



June 18, 2014

Mr. Howard Shelanski  
Administrator, Office of Information and Regulatory Affairs (OIRA)  
Office of Management & Budget  
725 17th Street, NW  
Washington, DC 20503

**RE: RIN 2137-AE91**

Dear Administrator Shelanski;

We are writing to express the critical safety interests of American communities in the PHMSA Rulemaking relative to RIN: 2137-AE91: ***“Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains”*** that is currently being reviewed by the Office of Management and Budget.

We understand that OMB is charged with examining the proposed PHMSA regulations from a cost-benefit perspective and have noted that staff has met with the American Fuel and Petrochemical Manufacturers, Quantum Energy, Phillips 66, BNSF (twice), the American Chemistry Council, ADM Transportation and Trucking, ExxonMobil, the Renewable Fuels Association, and jointly with the AAR and the ASLRRRA. Certainly, these groups can speak to their industry interests and the incremental costs of addressing the long-known safety gaps in the rail transport of explosive, flammable hazmat like crude oil and ethanol. What they have historically failed to do, however, is factor into their cost-benefit calculations the very real costs to communities and lives when the worst case scenario occurs and a derailment leads to an explosive release of a train’s contents.

At the heart of this safety problem is the DOT-111 tank car – a package that is simply not appropriate for the dangerous hazmat cargo it is now hauling across North America. Since there is no way to guarantee a 100% safety record when it comes to rail operations, it is imperative that a highly robust tank car be mandated by PHMSA to reduce the scope of the consequences when a derailment occurs. With a 4000% increase in the rail transport of crude oil since 2008, industry is simply playing the odds that any catastrophic derailments will occur in places where harm to communities and residents will be minimal. But playing the odds is a fool’s game.

We would ask that OMB take a broad look at cost-benefit and recognize that the environmental remediation, community rebuilding and civil liability costs associated with a major tank car rupture must be factored into any cost-benefit analysis of the new tank car standards. One need only look at the tragedy in Lac-Megantic, Quebec to understand the scope of “cost” associated with these accidents. Town officials have estimated that between environmental remediation and rebuilding, the price tag is likely to be in excess of \$2 billion – a sum that Canadian taxpayers are currently underwriting. Given that 47 people lost their lives in that accident, the liability associated with these wrongful deaths cannot yet be calculated and perhaps may exceed that vast sum. Unless these significant costs factors are included, no cost-benefit analysis will be credible.

In asking OMB to broaden its cost-benefit analysis to include factors beyond industry's cost of compliance with a robust tank car standard and an aggressive retrofit, we acknowledge that this will have some short term impacts on the nation's drive for energy independence. However, a March 2014 Credit Suisse equity research report addressed that issue and examined "what the impact to capacity may be of a full and immediate ban on the use of older DOT-111 tank cars for crude hauling." This report to investors concluded:

*"Using the same assumptions... regarding the number of barrels that each tank car can haul (650 barrels per car) as well as the number of days per round trip (20 days), we estimate that a full ban would have the effect of removing roughly 860 KBD of capacity from the crude fleet.*

*Our analysis indicates that under a scenario in which there is a full ban of older cars, capacity could recover to 1.25 MBD in 2014 and that capacity could exceed 1.7 MBD in 2015."*

Right now, the various industries involved in the supply chain of these energy resources are arguing over whether improved rail operations should be the focus of the new PHMSA rules and debating whether the new tank car standard should be the CPC-1232 or the more robust 2014 AAR standard. They are also debating a timeline for retrofitting the legacy fleet of DOT-111's and whether the tank cars manufactured after 2011 should be retrofitted as well. We strongly urge OMB and PHMSA to instruct all facets of industry to build new tank cars to the robust 2014 AAR standard with alacrity, and retrofit the entire existing fleet to those standards or retire non-compliant tank cars that can't be retrofitted from crude oil and ethanol service. Anything less than that in defining tank cars standards moving forward is a grave disservice to the American public and its expectations that federal regulators are serving their public safety interests.

We thank you for taking our comments into consideration as you wrap up your review of this proposed rulemaking. If you would like any further elaboration of our comments on this issue, we would be very pleased to meet with OMB staff to discuss our perspective. We know that the voice of impacted communities rarely has a seat at the table when rail-related industry regulations are being promulgated, but we believe the risk to the public is so high that this paradigm must change.

Sincerely,



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cc: Mr. Brian Deese, Acting Director, OMB