SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION:
QUESTIONS FOR THE RECORD

HEARING ON
FREIGHT RAIL TRANSPORTATION: ENHANCING SAFETY, EFFICIENCY, AND COMMERCE
WEDNESDAY, JANUARY 28

Questions for Mr. Chris Jahn, President, The Fertilizer Institute

From Chairman Thune

1. ***Flammable liquids proposed rule.*** **In discussing the potential effects of the flammable liquid unit train proposed rule (also known as the crude-by-rail rule), you stated that rail car maintenance facilities would be inundated by crude oil and ethanol tank retrofit orders required within an unreasonably short span of time, and that would crowd out facility capacity for other tank cars.**

   a. **Could you provide more detail on the proposed rule's crowding-out effect for tank cars carrying other commodities, including the scale and costs of increased out-of-service time and the broader effects on the economy?**

The Fertilizer Institute (TFI) and its members have concerns with the shop capacity necessary to service rail cars carrying non-flammable materials at the same time shops will be dealing with the requirements for flammable liquids under the proposed requirements when final. The Pipeline and Hazardous Material Safety Administration (PHMSA) has proposed a very aggressive transition period that will tax rail car construction and retrofit capacity. It is already a difficult task for shippers to keep their rail cars repaired, maintained, and in compliance because of existing backlogs at shops. This transition period will make it even more difficult for shippers of non-"High-Hazard Flammable Train" commodities to inspect and repair their rail cars.

According to a study prepared by The Brattle Group for the Railway Supply Institute's Committee on Tank Cars (RSI-CTC)[1], even if one were to assume that these modifications began on January 1, 2015 (an assumption that RSI-CTC members did not believe was realistic, given the ramp up period that would be required to order parts and components and hire and train the necessary workforce), it would not be feasible to achieve PHMSA's timeline because doing so requires that the modifications be carried out at a rate of over 1,400 tank cars per month. Further, during the initial years of the program when the most complex modifications are being carried out on the nonjacketed legacy DOT-111 tank cars, the RSI-CTC does not believe that it will be possible to process more than 550 cars per month. While it may be reasonable to assume some increase in throughput rates as shops become more familiar with the process, the RSI-CTC does not believe that under any realistic scenario it will be possible to approach anything close to the rates assumed in PHMSA's analysis and instead would take years beyond what PHMSA anticipates.

[1] Neels, Kevin, and Mark Berkman. *A Review of the Pipeline and Hazardous Materials Safety Administration's Draft Regulatory Impact Analysis Docket No. PHMSA-2012-0082 (HM-251)*. Rep. N.p.: Brattle Group, 2014. Print.

To avoid crowding out shop capacity and potential losses due to out-of-service time, TFI would recommend that PHMSA extend the period for compliance with the new tank standards to help mitigate this concern.

b. To what extent is the proposed rule scoped appropriately? To what extent could the high hazard flammable train definition be improved to better capture or target the risk posed by hazardous materials rail transportation?

The Fertilizer Institute (TFI) members are very concerned that the proposed definition of a "High-Hazard Flammable Train" (HHFT), and the proposed restrictions upon such trains, will have severe negative consequences for all other traffic that depends upon a fluid national rail network. Accordingly, we have an interest in this rulemaking due to its general impact on rail operations and possible future impact on non-HHFT DOT-111 tank cars.

The safety concerns that are driving the need for enhanced safety standards for flammable liquids have arisen in the context of unit trains of crude oil or ethanol, which typically consist of 50 or more tank cars usually tendered by a single customer for transportation to a single final destination. But the Pipeline and Hazardous Material Safety Administration (PHMSA) has proposed to classify as an HHFT any train with as few as 20 tank cars of flammable liquids. Consequently, far more trains will be designated HHFTs than are warranted by the risks that these rules are designed to address. We have encouraged PHMSA to fully consider the impact and unintended consequences of such a broad HHFT definition which will impact the entire rail network.

For example, speed restrictions for HHFTs are a concern because they will have impacts on the rail network far beyond any single HHFT by slowing down and congesting the larger network. The more trains that fall within the definition of an HHFT, the greater the potential impact. With the severe service issues experienced by fertilizer shippers, and shippers overall last winter, PHMSA's proposal will affect all commodities with longer transit times and increased congestion. Speed restrictions and overall operational restrictions will compound the service issues all railroads and shippers have experienced. Fertilizer shippers depend on efficient rail service in order to deliver essential crop nutrients in a timely manner to American farmers and service issues are a top priority for our members.

It is also important to note that shippers have no control over how train consists are made up after they release the cars to the railroad. What may seem like a compliant shipment may ultimately turn out to be part of an HHFT due to the railroad's handling of that shipment. The HHFT definition may also lead to railroads making a decision between expedient handling of railcars when determining the makeup of trains, which could lead to an HHFT, and sitting on loaded cars to avoid creating an HHFT train, both of which can be a detriment to overall rail service.

TFI suggests that PHMSA modify the definition of an HHFT to better target the risks associated with movement of crude and ethanol by only including unit trains, which typically consist of 50 or more tank cars, of either product.