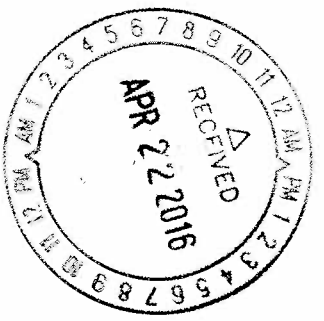
Hogan Lovells

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com



NOR 42146
240541

ENTERED
Office of Proceedings
April 25, 2016
Part of
Public Record

April 22, 2016

By Hand Delivery

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: American Fuel & Petrochemical Manufacturers v. BNSF Railway Company, NOR-___

Dear Ms. Brown:

Per the Surface Transportation Board's procedures for filing a formal complaint, 49 C.F.R. Part 1111, I have enclosed an original and eleven copies of a complaint against BNSF Railway Company for violation of its common carrier obligations and for unreasonable practices. I request that you acknowledge receipt and filing of the complaint by stamping the eleventh copy with the date of receipt and return it to the courier in the enclosed envelope.

I have also enclosed three compact discs with electronic copies of the complaint and exhibits and a check in the amount of $350 for the applicable filing fee.

Sincerely,

Justin A. Savage

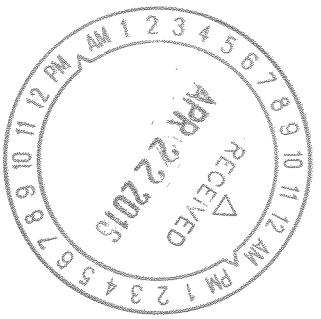
Partner
justin.savage@hoganlovells.com
D +1 202 637 5558

Enclosures

FEE RECEIVED
April 25, 2016
SURFACE
TRANSPORTATION BOARD

F I L E D
April 25, 2016
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS,	)	
	)	NOR ____
vs.	)	
BNSF RAILWAY COMPANY.	)	

COMPLAINT

The American Fuel & Petrochemical Manufacturers ("AFPM" or "Complainant"), 1667 K Street, NW, Suite 700, Washington, D.C. 20006, files this Complaint against Defendant BNSF Railway Company ("BNSF"), 2650 Lou Menk Drive, Fort Worth, Texas 76131. AFPM brings this Complaint pursuant to 49 U.S.C. §§ 10702, 11101, 11704, and 49 C.F.R. Part 1111. In support of the Complaint, AFPM alleges as follows.

THE PARTIES

1. Complainant AFPM is a non-profit national trade association headquartered in Washington, D.C. AFPM is comprised of more than 400 companies that operate 120 U.S. refineries, representing more than 95 percent of U.S. refining capacity. Many of AFPM's members ship crude in tank cars on BNSF's lines.

2. BNSF is a common carrier railroad engaged in the transportation of freight in interstate commerce. BNSF is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, and to the jurisdiction of the Surface Transportation Board (the "Board"). As further described herein, BNSF regularly and extensively provides rail

transportation for crude oil, including transportation in the disputed general purpose DOT 111 tank cars.

NATURE OF THE ACTION

3. This is an action against BNSF for violating its common carrier obligation by imposing a surcharge for shipping crude oil in rail tank cars expressly authorized for such shipments by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), effectively levying such an onerous financial penalty on crude shipments in those cars that their use would become impractical. To ensure a national, uniform system of safe transportation by rail, PHMSA administers the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. § 5101, *et seq*. The HMTA grants PHMSA exclusive authority over hazardous materials transportation, including the power to set safety standards governing rail tank cars that ship crude oil. PHMSA establishes rail car standards in a public rulemaking process under the protections of the Administrative Procedure Act, 5 U.S.C. § 500, *et seq*. As a common carrier railroad, BNSF is legally obligated to accept hazardous material such as crude oil that is offered for transportation in compliance with PHMSA's federal safety regulations.

4. PHMSA also administers and oversees hazardous materials transportation under the Hazardous Materials Regulations ("HMR"). 49 C.F.R. Parts 105–180. PHMSA's powers under the HMR include the exclusive authority to approve the specifications and standards for rail tank cars that ship crude oil. 49 U.S.C. § 5103(b)(1)(A)(iii).

5. Nation-wide, one of the most commonly used rail tank cars in crude service is the general purpose DOT 111 railcar, which is also referred to as the "unjacketed DOT 111." The American Association of Railroads ("AAR"), a trade association representing BNSF and other major railroads, recently filed comments with PHMSA estimating that nearly 23,000 general

purpose DOT 111s were used to ship crude oil, representing about 28% of the national crude oil rail fleet.

6. BNSF is a major railway and common carrier that provides services throughout the United States. Its network is comprised of almost 400 railroad lines with service in 28 states. Upon information and belief, BNSF is the largest transporter of crude oil in North America, hauling more than 600,000 barrels per day. In the Bakken formation in North Dakota and Montana, BNSF transports more than half of the crude oil produced.

7. AFPM is a national trade association of more than 400 petroleum refiners and petrochemical manufacturers throughout the United States. As AFPM represents the interests of virtually every United States refiner and petrochemical manufacturer, AFPM members depend on crude oil for feedstock, including crude oil shipped by rail. AFPM members own and/or employ rail tank cars to ship crude oil on BNSF lines, including the DOT 111 cars that are subject to the penalty here at issue.

8. Despite PHMSA's comprehensive regulatory regime, BNSF enacted a penalty on the use of certain PHMSA-authorized rail cars to ship crude oil, including a penalty on each "general purpose DOT 111" tank car that ships crude oil. BNSF does not apply the penalty to certain other rail cars designated as "jacketed DOT 111s" or "CPC-1232s" that make up the remaining subset of rail tank cars that PHMSA authorized for crude oil transportation.

9. Specifically, on October 24, 2014, BNSF announced that it would enact a $1,000-per-railcar penalty on each general purpose DOT 111 used to ship crude oil. On December 18, 2014, BNSF officially distributed its proposed cost schedule to customers as BNSF Price Authority 90118, Amendment/Rev: 20, effective January 1, 2015 (the "Price Authority") (attached as Exhibit A to the Complaint). The schedule imposes a $1,000 premium above the

cost to ship crude oil in general purpose DOT 111s when compared to identical shipments in jacketed DOT 111 tank cars, CPC-1232 specification tank cars, or "Next Gen" model railcars. BNSF's reference to "Next Gen" cars is illusory since no such cars actually exist. Jacketed DOT 111s and CPC-1232s are authorized tank cars for crude oil shipments, but PHMSA does *not* mandate their use.

10. Instead, general purpose DOT 111 railcars remain authorized for use in shipping crude oil until May 1, 2025 for crude oil that qualifies under PHMSA regulations as Packing Group III. For crude oil that qualifies for Packing Groups I and II, DOT 111 railcars may be used until January 1, 2018 and May 1, 2023, respectively. Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains, 80 Fed. Reg. 26,648, 26,738 (May 8, 2015) (the "Final Rule"). Even before BNSF enacted the penalty, the Notice of Proposed Rulemaking indicated that DOT 111 railcars were and would remain authorized for use in crude service. *See* 79 Fed. Reg. 45,015, 45,025 (proposed Aug. 1, 2014) ("The DOT Specification 111 tank car is one of several cars authorized by the HMR for the rail transportation of many hazardous materials, including ethanol, crude oil and other flammable liquids.").

11. BNSF's Price Authority imposes a consistent $1,000 premium for general purpose DOT 111 shipments over other rail tank car shipments, regardless of destination or the proportionality of the $1,000 to the underlying price. The $1,000 penalty is applied regardless of the route's other characteristics. Factors which might speak to safety, such as distance, climate, or geography, are not reflected in the $1,000 increase. As such, the flat-rate $1,000 differential constitutes an across-the-board penalty on the use of general purpose DOT 111 railcars in crude service, a breach of BNSF's common carrier duty, and an unreasonable practice.

12. The purpose of the penalty is to cause shippers to retrofit or prematurely retire federally authorized general purpose DOT 111 railcars ahead of the schedule set forth in the Final Rule. BNSF has admitted that the penalty is intended to discourage the use of certain DOT 111s. Specifically, BNSF informed the Administrator of PHMSA at a March 19, 2014 meeting that "there needs to be [a] disincentive to use DOT 111," and thus the company was "looking at pricing" to accomplish that objective. Notes from Administrator's Meeting with BNSF for Docket PHMSA-2012-0082, Open Rulemaking HM-251 (Mar. 19, 2014) (attached as Exhibit B to the Complaint). Rather than allowing shipments of crude oil in authorized DOT 111 tank cars, BNSF told PHMSA that "crude should move by the 'next generation' rail car"—*i.e.*, jacketed DOT 111s or CPC-1232s—even though DOT does not require such cars. In fact, upon information and belief, none had been manufactured yet. *Id.* In October 2014, BNSF announced the penalty, which was characterized as a fee to encourage shippers to scrap general purpose DOT 111s.

13. BNSF's assertion of unilateral regulatory authority over crude oil tank car standards conflicts with the PHMSA rulemaking on such standards. PHMSA's Final Rule on Enhanced Tank Car Standards, 80 Fed. Reg. at 26,648, went into effect on July 7, 2015. None of the regulatory options promulgated by PHMSA included BNSF's immediate $1,000-per-car penalty upon the continued use of general purpose DOT 111 tank cars. The certainty provided by PHMSA's exclusive tank car standards, including the retrofit schedule, would be undermined were BNSF and other railroads allowed to use financial penalties and penalties to coerce companies to adopt different standards.

14. This $1,000 penalty on certain PHMSA-authorized rail cars breaches BNSF's common carrier duty to ship hazardous materials under the auspices of PHMSA's comprehensive

regime governing hazardous materials transportation. Further, the uneven application of the penalty to DOT 111s is evidence of BNSF's unreasonable and discriminatory practices. Allowing railroads to penalize companies that ship crude oil in certain federally-authorized rail cars would circumvent PHMSA's statutory and regulatory process for setting rail car standards for hazardous materials shipments.

