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November 4, 2014

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

Dear Secretary Foxx:

I write to you today regarding the notice of proposed rulemaking dated July 23, 2014 titled "Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains." Any rule promulgated by the Department of Transportation must take into account its effects on the American economy.

The United States of America is currently experiencing an unprecedented boom of energy production due to rapidly increased production, including the Bakken Fields of North Dakota and Permian Basin in Texas. In fact, the United States has surpassed Saudi Arabia and Russia as the largest producer of oil in the world, according to the International Energy Agency, a year earlier than expected.[1]

This expansion of production has led to a growing reliance on rail to transport crude oil. Rail is expected to carry 650,000 carloads in 2014, up from 9,500 in 2008.[2] Producers are increasingly turning to rail because current pipeline infrastructure is at or near capacity and new projects have not been built. This Administration's adamant refusal to approve new pipeline infrastructure projects such as the Keystone XL project has necessitated transporting oil by rail.

The proposed rule includes several provisions which could negatively impact the economic viability of oil by rail, particularly a proposed universal 40 mile per hour speed limit and new requirements for new and existing tank cars.

As the Department itself notes, crude oil often travels over 1,000 miles by train. These long distances often are traversed on tracks that, under current Federal Railroad Administration rules and agreements in place with the Association of American Railroads, have greater speed limits than 40 miles per hour. Reducing the maximum speed for trains carrying crude oil would severely limit throughput, significantly slow the delivery process, and possibly cause bottlenecks in service for other trains utilizing the tracks.

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[1] "U.S. Seen as Biggest Oil Producer After Overtaking Saudi Arabia," Bloomberg News, July 4, 2014.
[2] "U.S. Rail Transportation of Crude Oil: Background and Issues for Congress," Congressional Research Service, May 5, 2014.

In 2011, the rail industry voluntarily strengthened their standards for new tank cars, proactively addressing the security of transporting flammable liquids such as crude oil. Since then, over 14,000 tank cars have been manufactured to this standard.[3] Despite this, the proposed rule is requesting comment on two sets of standards more stringent than the 2011 industry set standard. Additionally, existing rail cars would have to be either retrofitted, at a cost of $20,000-$40,000 per car, or retired.[4] Taken together, these could amount to huge costs for the industry.

Additionally, the three year retrofit schedule proposed in this rule is overly ambitious and likely not feasible without severely restricting the capacity of crude by rail. An analysis by Alltranstek estimated that in a best case scenario, there is shop capacity to retrofit just over 10,000 tank cars in three years.[5] Taken in light of the fact that over 60,000 tanks cars would likely have to be retrofitted to comply with the standards in this proposed rule, it is clear that a three year retrofit schedule is unlikely to be met.[6] This would have the practical effect of drastically reduce rail capacity.

Further, most of the proposed rule places the burden on the purchasers and producers of crude oil to improve safety in light of recent derailments of trains carrying crude. It should be noted, however, that a study of freight train derailments over the course of 2001-2010 "found that broken rails or track welds were the leading cause of derailments, by far."[7] If rules are to be promulgated regarding the transportation of goods by rail, the condition of the rails themselves must be taken into account. This proposed rule largely neglects to do so.

With the comment period now closed, we strongly urge the Department to incorporate industry input when crafting a final rule. The possible negative effects on energy production should oil-by-rail be restricted must be kept in mind. I certainly agree that safety should be a priority when transporting these products. However, safety should not be used as an excuse to continue this Administration's opposition to vital traditional energy sources, as we have seen with the Administration's refusal to approve construction of essential energy infrastructure like the Keystone XL pipeline.

I respectfully request any rule that is finalized promote domestic energy development, strong economic growth and reasonable safety standards while providing adequate time for compliance. Thank you for your consideration, and I look forward to your response.

Sincerely,

Jim Bridenstine

Jim Bridenstine
Member of Congress

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[3] "Safety of Crude Oil by Rail," Center for Strategic and International Studies, March 2014.
[4] *Id.*
[5] "Comments of the American Fuel & Petrochemical Manufacturers on the Pipeline and Hazardous Materials Safety Administration's Notice of Proposed Rulemaking for 'Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains,'" p. 36.
[6] *Id.*
[7] "U.S. Rail Transportation of Crude Oil: Background and Issues for Congress," Congressional Research Service, May 5, 2014.