety without creating new risks, or inadvertently shifting the risks to other businesses or operations.

Safety is a core value of the oil and gas industry and we, along with all stakeholders remain committed to ensuring we are doing all we can to produce and transport this important natural resource as safely as possible. According to the Association of American Railroads (AAR), 99.9977 percent of rail hazmat shipments arrive at destination without incident. The associations believe that one accident is too many. Further, the associations believe rail safety improvements must be developed using a holistic, comprehensive, and systematic approach that examines prevention, mitigation, and response. As the regulatory process moves forward, we will continue to work collaboratively with the rail industry, regulators and local first responders toward our goal of zero incidents.

The oil and gas industry, in partnership with the railroads, is working to develop a common educational tool to be distributed broadly to fire departments either through web portal or DVDs. This information will also be available for companies to use in continued interaction with fire departments and other EMS personnel. Rail and oil industries in many states have worked collaboratively on training and exercises, development of additional response resources and periodic meetings to keep the lines of communication open toward maximizing information sharing of the latest data on emergency response for crude incidences.

North Dakota is now the second largest oil-producing state in the nation and reached 1 million barrels of daily production in May 2014, up from 100,000 barrels per day in 2007. The oil and gas industry in North Dakota generates \$30 Billion in economic activity for the state annually and \$2.6 Billion in tax revenues. The industry is responsible for creation of 41,000 direct jobs. Nationwide, the oil and gas industry has increased oil production by over 2.3 million barrels per day between 2007 and 2013.

Although North Dakota's oil and gas production has grown substantially in recent years, pipeline capacity to key markets has not, requiring 60 percent of Bakken crude to be hauled via rail in July. Light sweet crude oils, such as Bakken crude oil, WTI and Brent crudes now comprise sixty percent of domestic crude production. This fast growing majority is quickly saturating the pipeline infrastructure across the country, including the U.S. Gulf Coast. Four new tight shale plays are becoming active in the states of Arkansas, Michigan, Illinois and Oklahoma. More domestic crude oil is expected to move by rail in the future making the importance of having data driven safety improvement and scientifically based regulation critical.

The following are comments submitted jointly by NDPC and IPAA in response to recently released Department of Transportation (DOT) proposed rules to increase the safety of flammable materials transported by rail. These proposed rules were expressed through a Notice of Proposed Rulemaking (NPRM) on rail safety and its companion Advanced Notice of Proposed Rulemaking (ANPRM) on emergency response published August 1, 2014. NDPC and IPAA support the efforts of PHMSA along with input from all stakeholders to improve on transportation safety of all Class 3 Flammable liquids. The associations thank U.S. DOT and PHMSA for the opportunity to provide the following comments.

PHMSA's proposed regulations and timing would require extensive scrapping of the existing fleet of tank cars and lead to higher transportation costs. Implementation of the high hazard flammable train definition, speed restrictions and phase out timeline for the DOT 111 railcars all contribute to immediate bottlenecks in supply of available railcars to meet the proposal's requirements. Higher transportation costs for crude oil would reduce available capital for investments in new production, resulting in lower production and higher prices for consumers.

High-Hazard Flammable Train (HHFT) Definition and Speed restrictions:

- (1) a 40-mph maximum speed restriction in all areas
 - (2) a 40-mph speed restriction in high threat urban areas; and,
 - (3) a 40-mph speed restriction in areas with a 100K+ population.
- PHMSA is also requesting comment on a 30-mph speed restriction

The proposed speed restrictions do not consider the type, quality, or quantity of track available but only the tank car design. The failure of the DOT to address track conditions is a central concern given the number of railway incidents caused by damaged rails. The proposed speed restrictions would also contribute to a drastic shortage of available tank cars. With mandated slower speeds, large additional numbers of tank cars will necessarily be required in order to meet already thin timelines and delivery schedules.

The consequences of the proposed 40-mph speed restriction in all areas would be significantly longer turnaround times for unit trains, thus necessitating the need to have more railcars in the shipping fleet. Longer turnaround times alone will make railcars in short supply on the first day the new rule takes effect. A 10-mph reduction in speed equates to a twenty percent increase in turnaround time (assuming 50 mph average train speed), requiring a twenty percent increase in fleet size. The American Petroleum Institute estimates the overall flammable liquids fleet size to be approximately 98,000 tank cars, 72,000 of which are in ethanol or crude oil service and moved by unit tank. A twenty percent increase in fleet size for tank cars used in unit trains would be 7200 additional tank cars needed the day that the 40-mph restriction would be implemented. This number of railcars represents approximately twenty to twenty five percent of the annual tank car building capacity in the United States.