15. BNSF's penalty also deprives companies of the procedural protections afforded to those that who participated in the PHMSA rulemaking on rail tank car standards for crude oil shipments. Under the Administrative Procedure Act, PHMSA must afford notice and an opportunity to comment on its proposed rules, which then must be considered in promulgating a final rule. Prior to the Notice of Proposed Rulemaking or the enactment of the Final Rule, AFPM, AAR, and other interested parties availed themselves of those procedural rights by filing written comments with PHMSA. All of these comments advocated for a multi-year phase out of general purpose DOT 111s because tank car manufacturers are unable to immediately retrofit or replace all DOT 111s due to limitations on their manufacturing shop capacity and other factors. *See* Excerpts from the Comments to PHMSA (attached as Exhibit C to the Complaint). As a practical matter, BNSF's penalty on general purpose DOT 111s denies AFPM and other stakeholders the procedural benefits of the rulemaking process with PHMSA: Even after the Notice of Proposed Rulemaking, 79 Fed. Reg. 45,015 (Aug. 1, 2014), and in direct contravention to the Final Rule, 80 Fed. Reg. 26,648 (May 8, 2015), BNSF has preemptively declared, and continues to enforce, an immediate financial penalty on the use of these still-authorized tank cars.

16. BNSF's actions have a direct impact on AFPM members who ship crude oil in general purpose DOT 111 cars. With each such DOT 111 holding approximately 700 barrels of

crude oil, BNSF's $1,000-per-railcar penalty results in an additional $1.50 in costs for each barrel of crude oil shipped in a DOT 111 railcar. BNSF's penalties apply to AFPM members who ship crude oil with BNSF using general purpose DOT 111 tank cars.

JURISDICTION

17. The Board has jurisdiction over BNSF because BNSF's actions run afoul of its common carrier obligations under the Interstate Commerce Commission Termination Act, 49 U.S.C. §§ 11101, 11704.

18. The Board has jurisdiction to prohibit BNSF from engaging in unreasonable practices by penalizing the use of federally authorized tank cars for the transportation of crude under 49 U.S.C. § 10702.

CLAIMS AND CAUSES OF ACTION

Count I – BNSF's Breach of its Common Carrier Obligations

19. Complainant incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

20. Section 171.1 of PHMSA's HMR provides, in relevant part: "Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate. . . . Regulations prescribed in accordance with Federal hazardous materials transportation law *shall govern safety aspects*, including security, *of the transportation of hazardous materials that the Secretary considers appropriate*." 49 C.F.R. § 171.1 (emphasis added).

21. Congress mandated that PHMSA "shall carry out" the "duties and powers" of the Secretary of DOT "related to . . . hazardous materials transportation and safety . . . ." 49 U.S.C.

§ 108(f)(1). PHMSA's authority over hazardous materials transportation "may be transferred" to another part of DOT or another government entity "only if specifically provided by law," 49 U.S.C. § 108(g), but no such transfer has been specifically authorized by Congress.

22. PHMSA's statutory authority includes the power to regulate "package[s], container[s], or packing component[s] . . . sold as qualified for use in transporting hazardous material in commerce." 49 U.S.C. § 5103(b)(1)(A)(iii). PHMSA's HMR authorize certain rail cars as "bulk packagings" for the transport of hazardous materials, including DOT 111 rail tank cars for the shipment of crude oil and other "Class 3" flammable liquids. 49 C.F.R. §§ 173.241(a) (listing DOT 111 tank cars for the shipment of low-hazard liquids); 173.242(a) (listing DOT 111 tank cars for medium-hazard liquids); 173.243(a) (listing DOT 111 tank cars for high-hazard liquids). *See also* 49 C.F.R. § 172.101, Hazardous Materials Table, Column 8C (listing bulk packaging requirements for hazardous materials). As PHMSA has noted: "The DOT Specification 111 tank car is one of several cars authorized by the HMR for the rail transportation of many hazardous materials, including ethanol, crude oil and other flammable liquids." 79 Fed. Reg. at 45,025. It will remain authorized through at least January 1, 2018 or up until May 1, 2023, depending on its PHMSA Packing Group. 80 Fed. Reg. at 26,738.

23. PHMSA's rail tank car standards are exclusive. Section 173.3 of the HMR state, in pertinent part, that "[t]he packaging of hazardous materials for transportation by . . . rail must be as specified in this part." 49 C.F.R. § 173.3(a). Section 173.31 of HMR provides, in relevant part, that "[t]ank cars and appurtenances may be used for the transportation of any commodity for which they are authorized in this part . . . ." 49 C.F.R. § 173.31(a)(2). Congress deemed uniformity in rail tank cars so important that it preempted States from enacting their own tank car standards. 49 U.S.C. § 5125(b)(1)(E); 49 C.F.R. § 171.1(f)(1)(iii)(E). Accordingly, PHMSA has

exclusive authority to regulate the specifications and standards of rail tank cars used to transport crude oil.

24. BNSF is a common carrier subject to the Interstate Commerce Commission Termination Act, and as such must provide rail transportation upon reasonable request. 49 U.S.C. § 11101. That statutory common carrier obligation includes a duty to transport hazardous materials where the appropriate agencies have promulgated comprehensive safety regulations. Here, BNSF is bound by PHMSA's comprehensive regulatory regime governing the shipment of crude oil, and must accept for transportation those general purpose DOT 111 cars that are authorized for such transportation. Any changes to PHMSA's regime must be processed through the rulemaking procedures under the Administrative Procedure Act, including those changes which resulted from the final rulemaking on standards for rail cars that ship crude oil. Enacting a monetary penalty with the purpose of deterring hazardous materials shipments in authorized rail cars is contrary to BNSF's common carrier obligation.

25. BNSF's penalty conflicts with both PHMSA's current standards for railcars in crude service, and its exclusive right to enact and enforce a comprehensive regulatory regime. Despite BNSF's distaste for general purpose DOT 111 railcars, they are authorized bulk packagings for crude service under the HMR. Accordingly, BNSF's penalty undermines its common carrier obligation to submit to PHMSA's authority under the Hazardous Materials Transportation Act and the Interstate Commerce Commission Termination Act.

Count II – Unreasonable Practice

26. Complainant incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

27. Under 49 U.S.C. § 10702, a railroad must maintain reasonable practices with respect to the transportation that they hold to perform.

28. Under BNSF's Price Authority, movements in general purpose DOT 111 cars are subject to an additional $1,000 penalty per car when compared to the cost for the same shipment of the same cargo in a jacketed DOT 111, CPC-1232, or illusory "Next Gen" tank car. The $1,000 penalty is applied solely due to the crude shipment's authorized PHMSA packaging in a general DOT 111 railcar, regardless of any other factor, such as location or distance moved. Accordingly, BNSF's Price Authority is an unreasonable practice in violation of 49 U.S.C. § 10702.

PRAYER FOR RELIEF

WHEREFORE, for the above reasons, Complainant prays that the Board require Defendant BNSF answer the charges alleged herein, and after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board's implementing regulations, the Board:

1. As to Count I, find that BNSF's implementation of BNSF Price Authority 90118 is null and void and in violation of BNSF's common carrier obligation under 49 U.S.C. § 11101;
2. As to Count II, find that BNSF's implementation of BNSF Price Authority 90118 is null and void and unenforceable because it constitutes an unreasonable practice in violation of 49 U.S.C. § 10702;
3. As to Count I and Count II, order BNSF to rescind immediately BNSF Price Authority 90118; and

4. Grant any such other and further relief to which AFPM may show itself to be justly entitled based on the record.

Respectfully submitted,

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS

Bruce D. Oakley
Heaven C. Chee
HOGAN LOVELLS US LLP
700 Louisiana Street, Suite 4300
Houston, Texas 77002
Tel: (713) 632-1400
Fax: (713) 632-1401
Email: bruce.oakley@hoganlovells.com

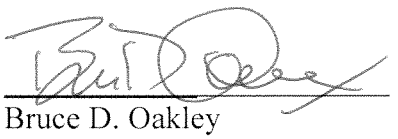
Justin A. Savage
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
Email: justin.savage@hoganlovells.com

COUNSEL FOR AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS

CERTIFICATE OF SERVICE

I do hereby certify that on this 22nd day of April, 2016, I have served a copy of the foregoing Complaint via express overnight courier to the chief legal counsel for Defendant at the following address:

Roger Norber
Executive Vice President, Law and Corporate Affairs
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131-2830



Bruce D. Oakley

EXHIBIT A

GENERAL RULES

-Freight charges must be prepaid, or freight charges must be collect.
-Price applies in United States funds.
-Rates in this price list take precedence in the following order: 1st - Point to Point, 2nd - Point to Group or Group to Point and 3rd - Group to Group.
-Internal Flag BNSF 35 P-B.
-Price is subject to a Fuel Surcharge. A Mileage Based Fuel Surcharge will be applied to the rates or charges in this price authority for the shipment, as provided for in Item 3376-Series, Section B ($2.50 Strike Price), of BNSF Rules Book 6100-Series. This amount will be added to the freight bill.
-Price may be used in combination with other prices for the portion of the shipment both prior to specified origin and subsequent to specified destination. If used in combination, separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11.
-PLEASE BE AWARE THAT, IN ACCORDANCE WITH STATE AND/OR FEDERAL REGULATIONS, BNSF MAY BE REQUIRED FROM TIME TO TIME IN THE FUTURE TO SUBMIT CERTAIN INFORMATION TO GOVERNMENT AGENCIES RELATING TO YOUR FUEL PURCHASES. THIS INFORMATION PRIMARILY INCLUDES THE NAME OF THE SHIPPER, THE CONSIGNEE, THE PAYER OF FREIGHT, THE TYPE OF FUEL, THE QUANTITY OF FUEL, AND THE WAYBILL NUMBER FOR FUEL PRODUCTS THAT EITHER ORIGINATE OR TERMINATE IN CERTAIN STATES. ACCORDINGLY, IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE THAT IT OR ITS CONSIGNEE'S SHIPMENT INFORMATION IS ACCURATELY RECORDED WHEN SUBMITTED TO BNSF AND CUSTOMER ACKNOWLEDGES THAT THE SHIPMENT INFORMATION MAY BE RELIED UPON BY BNSF IN EXTERNAL REPORTING REQUIRED BY APPLICABLE LAWS AND REGULATIONS.
-The Environmental Protection Agency (EPA) has promulgated rules governing motor vehicle diesel fuel (49 U.S.C-80.500 et. Seq.). These regulations require refiners, importers and distributors to designate and track shipments of ultra low sulfur diesel fuel. In order to ship such products on BNSF, shippers of motor vehicle diesel fuel must take responsibility for complying with the designate and track requirements of the regulations. This includes, but is not limited to, registration of all rail fleets/facilities, recordkeeping, and all reporting responsibilities. By the act of tendering such shipments of motor vehicle diesel fuel to BNSF for movement, the shipper is acknowledging to BNSF that they are compliant with all above referenced regulations.
-The Price document number, correct address and patron code must be shown on the bill of lading to insure accurate billing. Payments of freight charges on interline through rates within this price authority are as follows: Freight charges must be prepaid when BNSF is the originating carrier. Freight charges must be collect when BNSF is the terminating carrier.
-Transportation under this agreement is subject to BNSF Rules Book 6100-Series in effect as of the date of shipment. A copy of this Rules Book may be obtained via the internet at: www.BNSF.com. If Customer does not have access to the internet, Customer should contact Price Management at (817) 593-1134 and a copy of BNSF Rules Book 6100 will be mailed to Customer.
-For per car rates displayed in this Price Authority: For shipments moving on per car based rates in this Price Authority, BNSF will not be required to weigh shipments. Requests for weighing a car will be subject to the rules, regulations and charges found in BNSF Weighing Book BNSF-9300-Series. For weight based rates displayed in this Price Authority: For shipments moving on weight based rates in this Price Authority, shipper must have a Weight Agreement and will be responsible for supplying BNSF origin weights at the time of billing. If you are unsure if you have a Weight Agreement with BNSF, please contact auxpricing@bnsf.com. A weighing charge will apply whenever BNSF is requested to weigh a car. Except as otherwise provided herein, the rules, regulations and charges of BNSF Weighing Book, BNSF-9300 Series will apply, except item 500, paragraph C., 1, will not apply.
-Prices in this Rate Item Price List alternate with other Rate Item Price Lists.

COMMODITY DEFINITIONS

STCC	DESCRIPTION
	COMMODITY GROUP - BNSF 90118 COMMODITIES (REN) (REN)
	1311110 PETROLEUM OIL OR SHALE OIL, CRUDE
	2911716 DILUTED BITUMEN
	2911718 BITUMEN, UNDILUTED
	2911976 PETROLEUM CONDENSATE

COLUMN HEADING DEFINITIONS

COLUMN LABEL	DESCRIPTION
COM	COMMODITY
WGT	WEIGHT CONDITION
EQP	EQUIPMENT
DTE	PRICE EFFECTIVE/EXPIRATION DATE
SHP	SHIPPING CONDITION

COLUMN NOTATIONS

NOTATION	DESCRIPTION
+	DESIGNATES SWITCHING LIMITS
CU	PER CUBIC FOOT UNIT
GT	PER GROSS TON
LB	PER POUND
PA	PER CONTAINER
PC	PER CAR
PF	PER CUBIC FOOT
PH	PER HUNDRED POUNDS
PK	PER CORD
PM	PER MILE
PT	PER NET TON
PV	PER VEHICLE
PW	PERCENTAGE OF CHARGES
TN	PER TRAIN
TR	PER TRAILER

RATE LEVEL CONDITIONS

********** THIS SECTION APPLIES TO INDIVIDUAL RATES **********

2nd eff 1/1/2015-02

COMMODITY DEFINITIONS

CODE	STCC	DESCRIPTION
C01		COMMODITY GROUP - BNSF 90118 COMMODITIES (REN)
		1311110 PETROLEUM OIL OR SHALE OIL, CRUDE
		2911716 DILUTED BITUMEN
		2911718 BITUMEN, UNDILUTED
		2911976 PETROLEUM CONDENSATE

EQUIPMENT DESCRIPTIONS

CODE	DESCRIPTION
EQ-DOT111-GP-TANK, PR,ZR-02	Price applies in Shipper Owned or Leased General Purpose DOT-111 Tank Cars. Mileage payments will not apply.
EQ-CPC1232_111JCK-TNK,PR,ZR-02	Price applies in Shipper Owned or Leased CPC-1232 or DOT-111 Jacketed Tank Cars. Mileage payments will not apply.
EQ-NEXT_GEN-TANK, PR,ZR-03	Price applies in Shipper Owned or Leased Next Generation Tank Cars. Mileage payments will not apply.

SHIPMENT CONDITIONS

CODE	DESCRIPTION
S001	Train size will be increased by a maximum of 30 units to meet PSMT requirements. Price applies on a minimum train size per shipment of 100 cars. Price applies when cars originate from one location. Origins must be approved by BNSF Operations. Switching charges at both origin and destination will not be absorbed.
S002	Train size will be increased by a maximum of 30 units to meet PSMT requirements. Price applies on a minimum train size per shipment of 100 cars. Price applies when cars originate from one location. Origins must be approved by BNSF Operations. Switching charges at Origin and Destination will be absorbed up to $300.00. No more than $300.00 per car will be absorbed. Any additional amount will be assessed.
S003	Train size will be increased by a maximum of 30 units to meet PSMT requirements. Price applies on a minimum train size per shipment of 100 cars. Price applies when cars originate from one location. Origins must be approved by BNSF Operations. Switching charges at Destination will be absorbed.
S004	Switching charges at Origin and Destination will be absorbed up to $160.00. No more than $160.00 per car will be absorbed. Any additional amount will be assessed. Train size will be increased by a maximum of 30 units to meet PSMT requirements. Price applies on a minimum train size per shipment of 100 cars. Price applies when cars originate from one location. Origins must be approved by BNSF Operations.
S005	Train size will be increased by a maximum of 30 units to meet PSMT requirements. Price applies on a minimum train size per shipment of 100 cars. Switching charges at both origin and destination will not be absorbed.

CHANGE INDICATOR DESCRIPTIONS

CODE	DESCRIPTION
A	ADDITION
I	INCREASE
D	DECREASE
C	CHANGE

CODE	DESCRIPTION
M	MULTIPLE
X	EXPIRE

2nd eff 1/1/2015-02
All prices in U.S. dollars

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ-DOT111-GP-TANK,PR,ZR-02	EQ-CPC1232_111JCK-TNK,PR,ZR-02	EQ-NEXT_GEN-TANK,PR,ZR-03				CHG IND	DTE	SHP
BNSF-5 BISMARCK EXCL STAMPEDE	BEAUMONT/KORF, TX	BNSF DIRECT	C01		5597 PC	4597 PC	4597 PC				C		S005
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 ALBUQUERQUE	BNSF DIRECT	C01		5920 PC	4920 PC	4920 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 AMARILLO	BNSF DIRECT	C01		5863 PC	4863 PC	4863 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 CHICAGO	BNSF DIRECT	C01		4357 PC	3357 PC	3357 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 DENVER	BNSF DIRECT	C01		4831 PC	3831 PC	3831 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 DULUTH	BNSF DIRECT	C01		4210 PC	3210 PC	3210 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 EL PASO	BNSF DIRECT	C01		6346 PC	5346 PC	5346 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 FORT WORTH	BNSF DIRECT	C01		5873 PC	4873 PC	4873 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 HOUSTON +	BNSF DIRECT	C01		5597 PC	4597 PC	4597 PC				C		S003
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 LOS ANGELES	BNSF DIRECT	C01		7388 PC	6388 PC	6388 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 MEMPHIS	BNSF DIRECT	C01		5232 PC	4232 PC	4232 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 NEW ORLEANS	BNSF DIRECT	C01		6087 PC	5087 PC	5087 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 OKLA CITY +	BNSF DIRECT	C01		4882 PC	3882 PC	3882 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 PADUCAH	BNSF DIRECT	C01		4866 PC	3866 PC	3866 PC				C		S001

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ-DOT111-GP-TANK,PR,ZR-02	EQ-CPC1232_111JCK-TNK,PR,ZR-02	EQ-NEXT_GEN-TANK,PR,ZR-03				CHG IND	DTE	SHP
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 ROSWELL	BNSF DIRECT	C01		5303 PC	5303 PC	5303 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	BNSF 5 WICHITA	BNSF DIRECT	C01		4820 PC	3820 PC	3820 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	CHERRY POINT/FERDALE, WA	BNSF DIRECT	C01		5279 PC	4279 PC	4279 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	KANSAS CITY MO/KS +	BNSF DIRECT	C01		4602 PC	3602 PC	3602 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	RICHMOND, CA +	BNSF DIRECT	C01		6618 PC	5618 PC	5618 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	EAST ST LOUIS, IL +	BNSF DIRECT	C01		4602 PC	3602 PC	3602 PC				C		S004
BNSF-5 BISMARCK EXCL STAMPEDE	PORT ARTHUR, TX +	BNSF DIRECT	C01		5597 PC	4597 PC	4597 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	WEST PORT ARTHUR, TX	BNSF DIRECT	C01		5597 PC	4597 PC	4597 PC				C		S002
BNSF-5 BISMARCK EXCL STAMPEDE	ARCO, WA	BNSF DIRECT	C01		5279 PC	4279 PC	4279 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	FIDALGO, WA	BNSF DIRECT	C01		5279 PC	4279 PC	4279 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	TACOMA, WA +	BNSF DIRECT	C01		5279 PC	4279 PC	4279 PC				C		S001
BNSF-5 BISMARCK EXCL STAMPEDE	VANCOUVER, WA +	BNSF DIRECT	C01		5070 PC	4070 PC	4070 PC				C		S001
NEW WESTMINSTER, BC +	PORT WESTWARD, OR	BNSF DIRECT	C01		3657 PC	2657 PC	2657 PC				C		S001
NEW WESTMINSTER, BC +	ARCO, WA	BNSF DIRECT	C01		3185 PC	2185 PC	2185 PC				C		S001
NEW WESTMINSTER, BC +	FIDALGO, WA	BNSF DIRECT	C01		3185 PC	2185 PC	2185 PC				C		S001
NEW WESTMINSTER, BC +	TACOMA, WA +	BNSF DIRECT	C01		3185 PC	2185 PC	2185 PC				C		S001