Allowing higher speeds in areas with low population density would minimize the impact of increased turnaround times and the requirement for additional tank cars.

Instead of addressing track integrity in the NPRM, PHMSA asks for input on whether a previously published track integrity rule (January 2014) is sufficient or whether new regulations are necessary for HHFT routes. Given the number of derailments caused by broken rails, this is potentially a large gap. Prevention technologies are being discussed in the Prevention Working Group with the railroads. We support an approach to speed restrictions that considers not only the railcar type but also the track design and track maintenance record. Speed restrictions imposed on areas where tracks have been upgraded to state of the art and regular track inspections are conducted should not be required.

Railroads, not car owners, assemble trains based on their contents and final destination. In many cases, a unit train is a compilation of cars from more than one customer. Under the proposed rule, if any of the cars contained in the unit train were not modified to match the PG I or PG II requirements of the HHFT, then the entire train would be subject to the lower speed requirement. Due to the inefficiencies of this arrangement, railroads would likely require all shippers to modify their tank cars in case they are assigned to an HHFT.

Retrofit requirements:

The predictions by the DOT for older railcars to be retrofitted and re-introduced to service is unlikely. Tank car building and retrofitting capacities are not capable of accomplishing both within the limited time frame proposed. The American Petroleum Institute (API) hired outside consultants to model expected industry behavior with regards to the upgrade. The models show that large numbers of DOT-111 railcars will be de-commissioned early instead of retrofitted. Many of these DOT-111 railcars are in fine working condition and more than capable of safely transporting crude oil.

The proposed retrofitting schedule for tank cars is based upon the liquid being transported and its assigned packing group (PG I, II, or III). Transport of PG I liquids will not be authorized after October 1, 2017. However, almost all light, sweet crude, including Bakken crude, is transported as PG I. This two-year phase-out period would contribute to the railcar shortage for shippers and necessitate almost a complete overhaul of crude oil tank cars within a two year period.

Currently, 60 percent of the crude oil produced in the United States is light, sweet crude. Much of this material has been transported by pipeline to the U.S. Gulf Coast, the location of the greatest refining capacity exists. It is anticipated that the gulf coast will be saturated with light, sweet crude shortly. As this occurs, more of this valuable feedstock will turn to rail as a means of finding other markets. The proposed rule needs to anticipate this shift towards greater numbers of railcars carrying light, sweet crude in the near future.

PHMSA's timeline for DOT-111 railcars is predicated on the assumption that DOT-111s now in use for PG I or PG II hazmat will be moved into PG III service. Even heavy Canadian crudes once mixed with diluents and shipped as dilbit or railbit are not expected to qualify as PG III materials, and therefore will not qualify as a home for the displaced DOT-111 railcars.

The API/AAR proposal for retrofit of existing fleet provides for a longer timeframe and involves a lower number of railcars requiring retrofit. We recommend that PHMSA re-examine the proposed timeline for retrofit and phase out of DOT 111 railcars, taking into consideration the retrofit capacity in the United States as well as the feasibility that cars can be shifted to other services and adopt the API timeline for retrofit or phase out plan based on car type as follows:

- a. Retrofit or phase out DOT-111 NJ by January 1, 2021 after which they can no longer be allowed to be used in that service (assuming rule is implemented January 1, 2015).
- b. Retrofit or phase out DOT-111 J by January 1, 2021 after which they can no longer be allowed to be used in that service (assuming rule is implemented January 1, 2015).
- c. Retrofit or phase out CPC-1232 NJ by January 1, 2025 after which they can no longer be allowed to be used in that service (assuming rule is implemented January 1, 2015).

Braking regulations:

The proposed braking regulations provide three suggestions for breaking enhancements: electronically controlled pneumatic (ECP) brakes, two-way end of train devices (EOT), or distributed power systems (DP). The implementation of ECP brakes are an additional cost to shippers, especially for the retrofitting of old cars. ECPs have minimal safety impacts and will not prevent a derailment, therefore cost to benefit threshold is not achieved for implementation of the ECP technology. In addition, there are only two providers of ECP brakes in North America. These providers do not have the capacity to provide the needed number of ECP brakes for implementation.