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ-DOT111-GP-TANK,PR,ZR-02	EQ-CPC1232_111JCK-TNK,PR,ZR-02	EQ-NEXT_GEN-TANK,PR,ZR-03				CHG IND	DTE	SHP
NEW WESTMINSTER, BC +	VANCOUVER, WA +	BNSF DIRECT	C01		3363 PC	2363 PC	2363 PC				C		S001

ORIGIN GEOGRAPHY GROUPS

GROUP - BNSF-5 BISMARCK EXCL STAMPEDE (REN)
County of DAWSON
County of FALLON
County of RICHLAND
County of ROOSEVELT
County of SHERIDAN
County of WIBAUX
County of ADAMS
County of BILLINGS
County of BOTTINEAU
County of BOWMAN
County of BURKE
County of BURLEIGH
County of DIVIDE
County of GOLDEN VALLEY
MANITOU,ND
County of MCHENRY
County of MCKENZIE
County of MCLEAN
County of MERCER
County of MORTON
County of MOUNTRAIL
County of OLIVER
County of RENVILLE
County of SHERIDAN
County of SLOPE
County of STARK
County of WARD
County of WILLIAMS
County of CORSON
County of PERKINS
County of WALWORTH
except STAMPEDE,ND

DESTINATION GEOGRAPHY GROUPS

GROUP - BNSF 5 EL PASO (REN)
County of EL PASO

GROUP - BNSF 5 LOS ANGELES (REN)

County of LOS ANGELES
County of ORANGE
County of RIVERSIDE
County of SAN BERNARDINO

GROUP - BNSF 5 DENVER (REN)
County of ADAMS
County of ARAPAHOE
County of BOULDER
County of BROOMFIELD
County of DENVER
County of DOUGLAS
County of EL PASO
County of JEFFERSON
County of LARIMER
County of LOGAN
County of MORGAN
County of PHILLIPS
County of WASHINGTON
County of WELD
County of YUMA
County of CHEYENNE
County of LARAMIE

GROUP - BNSF 5 HOUSTON (REN)
County of AUSTIN
County of BRAZORIA
County of BRAZOS
County of BURLESON
County of CALHOUN
County of CHAMBERS
County of FORT BEND
County of FREESTONE
County of GALVESTON
County of GRIMES
County of HARRIS
County of HARRISON
County of LEON
County of LIBERTY
County of MADISON
County of MATAGORDA
County of MILAM
County of MONTGOMERY
County of WASHINGTON

County of WHARTON
except BAYPORT,TX +

GROUP - BNSF 5 OKLA CITY (REN)
County of ALFALFA
County of BLAINE
County of CADDO
County of CANADIAN
County of CARTER
County of CIMARRON
County of CLEVELAND
County of COMANCHE
County of CUSTER
County of DEWEY
County of ELLIS
County of GARFIELD
County of GARVIN
County of GRADY
County of GRANT
County of JACKSON
County of JEFFERSON
County of KAY
County of KIOWA
County of LINCOLN
County of LOGAN
County of LOVE
County of MAJOR
County of MCCLAIN
County of MURRAY
County of MUSKOGEE
County of NOBLE
County of OKLAHOMA
County of OKMULGEE
County of POTTAWATOMIE
County of TEXAS
County of TILLMAN
County of WASHITA
County of WOODS
County of WOODWARD
except CLINTON,OK +

GROUP - BNSF 5 NEW ORLEANS (REN)
County of ACADIA
County of ASSUMPTION

County of AVOYELLES
County of CALCASIEU
County of EVANGELINE
County of IBERIA
County of JEFFERSON
County of JEFFERSON DAVIS
County of LAFAYETTE
County of LAFOURCHE
County of ORLEANS
County of RAPIDES
County of ST CHARLES
County of ST LANDRY
County of ST MARTIN
County of ST MARY
County of TERREBONNE
County of VERMILION

GROUP - BNSF 5 MEMPHIS (REN)
County of CRAIGHEAD
County of CRITTENDEN
County of FULTON
County of GREENE
County of LAWRENCE
County of MISSISSIPPI
County of POINSETT
County of SHARP
County of DUNKLIN
County of NEW MADRID
County of PEMISCOT
County of BENTON
County of DE SOTO
County of MARSHALL
County of TIPPAH
County of UNION
County of SHELBY

GROUP - BNSF 5 CHICAGO (REN)
County of CARROLL
County of COOK
County of DE KALB
County of DUPAGE
County of GRUNDY
County of KANE
County of KENDALL

County of LA SALLE
County of LEE
County of OGLE
County of WILL
County of WINNEBAGO

GROUP - BNSF 5 AMARILLO (REN)
County of ARMSTRONG
County of BAILEY
County of CARSON
County of CASTRO
County of CHILDRESS
County of COCHRAN
County of COLEMAN
County of DALLAM
County of DAWSON
County of DEAF SMITH
County of DONLEY
County of FLOYD
County of GAINES
County of GARZA
County of GRAY
County of HALE
County of HALL
County of HANSFORD
County of HARDEMAN
County of HARTLEY
County of HASKELL
County of HEMPHILL
County of HOCKLEY
County of HUTCHINSON
County of LAMB
County of LIPSCOMB
County of LUBBOCK
County of LYNN
County of MOORE
County of NOLAN
County of OCHILTREE
County of OLDHAM
County of PARMER
County of POTTER
County of RANDALL
County of ROBERTS
County of SCURRY

County of SHERMAN
County of SWISHER
County of TAYLOR
County of TERRY
County of WICHITA
County of WILBARGER

GROUP - BNSF 5 DULUTH (REN)
County of AITKIN
County of BELTRAMI
County of CARLTON
County of CASS
County of CROW WING
County of HUBBARD
County of ITASCA
County of KOOCHICHING
County of PINE
County of ST LOUIS
County of DOUGLAS
except FSAC 52731/BNSF

GROUP - BNSF 5 PADUCAH (REN)
County of FRANKLIN
County of JEFFERSON
County of JOHNSON
County of MARION
County of MASSAC
County of WILLIAMSON
County of MCCRACKEN

GROUP - BNSF 5 WICHITA (REN)
County of BARBER
County of BARTON
County of BUTLER
County of CHASE
County of CLAY
County of CLOUD
County of COFFEY
County of COMANCHE
County of COWLEY
County of DICKINSON
County of EDWARDS
County of ELK
County of FINNEY

County of FORD
County of FRANKLIN
County of GRANT
County of GRAY
County of GREENWOOD
County of HAMILTON
County of HARPER
County of HARVEY
County of HASKELL
County of HODGEMAN
County of KEARNY
County of KINGMAN
County of KIOWA
County of LANE
County of LINCOLN
County of LYON
County of MARION
County of MCPHERSON
County of MITCHELL
County of MONTGOMERY
County of MORRIS
County of MORTON
County of NEOSHO
County of NESS
County of OSAGE
County of OSBORNE
County of PAWNEE
County of PRATT
County of RENO
County of RICE
County of RUSH
County of SALINE
County of SCOTT
County of SEDGWICK
County of SEWARD
County of SHAWNEE
County of STAFFORD
County of STANTON
County of STEVENS
County of SUMNER
County of WILSON

GROUP - BNSF 5 FORT WORTH (REN)
County of MARSHALL

County of BOSQUE
County of BROWN
County of CLAY
County of COLLIN
County of COMANCHE
County of COOKE
County of CORYELL
County of DALLAS
County of DENTON
County of EASTLAND
County of ELLIS
County of ERATH
County of GRAYSON
County of HILL
County of HOOD
County of JOHNSON
County of LAMPASAS
County of MCCULLOCH
County of MCLENNAN
County of MILLS
County of MONTAGUE
County of NAVARRO
County of TARRANT
County of WISE
except BRADY,TX
except LOMETA,TX

GROUP - BEAUMONT/KORF, TX
BEAUMONT,TX +
KORF,TX

GROUP - CHERRY POINT/FERDALE, WA
CHERRY POINT,WA +
FERNDALE,WA

GROUP - KANSAS CITY MO/KS
KANSAS CITY,KS +
KANSAS CITY,MO +

GROUP - BNSF 5 ROSWELL (REN)
County of CHAVES
County of CURRY
County of DE BACA
County of EDDY

County of ROOSEVELT
County of CULBERSON
County of REEVES

GROUP - BNSF 5 ALBUQUERQUE (REN)
County of APACHE
County of BERNALILLO
County of CIBOLA
County of DONA ANA
County of GRANT
County of GUADALUPE
County of LUNA
County of MCKINLEY
County of MORA
County of SAN MIGUEL
County of SANDOVAL
County of SANTA FE
County of SIERRA
County of SOCORRO
County of TORRANCE
County of VALENCIA

EXTERNAL NOTES

REVISION	NOTE DATE	DESCRIPTION
20	12-17-2014	AUTHORITY RE-ISSUED DUE TO SHIPMENT CONDITION CHANGES
20	12-12-2014	Corrected origin for BNSF-5 Bismarck xcluding Stampede group eff 1/1/2015.
19	12-09-2014	Modified equipment eff 1/1/2015.
18	12-02-2014	Adds rates from BNSF5 Bismarck Group excl Stampede to West Port Arthur, TX effective 12/2/14.
17	06-23-2014	Increases rate from New Westminster, BC to Tacoma, WA effective 7/14/14.
16	05-14-2014	Added rate for Bismark grp x Stampede to Cherry Point/Ferndale, WA eff 5/14/2014.
15	05-07-2014	Added rate for Bismarck grp ex Stampede to Beaumont/Korf, TX eff 5/7/2014.
14	03-14-2014	Revised equipment.
13	03-13-2014	Adjusted rate for New Westminster, BC to Tacoma, WA eff 4/2/2014.
12	03-07-2014	Renewal with rate adjustments eff 4/1/2014.
11	08-22-2013	Added unit train rates from Dore, ND to Richmond, CA and Vancouver, WA and BNSF-5 Bismarck Group excl Stampede to Richmond, CA effective 8/22/13.
10	08-07-2013	Added rates from New Westminster, BC to Arco, Fidalgo, Tacoma and Vancouver, WA,and to Port Westward, OR effective 8/7/2013. Moved from Item 4000.
2	02-21-2013	Added rate from BNSF 5 Bismarck Excluding Stampede to Tacoma, WA effective 4/1/2013.
1	02-20-2013	Revised PSMT requirement effective 4/1/2013.
0	02-19-2013	New Crude Oil Tariff with various locations effective 4/1/2013.

EXHIBIT B

Notes from Administrator's Meeting with BNSF
For Docket PHMSA-2012-0082
Open Rulemaking HM-251
March 19, 2014

Participants:
PHMSA:
Cynthia Quarterman, Administrator
Magdy El-Sibaie, Associate Administrator, Office of Hazardous Materials Safety
Ryan Posten, Deputy Associate Administrator, Policy and Programs, Office of Hazardous Materials Safety
Jeannie Shiffer, Director, Office of Government, International, and Public Affairs
Vanessa Sutherland, Chief Counsel
Vasiliki Tsaganos, Deputy Chief Counsel

FRA:
Karl Alexy, Staff Director, Hazardous Materials Division

Industry:
Gregory Fox, Executive Vice President, Operations, BNSF Railway Company
Michael Smythers, Jr., Assistant Vice President, Federal Government Affairs, BNSF Railway Company
Amy Hawkins, Vice President, Federal Government Affairs, BNSF Railway Company
Patrick M. Brady, Assistant Director Hazardous Materials, BNSF Railway Company

Preliminary Remarks:*
PHMSA has an open rulemaking regarding rail cars and, as such, cannot comment on that pending rulemaking; PHMSA will simply listen to comments. The comment period has closed for the ANPRM, but PHMSA may consider late-submitted comments.

Comments from BNSF Railway Company ("BNSF"):*

*BNSF is committed to prevention, mitigation and response.

*They don't believe that Bakken crude is very different than other crude, but they believe it is more volatile and that is why they are pushing for the new tank car standard. They believe that ethanol and crude should move by the "next generation" rail car. They said that they need certainty with respect to the new tank car standards and for the retrofit issue to be addressed.

* They are also working on the response side and are training first responders. They are also working on creating hazmat training for first responders.

*They believe that the voluntary actions have moved the needle in terms of risk reduction and they take risk reduction very seriously.

* This is a summary of the comments made at this meeting and not a transcript.

* They are supportive of breaking out the proposed rulemaking into two rulemakings. They would like to see the new tank car rulemaking as soon as possible.

*They believe the CPC-1232 should be jacketed and with thermal protection for hauling crude and ethanol.

*They proposed that the DOT 111s can be make equally safe as the CPC-1232 if they are equipped with head protection, valve protection, are jacketed and have thermal protection. They also suggested speed restrictions on the 111 in high volume areas for 5-7 years.

*They don't distinguish between the older and newer DOT 111s.

*They said that they spent a lot of time on conditional probability of release (CPR) with the University of Illinois and the calculated CPR for a DOT 111 is 50%. .

*They said that the mistake they made with the consensus standard in 2011 was that the CPC - 1232 car didn't have a jacket. If they knew about crude oil in 2011, they would not have supported the consensus standard.

*They said that the CPC- 1232 is 76% more crashworthy than an unjacketed DOT 111.

*The "next generation" car is 85% more crashworthy than the DOT 111. Their concept of a "next generation" car is a shell thickness of 9/16, full-height head shield, thermal protection, head shield, top and bottom valve protection, high capacity pressure relief valve, and jacketed. They basically described it as a 112 tank car with a hinged and bolted manway and bottom outlet valve.

*They also said that they could see a scenario that a slight modification to the CPC-1232 and DOT 111 could allow Packing Group III to be hauled into the future. They also suggested that Canadian tar sands, asphalt and diesel could be shipped in these cars.

*They said that they have put out a request for proposal for new tank cars and will have bids back in 60 days. They will be looking for the new tank car standard before they commit $700 million.

*They have not changed their tariffs on DOT 111s although Canada has done this. They are concerned that the DOT 111s will come to the U.S. and the CPC-1232s will end up in Canada. They believe that there needs to be disincentive to use DOT 111 and they are looking at pricing as well.

* This is a summary of the comments made at this meeting and not a transcript.

EXHIBIT C

American
Fuel & Petrochemical
Manufacturers

1667 K Street, NW
Suite 700
Washington, DC
20006

202.457.0480 office
202.457.0486 fax
afpm.org

COMMENTS OF THE AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS ON THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION'S ("PHMSA'S") NOTICE OF PROPOSED RULEMAKING FOR HAZARDOUS MATERIALS: ENHANCED CAR STANDARDS AND OPERATIONAL CONTROLS FOR HIGH-HAZARD FLAMMABLE TRAINS, DOCKET NO. PHMSA-2012-0082 (HM-251), 79 FED. REG. 45,015 (AUG. 1, 2014)

September 30, 2014

David Friedman
American Fuel & Petrochemical
Manufacturers
1667 K Street, NW, Suite 700
Washington DC 20006
United States of America
(202) 457-0486

I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers ("AFPM") appreciate the opportunity to provide comments on the U.S. Department of Transportation ("DOT"), Pipeline and Hazardous Materials Safety Administration's ("PHMSA's") Notice of Proposed Rulemaking for Hazardous Materials: Enhanced Car Standards and Operational Controls for High-Hazard Flammable Trains ("Proposal" or "NPRM").[1] AFPM members share a deep commitment to safety and strive for opportunities to proactively integrate safety into their operations and management culture. With that strong commitment to safety in mind, AFPM is concerned that the Proposal largely ignores measures that could prevent derailments of crude and ethanol shipments, focusing instead on mitigating the impact of derailments. While AFPM supports appropriate and effective mitigation, several of PHMSA's proposed measures fail to take meaningful steps toward preventing derailments, risk significantly reducing crude rail capacity, and cost billions of dollars. We respectfully submit these comments to promote further dialogue on how to fashion a final rule that is preventative as well as protective, data-driven, and effective.

A. AFPM's Interest in the Proposal

AFPM is a national trade association of more than 400 petroleum refiners and petrochemical manufacturers throughout the United States. AFPM members operate 120 U.S. refineries comprising more than 95 percent of U.S. refining capacity.

AFPM members depend upon a plentiful, affordable supply of crude oil as a feedstock for the transportation fuels and petrochemicals that they manufacture. As manufacturers, AFPM members acquire crude oils from multiple sources, with a growing proportion coming from domestic sources, including oil produced from the Bakken formation. Ethanol is also a critical commodity for refiners because the Renewable Fuel Standard ("RFS") of the Clean Air Act requires ethanol to be blended into gasoline.

Safe, reliable, and economic transportation of crude oil and ethanol from source to refinery plays a vital role in ensuring the efficient, economical, and continuous operation of our refining and petrochemical operations. Approximately 11 percent of the crude oil processed by AFPM members arrives by rail. Rail shipments are of particular importance for the Bakken formation, which lacks a pipeline infrastructure. As a result of the RFS mandate, AFPM members are also impacted by the transportation of ethanol from plant to terminal, since most ethanol is transported to market by rail.

In order to ship crude and ethanol, AFPM members lease and own tens of thousands of rail tank cars. About 40% of the tank cars used by AFPM members are owned, with the remaining cars leased.[2] Most rail shipments of crude and ethanol are carried in unit trains. The average size of such unit trains is 94 cars, according to an AFPM membership survey.[3]

---

[1] Docket No. PHMSA-2012-0082 (HM-251), 79 Fed. Reg. 45,015 (Aug. 1, 2014).

[2] *See* AFPM Member Tank Car Retrofit Survey, at 5 (Sept. 14, 2014) ("AFPM Retrofit Survey") (**Exhibit 1**).

[3] Fifteen AFPM members, who collectively own or lease about 29,000 tank cars, responded to the survey.

B. AFPM's Unwavering Commitment to Safety

The refining and petrochemical manufacturing industries are committed to protecting the health and safety of our workers, our contractors, our neighbors, our customers, and the communities through which crude oil and ethanol are shipped. AFPM supports a holistic, preventative approach to improving the safe transportation of crude oil by rail and other modes, and is committed to working with PHMSA on this issue. AFPM and its members work diligently to maintain a safe working environment in our refineries, with a goal of zero incidents. This commitment applies to the safe transportation of crude oil and other feedstocks to refineries, and of refined products to our members' customers.

As part of a longstanding commitment to safety, AFPM members have been proponents of AAR Tank Car Committee's proposed Petition P-1577 recommendations, which were introduced in 2011 as CPC-1232 standard tank cars. AFPM members made an enormous capital investment, now estimated at more than $3 billion, in tank cars meeting the updated standard because of their good-faith expectation that the standard would soon be adopted as law by the U.S. government. This expectation was supported by the fact that the U.S. DOT and Canadian Transport Ministry were both active participants in the AAR Tank Car Committee. Approximately 25% of the DOT-111 tank cars currently in crude and ethanol service are compliant with the CPC-1232 standard. [4] This number is expected to increase to more than 50,000 cars by the end of 2015. Despite the lack of regulatory certainty, the shipper sector has continued its good-faith, high-cost efforts to meet the CPC-1232 standard.