NDPC and IPAA support use of distributed power systems on HHFTs. DP places locomotives at points in the middle or end of the train to assist the train in crossing difficult grades or curves by providing additional power. Distributed power also enables quicker application of standard air brakes and reduces force between the wheels and the rails to minimize wear on components that may lead to a derailment. Distributed power is currently available and in use, making implementation possible in a very short timeframe.

NDPC and IPAA also support use of end-of-train devices (EOT) which are currently in use by the rail industry. EOTs replace the caboose in marking the end of the train. EOTs monitor brake pressure to ensure integrity of the air brakes and transmit information to the locomotive about whether the end of the train is moving and in what direction movement is occurring. Use of EOTs shortens the time for all brakes to be applied.

Innovation in tank car building:

The DOT expects the new regulation to encourage innovation and the creation of “new, tougher steels.” However, this development is at least five years away. To incentivize new innovations in railcar design and materials for railcar construction, a significant lengthening of the proposed schedule by numerous years will be required. There will be little impetus to research sweeping changes in railcar design on the immediate heels of an industry expenditure of billions of dollars for building or retrofitting of the current tank car fleet.

Notification to State Emergency Response Commissions (SERC)

The requirement of HHFTs transporting over 1,000,000 gallons of specifically Bakken crude to notify state emergency response commissions (SERC) unjustifiably targets Bakken crude and perpetuates the myth of Bakken crude oil volatility.

Six separate independent studies have shown that Bakken crude oil is an average, light sweet crude and is no more volatile or flammable than similar oils from other regions of North America. None of the available data supports Bakken crude oil presenting a higher degree of transportation risk from other crude oils that meet the criteria for Class 3 Packing Group I and II. Therefore, any regulatory action that distinguishes Bakken crude oil from other crude oils is without rational basis. We recommend that any application of special requirements, such as notification of SERCs be based on properties of hazardous material and not based on place of origin. In addition, the concept of developing a special STCC code for Bakken is without benefit. PHMSA provided no data demonstrating that Bakken crude oil is materially different from a hazard perspective that would necessitate development of a unique STCC. In addition, STCC are not used by emergency personnel but rather exclusively by shippers and railroads and therefore do not offer any additional information to responders.

Light sweet crudes oils now comprise sixty percent of domestic oil production in the United States. In the near future, other types of light sweet crude oil will be turning to rail transport to fulfill the need to move to markets outside of the U.S. Gulf Coast. Proposed regulations should be focused on the nature of the hazardous materials to achieve a lasting safety improvement, continued focus on Bakken crude oils leaves

a gap in the analysis and understanding of other light sweet crudes oil that will soon be offered for domestic rail transportation.

Sampling and analysis frequency:

Our associations support frequent sampling and testing of all hazardous materials being offered for transportation using the best available technology in sampling and latest state of the art analysis techniques that pass statistical robust measurements. API has put forth countless manhours towards assessing analytical methods, sampling methodology and studying the relationships between vapor pressure, volatility, flammability and ignitability. We look forward to the release of the API conclusions as part of the API RP 3000 and will support their recommendations.

Classification:

We look forward to the release of the API conclusions as part of the API RP 3000 and will support their recommendations on classification, as well as sampling and analysis frequency.

NDPC and IPAA conclusions:

The NDPC and IPAA and their member companies are firmly committed to the safe transport of Bakken crude oil by railway and support measures to prevent accidents and incidents. The NDPC supports new standards for tank cars, rail routing, and speeds, but over the course of a realistic timeframe which does not inhibit the oil and gas industry to supply American refineries with American crude oil. The shift from DOT-111 cars to newer DOT-117 cars must not create a shortage of infrastructure for oil and gas producers and transporters. The rates of retrofitting proposed by the DOT are more than twice the rate which industry stated it would be capable of achieving.

Some of the measures supported by the NDPC include proposals put forward by API and the Association of American Railroads (AAR) in July. These include an increase from 7/16" shell to 8/16" shell, a phase-out timeframe not based on packing group but on the vulnerability of the tank car, and an increase in the timeline for the retrofit of non-jacketed to six years.

Railways currently transport 99.997% of hazardous material safely throughout the United States. The NDPC and its members are committed to improving on the final 0.003% of incidents in cooperation with federal officials.

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