[4] *See* Alltranstek, LLC, "Economic Impact on the North American Tank Car Fleet and Supply with the Implementation of the Anticipated New Tank Car Regulations" (Sept. 30, 2014) ("Alltranstek Technical Analysis") (**Exhibit 2**).

II. EXECUTIVE SUMMARY OF AFPM'S COMMENTS

Domestic oil and gas production has grown dramatically in recent years, with crude oil projected to soon reach levels last seen in 1970. Rail has played a critical role in facilitating the growth of domestic energy production and manufacturing, spurring the creation of tens of thousands of new jobs. Recent increases in crude oil output are transported mainly by rail. For example, producers in the Bakken formation use rail to ship 70% of crude oil to refineries and midstream companies. Similarly, 70% of ethanol reaches refineries by rail.

Although transportation by rail is very safe – with 99.997% of all hazardous materials moving by rail reaching its destination without incident – our industry is committed to a culture of continuous improvements and focused on zero incidents as the goal. AFPM respectfully submits that any effort to enhance rail safety must begin with addressing the primary root causes of derailments and other accidents: (1) track integrity and (2) human factors. Eighty-eight percent of derailments occur due to track defects. Human error is the predominant cause of other train accidents (*e.g.*, collisions with other trains). Investment in accident prevention would result in the greatest reduction in the risk of rail incidents.

In particular, DOT should consider recommendations made by the National Transportation Safety Board ("NTSB") to improve track safety standards and reduce human error. Those recommendations include requiring railroads to regularly report track service failure data, so that the Federal Railroad Administration ("FRA") may review high-stress, at risk areas of track. FRA rejected NTSB's safety recommendation, deferring to the railroads' claim that they could not obtain sufficient equipment and personnel to test high-stress areas of track. The Proposal continues the pattern of ignoring accident prevention: Nothing in this rulemaking would require railroads to buy one more piece of track inspection equipment, hire one more qualified inspector or inspect one more mile of track. The Proposal would instead mandate that shippers spend billions of dollars on tens of thousands of new and retrofitted tank cars to mitigate the impacts of accidents.

AFPM supports the "Option 3" specification for new and retrofitted rail tank cars shipping crude and ethanol in unit trains of 75 cars or more. The Option 3 specification tank car is an enhanced CPC 1232 tank car with a 7/16" shell and other enhanced safety features. The Option 1 and 2 tank cars with a 9/16" shell provide only negligible safety benefits at a substantial incremental cost. For example, an independent DOT study in 2009 concluded that shell thickness played a "relatively weak" role in determining whether an accident would result in a tank car puncture and loss of lading.

By comparison, PHMSA's cost-benefit analysis of the tank car options appears to be results-oriented, unreliable and based on data that PHMSA declined to place in the administrative record. PHMSA did not follow basic Office of Management and Budget procedures, such as preparing a "Statement of Energy Effects" analyzing how the rule may affect the supply of crude, its price, and the ability to meet demand with domestic crude. Indeed, the Proposal would create a significant risk of disrupting gasoline supplies. The numerous procedural and substantive flaws of PHMSA's cost-benefit analysis make it clear that Options 1 and 2 would cost far more and provide little in the way of additional safety improvements.

PHMSA's proposed three-year schedule for retrofits of existing tank cars is infeasible and would damage the economy. The Proposed Rule represents the largest tank car retrofit in history, affecting more than 67,000 tank cars. AFPM requested that Alltranstek, LLC, a leading rail consulting company, assess the capacity of retrofit shops to perform the retrofits required under the Proposal. Based on that analysis, AFPM concludes that a ten-year retrofit schedule would be achievable. Insisting upon a more aggressive schedule would risk tank car shortages, a significant loss in crude and ethanol rail capacity, higher prices for consumers of petroleum products, and steep opportunity costs for refiners who would no longer be able to maintain current business levels.

Equally infeasible is PHMSA's proposal that the new tank car standards, the retrofit standards, speed restrictions and other requirements of the rule apply to "high-hazard flammable trains" ("HHFT"), *i.e.*, a single train carrying 20 or more carloads of a Class 3 flammable liquid. While the purpose of the Proposed Rule is to regulate crude and ethanol rail shipments, the HHFT definition would have the practical effect of requiring that *all* flammable liquids transported in HHFTs comply with the tank car standards and other obligations of the rule. Shippers sending a manifest train of only a few cars of flammable liquids cannot reasonably predict whether a railroad might gather additional cars down the line, triggering the 20 car threshold for HHFT. Regulating all flammable liquids would require a separate risk assessment and cost-benefit analysis, procedural steps that PHMSA failed to take.

In place of the unworkable HHFT definition, AFPM proposes that PHMSA tie the tank car standards and other requirements of the rule to a definition of "unit train," meaning a train of 75 or more cars in crude or ethanol service. This definition more accurately addresses the purpose of the rule: mitigating risks of release from large, multi-car derailments. An AFPM member survey showed that the smallest unit train in crude and ethanol service was 86 cars. Thus, setting a 75-car threshold for the definition of a unit train should capture all crude and ethanol in unit train service.

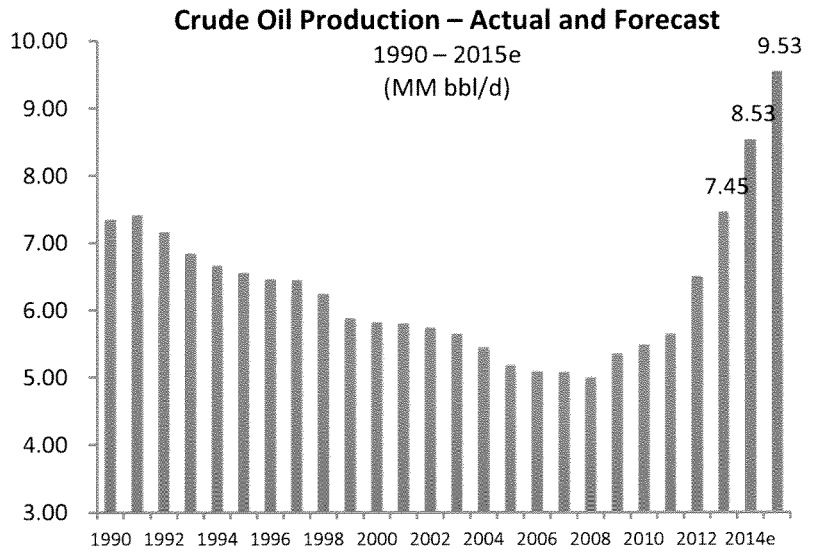
AFPM supports the Option 3 rail speed limit. That option will impose a 40 mph speed limit in high-threat urban areas ("HTUAs") for HHFTs unless all shipments meet the proposed tank car standards. AFPM agrees with the railroads that this is an appropriate speed limit, but suggests that it be tied to AFPM's proposed unit train definition, rather than HHFTs. The other speed limit options under consideration in the Proposal would unduly restrict rail capacity and risk supply disruptions of crude oil and other commodities throughout the rail system.

PHMSA's proposed classification and testing program for crude oil is unnecessary, unduly prescriptive, and burdensome. The properties of crude oil, including Bakken crude, are well understood. However, if PHMSA does decide to go forward with the proposed classification and testing program, these comments provide several suggestions to appropriately tailor the program. Finally, stabilization of Bakken crude is unnecessary and inappropriate because the properties of Bakken fall within the normal range for several other light crudes and stabilization would not reduce the risk of transporting this flammable liquid.

III. THE IMPORTANCE OF RAIL TO DOMESTIC ENERGY INDEPENDENCE

Domestic oil and gas production has grown significantly in recent years, providing tens of thousands of jobs.[5] U.S. crude oil production is forecasted to increase from an estimated 7.45 million barrels per day ("MM bbl/d") in 2013 to 8.53 MM bbl/d in 2014 and 9.53 MM bbl/d in 2015, the highest annual average crude oil production since 1970. The amount of domestic crude oil supplied to East Coast refineries and petrochemical facilities has increased with rising domestic production in the Bakken area and expansion of crude-by-rail infrastructure. Hydrocarbon gas liquids (HGL) production at natural gas liquids plants is projected to increase from 2.6 MM bbl/d in 2013 to 3.1 MM bbl/d in 2015—most of this growth is expected to come from additional ethane and propane production. The growth in U.S. petroleum and other liquids production is shown in Figures 1 and 2 below. For the first time since 1995, domestic crude production exceeds imports, reducing our dependence on crude from the Middle East, Africa, and Latin America.[6]

Figure 1



Source: Alltranstek Technical Analysis, at 9.

[5]Unless otherwise noted, this section of the comments is drawn from the Alltranstek Technical Analysis (Exhibit 2).

[6]Congressional Research Service, "U.S. Rail Transportation of Crude Oil: Background and Issues for Congress" at 1-2 (Feb. 16, 2014) (Excerpts at **Exhibit 3**) ("CRS Report"), *available at* https://www.fas.org/sgp/crs/misc/R43390.pdf

cost estimates prepared by Alltranstek, requires PHMSA to reassess the cost-benefit calculation of each of the Option 3 retrofit modifications to demonstrate their individual and combined benefits. Only with this careful reexamination can the most effective use of resources be put to the task of truly providing the improved safety benefit that both AFPM and PHMSA wish to achieve.

C. The Retrofit Schedule

PHMSA proposes a schedule to retrofit tank cars used in HHFTs based on the packing group of the commodity transported, with cars transporting Packing Group I ("PG") cars retrofitted by October 2017, PGII cars by October 2019 and PGIII cars by October 2020. *See* 79 Fed. Reg. 45,076. PHMSA proposes to apply the same tank car standards to new and retrofitted cars. Therefore, the agency requests comment on the same Option 1, 2 and 3 alternatives for tank car specifications, except that the agency will not require additional top fitting protection for retrofits due to the costs exceeding the benefits. *Id.* at 79 Fed. Reg. 45,059.

1. Prioritize Retrofits Based on Crude and Ethanol Unit Train Service

AFPM recommends initially focusing on retrofits used in crude and ethanol service in unit trains. It would allow PHMSA to begin with the crude and ethanol fleets that the rule is intended to address.

In contrast, prioritizing retrofits based on PG is inappropriate and disconnected from the purpose of this rulemaking. While PG distinctions may make sense in prioritizing risks from non-bulk shipping containers, taking that approach is illogical when dealing with bulk transport via rail. Regardless of the PG, the risk associated with a train derailment of crude or ethanol risks loss of a large volume of flammable liquid, a fire, and other consequences. Whether a product is PGI, PGII or PGIII makes little difference to the risks posed by the consequences of a breach during a crude oil or ethanol derailment. That common-sense observation was recently confirmed by an FRA study of the consequences of ethanol and crude oil derailments. *See* FRA Ethanol/Crude Analysis. After noting that "[d]enatured alcohol is a packing group II material ... and [c]rude oil from the Bakken shale play is typically a packing group I material," FRA's study concluded:

> There is little evidence supporting the position that crude oil (especially the extracted crude from the Bakken region) poses a heightened risk of a high energy or explosive event when tank cars containing the material are exposed to pool fire conditions. In fact, the failure rate (due to thermal damage) of tank cars containing denatured alcohol is 1.5x greater than that of a tank car transporting crude oil.

Id. at 8.

PHMSA should initially focus the retrofit schedule on crude and ethanol cars in unit train service. It would allow the improved prioritization of limited retrofit shop capacity. As this rulemaking illustrates, retrofits also disrupt the tank shop industry, creating long delays and the

inability to meet customer needs for ongoing maintenance of rail car fleets as they reach requalification deadlines.

2. PHMSA Should Set a 10-Year Retrofit Schedule

PHMSA assumes the size of the fleet to be retrofitted is 66,185 cars, broken down between 43,805 unjacketed DOT-111s and 22,380 unjacketed CPC-1232s. PHMSA further assumes that these tank cars can be retrofitted in three years. That would work out to an average of 22,062 tank retrofitted per year. *See* Draft RIA, at 89, 98-99, 105-06.

PHMSA's retrofit schedule is infeasible. The agency claims that its schedule is based on discussions with tank car manufacturers. But RSI, which represents 70% of the tank car market, recently increased its estimate of annual shop capacity to 6,400 tank cars per year, a number that is less than thirty percent of PHMSA's estimated shop capacity necessary to meet its proposed three-year retrofit schedule. Significantly, the RSI estimate of 6,400 cars per year requires a ramp up period. Current capacity is only 2,430 tank cars per year, suggesting that it will take several years to grow to RSI's projected capacity. See Alltranstek Analysis, at 19–20.

PHMSA's retrofit schedule ignores a number of real world factors that impact shop capacity. The industry's capacity to repair rail cars today is relatively the same as it was ten years ago when the fleet was 20% smaller and the regulatory environment less volatile. Shop capacity is extremely tight. In fact, many tank car repair shops have become "booked-out" for the next 2-3 years. Furthermore, a heavy requalification wave will start in 2015 as a result of the large number of tank cars built for ethanol service in 2005-2007, exacerbating the tank car repair shop shortage considerably over the next several years. Tank car cleaning and coating/lining capacity is currently constrained and is a critical pressure point in the tank car repair supply chain. See Alltranstek Analysis, at 16.

At AFPM's request, Alltranstek prepared an estimate of the size of the potential fleet of existing crude and ethanol tank cars subject to the proposed retrofit options. As of May 1, 2014, Alltranstek estimated that there are about 94,000 crude and ethanol tank cars. *See* Alltranstek Analysis, at 21. The breakdown of this fleet is provided below in Table 1. In analyzing retrofit issues, RSI estimated that approximately 28% of the existing fleet would be scrapped under the Proposal. This scrappage estimate is based on the age of the existing fleet and the feasibility of retrofitting these tank cars to meet the Option 3 retrofit specifications. Applying that 28% scrappage rate to 94,000 cars yields 68,000 crude and ethanol tank cars to be retrofitted, a slightly higher number than PHMSA's estimate of about 66,000 tank cars.

Table 1: Existing Fleet

	Tank car category	Option 3	Option 2	Inventory 5/1/2014	% of Total	Assumptions
1	CPC-1232 Bare tank car - 286k GRL	$45,900	$56,900	16,106	17%	
2	CPC-1232 jacketed tank car	$2,700	$35,700	7,696	8%	Assume that car can exist with current insulation - 286k GRL
3	DOT pre-CPC-1232 bare tank car	$68,400	$79,400	55,485	59%	Assume that PHMSA will accept A-516-70 tank material - 263k GRL
4	DOT pre-CPC-1232 jacketed tank car	$42,700	$75,700	3,355	4%	Assume that PHMSA will accept A-516-70 tank and insulation - 263k GRL
5	DOT pre-1996 bare tank car	$86,900	$97,900	11,617	12%	Assume that PHMSA will accept A-516-70 tank material - 263k GRL
6	DOT pre-1996 jacketed tank car	$61,200	$94,200			Assume that PHMSA will accept A-516-70 tank and insulation - 263k GRL
	Total			94,259	100%	

Source: Alltranstek Analysis at 28

Alltranstek also prepared an analysis of annual shop capacity to perform retrofits. Alltranstek conducted a survey of about 74% of the tank car repair market. Based on the survey, Alltranstek concluded that 54 shops can perform the types of major retrofits required by the NPRM (*e.g.*, jackets, head shields, *etc.*). *See* Alltranstek Analysis, at 15, 17-18. Alltranstek then looked at two retrofit capacity scenarios, a "base case" and an "investment case." Both scenarios account for "on the ground" facts such as capacity currently under contract through 2015, upcoming requalification demand and average retrofit turn-around times. The principle difference between the two scenarios is that the investment case assumes 30% growth in the number of shops entering the retrofit market over the first four years of the retrofit schedule. *See id.* at 19-20.

The results of Alltranstek's analysis of shop capacity show that a three-year schedule would impose severe capacity restrictions on crude and ethanol rail service. Annual retrofit capacity for both the base case and investment case are shown below in Figures 6 and 7. *See* Alltranstek Analysis, at 19-20. Alltranstek estimated that about 10,000 cars could be retrofitted by year three in the investment case, while the base case could result in retrofitting about 8,500 cars. These numbers are nowhere near the 68,000 cars that AFPM estimates would have to be retrofitted within the same time period. As a result, over 50,000 tank cars would be forced off the rails.

Figure 6: Alltranstek Base Case Results for Retrofit Shop Capacity.

Estimated shop capacity for next four years ***Base Case***	Year 1	Year 2	Year 3	Year 4	Total
Number of retrofit capable shops	54	56	58	60	
(x) Avg annual retrofit production per shop	45	45	47	49	
(=) Estimated number of annual retrofits	2,430	2,520	2,726	2,940	
(+) Respondent currently planned capacity	0	363	363	363	
(=) Total number of potential annual retrofits	2,430	2,883	3,089	3,303	**11,705**
Growth in shops providing service		2	2	2	
Growth in production efficiency		*0.0%*	*5.0%*	*5.0%*	

Figure 7: Alltranstek Investment Case for Retrofit Shop Capacity

Estimated shop capacity for next five years Investment Case	Year 1	Year 2	Year 3	Year 4	Total
Number of retrofit capable shops	54	59	69	79	
(x) average annual retrofit production per shop	45	50	58	70	
(=) estimated number of annual retrofits	2,430	2,950	4,002	5,530	
(+) Respondent currently planned capacity	0	363	363	363	
(=) Total number of potential annual retrofits	2,430	3,313	4,365	5,893	**16,001**
Growth in shops providing service		5	10	10	
Growth in production efficiency		*10.0%*	*15.0%*	*20.0%*	

Adopting PHMSA's three-year phase-in would restrict crude and ethanol rail capacity and damage the economy. RSI has estimated that withdrawing 31,000 tank cars from service would be equivalent to reducing the capacity of the crude and ethanol fleet by 20% to 25%, a

huge loss at a time of growing domestic crude production in our nation. *See* RSI TC Comments, at 11. Indeed, AFPM Members face the possibility of paying damages on contracts that involve "take or pay" commitments, another cost PHMSA ignored in the rulemaking.[45] PHMSA's schedule would also impact domestic energy production. Shortages of tank cars could result in disrupting the gasoline supply if insufficient supplies of ethanol are available for blending operations. Crude deliveries to refiners could also be constricted as 70% of Bakken crude is shipped by rail.

Setting a tight three-year retrofit period poses particular risks because the retrofit data provided by tank car manufacturers has been changing frequently. For example, the RSI estimates of the retrofit fleet have changed substantially over the last eight months by as much as 20,000 cars. The enhanced PRVs and BOVs are still going through testing and trials, with the Tank Car Committee considering the flow rates for the PRVs. Imposing a 36 month retrofit period heightens the uncertainty and risk created by highly dynamic data.

Instead of a three-year retrofit schedule, AFPM recommends a ten-year schedule. Using the more optimistic "investment case," Alltranstek estimates that about 16,000 tank cars will have been retrofitted by year four of the schedule. That would leave approximately 52,000 tank cars to retrofit. The investment case projects that, by year four, tank car shops will have built up a capacity to perform about 5,900 retrofits per year. Similarly, RSI estimates that, after a period of ramp up, annual shop capacity will reach 6,400 retrofits per year. At 6,400 retrofits a year, the retrofit schedule would extend another eight years, making it 12 years total. However, AFPM believes that additional efficiencies and shop capacity may build up over time to allow the investment necessary to complete retrofits within 10 years. That schedule also accords with the ten year requalification period that tank cars must all undergo.

A ten-year retrofit schedule would be consistent with past precedent. In 1995, the Research and Special Programs Administration ("RSPA"), the predecessor agency to PHMSA, issued a rule requiring the retrofit of tank cars used to ship certain high hazardous materials, including those that are poisonous-by-inhalation, such as chlorine. 60 Fed. 49,048 (1995). In the rule, RSPA determined that a ten year schedule for the retrofit of the existing fleet was appropriate. *Id.* at 49,058, 49,073-74.

In setting a ten-year schedule, it is important that PHMSA prioritize retrofits to further the objectives of the rule. Otherwise, retrofitting will be done purely on a commercial basis without regard to the issues PHMSA seeks to address. Accordingly, AFPM proposes the following retrofit schedule to be accomplished within ten years:

- DOT-111 unjacketed cars December 2020.
- CPC-1232 unjacketed cars by March 2024.

DOT-111 jacketed cars by March 2025.

[45] In general, a "take or pay" commitment is a contractual obligation to pay for a certain amount of crude oil, regardless of whether the buyer can ship the oil.

Once PHMSA sets a realistic retrofit schedule, PHMSA should commit to have an independent reassessment of the schedule at the mid-point of implementation.[46] The NPRM envisions an unparalleled retrofit mandate, one that is likely infeasible in light of retrofit capacity at tank car shops. To avoid disruptions in rail service of crude, ethanol, and potentially other commodities, the Department of Energy—or another agency independent of DOT—should evaluate the implementation of the retrofit schedule at its midway point to ensure that shippers will still have access to the fleet necessary to move commodities. [47] This midway check can be accomplished by reviewing the Umler database or R-1 filings with AAR to see whether retrofits appear to be on a path toward achieving the schedule.

D. PHMSA'S Draft Cost-Benefit Analysis

AFPM requests that PHMSA issue a notice of data availability ("NODA") with a new, supplemental cost-benefit analysis that addresses the numerous deficiencies in the agency's current analysis. [48] PHMSA's draft cost-benefit analysis of the tank car retrofit options is riddled with errors. It omits key calculations and assumptions, leaving the regulated community to guess at how the agency arrived at certain values used to justify this multi-billion dollar retrofit mandate. What PHMSA does include in the cost-benefit analysis appears to be inaccurate, unreliable and little more than guess-work, with inadequate studies, testing, and real-world data. The cumulative effect of PHMSA's errors is to substantially understate the costs of the Proposal. Indeed, the flaws in the cost-benefit analysis all appear to lower the costs of Option 1, suggesting that PHMSA arbitrarily selected that option before going through the rulemaking process.

AFPM's ability to meaningfully participate in the rulemaking process is substantially prejudiced by the agency's failure to prepare a complete analysis. Even if the agency fully accepted AFPM's comments, the resulting cost-benefit analysis would be so fundamentally different that we would have no opportunity to comment fairly and effectively on the agency's "re-do." Accordingly, we respectfully request that PHMSA issue a NODA that provides notice and an opportunity to comment upon the revised cost-benefit analysis before the rule becomes final. To the extent that PHMSA declines this opportunity to provide sufficient notice, its final rule would be unreasonable and arbitrary.

---

[46] Even before the mid-point of a reasonable retrofit schedule, PHMSA may need to adjust the schedule for particular equipment that remains unproven. In particular, the timeline for the enhanced pressure relief valve and bottom outlet handle continues to slip. As of the writing of these comments, tank car manufacturers continue to work on the flow rate for the pressure relief valves. The design and proving of the bottom outlet handles is ongoing. The retrofitting of tank cars should only begin when the equipment is market ready, including retrofitting jacketed CPC-1232s with the enhanced pressure relief valves and bottom outlet handles. To the extent that these retrofits are not fully designed, tested and proven by the retrofit deadline, PHMSA should adjust the deadline to the next tank car qualification or other major shop event to allow the technology to mature before retrofit.

[47] AFPM opposes having an AAR or RSI committee or working group oversee or determine any adjustment to the retrofit schedule. Railroads and tank car manufacturers work cooperatively with shippers on several issues, but it is still the case that AAR and RSI speak for their own members and interests. Shippers deserve an independent assessment, not one overseen by their commercial counterparties.

[48] While the bulk of our criticisms of PHMSA's cost benefit analysis appear in this section on retrofits, the criticisms apply more broadly to the entire rule and should not be construed as merely critiquing the retrofit obligations.

AMERICAN PETROLEUM INSTITUTE

ASSOCIATION OF AMERICAN RAILROADS

Submitted Electronically

September 30, 2014

Docket Management System
U.S. Department of Transportation
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Attention: Docket ID No. PHMSA-2012-0082 (HM-251)

Re: Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation (RRR)

The Association of American Railroads (AAR) on behalf of itself and its member companies and the American Petroleum Institute (API) on behalf of itself and its member companies offer the following comments in response to the Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration's (PHMSA) request for comments on Docket PHMSA-2012-0082.

AAR's member railroads account for most of the rail transportation of flammable liquids and have a substantial interest in the proposed tank car standards and operating requirements. API represents more than 600 companies involved in all aspects of the oil and natural gas industry including the exploration, production, shipping, transportation and refining of crude oil and has a substantial interest in the proposed rules governing crude by rail.

Our country is in the midst of an energy renaissance that has allowed us to become a global leader in energy production. AAR and API support a rule that enhances the safety of rail transportation in North America while allowing for the continued growth of our oil and natural gas production. The geographic diversity of the railroads, coupled with emerging non-traditional production regions, has led to a mutually beneficial partnership between the oil and rail industries as new resources are produced and transported.

In June, 2014, the combined oil and rail executive leadership agreed to work collaboratively to identify and implement proven practices to prevent, mitigate and respond to risks associated with moving crude oil by rail. As part of that effort, the members of AAR and API have jointly developed a response to PHMSA's proposed rail tank car standards and are providing PHMSA with comments and suggestions directed towards improving PHMSA's recommended tank car design, tank car retrofit design, and implementation schedule.

The oil and rail industries' commitment to safety, efficiency and environmentally responsible operations is reflected in the joint comments. We encourage PHMSA to consider the issues raised in our comments and take a measured, data-based approach as they finalize the rulemaking.

Sincerely,

President and Chief Executive Officer
American Petroleum Institute

President and Chief Executive Officer
Association of American Railroads

Attachment

Table 2. AAR Existing Tank Cars and RSI Committed[13] Tank Car Orders

Car Type / CPR Value	2013	2014 orders	2015 orders	Crude Oil Total	Ethanol	Ethanol and Crude Oil Total
CPC-1232 jacketed (4.57%)	7,685	13,647	9,730	31,062	23	31,085
CPC-1232 non-jacketed (10.3%)	11,364	7,481	1,180	20,025	751	20,776
Legacy-111 jacketed (8.5%)	6,524			6,524	88	6,612
Legacy-111 non-jacketed (19.55%)	22,930			22,930	26,983	49,913
			Total	80,541	27,845	**108,386**

Note: Excludes 38,000 tank cars in Other Flammables service.

II. Retrofit Schedule

PHMSA's analysis has led it to conclude that the proposed tank car designs and timelines would not have deleterious impact on the market for tank cars. In particular, PHMSA concludes that no tank cars would be prematurely retired and that the rule would not impact the transportation of crude oil or ethanol. This is not the case. Indeed, PHMSA makes a number of errors regarding what would be involved in retrofitting existing tank cars, the capacity to retrofit tank cars, and the ability of tank cars to be repurposed to Canadian oil sands trade. When these realities are taken into account, it is clear that shortages of retrofit shop capacity

[13] Committed tank car orders are contracted to be built for a specific design and will be completed by the end of 2015

would likely lead to premature scrapping of a large part of the existing fleet, jeopardizing the reliable use of rail for crude oil and ethanol transport, with potential associated adverse impacts on crude oil production and ethanol costs.

As part of the agreement on tank car specifications, AAR and API reached an agreement on a retrofit schedule. The schedule was discussed in the context of the transportation of crude oil only. The schedule provided for the retrofit of legacy DOT-111 non-jacketed tank cars within three years, following an estimated six to twelve months needed for the tank car shops to "ramp up." The schedule provided for an additional three years for the non-jacketed CPC-1232 cars, after the three years required for retrofitting the DOT-111 non-jacketed fleet. AAR and API agreed that this approach should not preclude individual company activities to upgrade their fleets early. AAR and API also agree that the jacketed legacy DOT-111 cars and CPC-1232 cars should be retrofitted at the next shopping or qualification. Finally, AAR and API agreed that if the proposed rule were to include other materials such as ethanol and "other flammable liquids" that the schedule could not be met and that the schedule would need to be extended. This additional time would be required due to limits of shop capacity.

With PHMSA's proposed rule including crude oil and ethanol and other flammable liquids, AAR and API are recommending that PHMSA take into account the retrofit schedule AAR and API considered for a crude oil only program in establishing a retrofit schedule encompassing additional commodities. As stated, AAR and API would support placing a priority on crude oil and ethanol since they account for most of the unit train service for flammable liquids. Additionally, PHMSA should account for manufacturing capacity, shop capacity for any retrofits that will be undertaken, the number of DOT-111 cars that need to be phased out of flammable liquid service, and the demand for new DOT-111 cars. AAR and API also support consideration of a prioritized schedule that takes into account the commodity transported, the type of tank car, e.g., non-jacketed legacy DOT-111, jacketed DOT-111, and whether commodities are usually transported in unit trains or manifest service.

Another key element of the AAR and API agreement on a retrofit schedule was that as retrofits progressed, there needed to be a review of the ability to meet the suggested timeline. Accordingly, AAR and API recommend the development of a retrofit review program. The review would address available shop capacity, access to sufficient quantities of materials, availability of skilled labor, and actual progress in manufacturing and retrofitting tank cars and consider what, if any, additional time would be necessary to complete the retrofit schedule.

III. **Conclusion**

AAR and API are committed to the safe transportation of crude oil by rail. The associations believe their proposal to enhance tank car specifications for crude oil serve the public interest by taking a significant step to make a safe transportation system even safer while avoiding significant adverse economic effects.