

United States Senate

WASHINGTON, DC 20510

September 29, 2014

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Ave S.E.
Washington, D.C. 20590

Dear Secretary Foxx:

We write to bring to your attention comments we submitted today regarding Section V(B) of the recent Notice of Proposed Rulemaking (PHMSA-2012-0082 (HM-251)) (“proposal”), released by the U.S. Department of Transportation (U.S. DOT) that sets out information disclosure requirements for railroads transporting crude oil.

We believe railroads should supply first responders with more transparent information about crude-by-rail and other flammable liquid shipments traveling through communities in Oregon, California, and other states across the nation. Doing so would reduce the public health and environmental dangers these shipments pose by allowing for better emergency planning, training and coordination between local, state and federal authorities, as well as the private sector, which plays an important role in responding to transportation accidents.

In its current form, the proposal is too narrow, because railroads are only required to notify states of trains carrying 1,000,000 gallons (about 35 cars) or more of crude oil produced in the Bakken formation of the Williston Basin. Oil from outside the Bakken or transported in volumes below the reporting threshold would be excluded from the proposal’s reach, as would ethanol and at least 71 other flammable liquids that are transported by rail. We believe the limited scope would keep many towns, cities and rural areas in our states in the dark about substantial volumes of non-Bakken oil and other flammable liquids travelling in large volumes through their communities.

Given these concerns, we believe U.S. DOT should (1) expand the advanced notification requirement to include all Class 3 flammable liquids, not just oil shipments from the Bakken region, and (2) lower the volumetric threshold for reporting to no higher than 20 carloads of flammable materials, equivalent to High-Hazard Flammable Trains defined the proposal.

These changes are important because:

Small and non-Bakken oil shipments have resulted in serious accidents therefore the 35-car threshold should be lowered: With the exception of the Lac Megantic accident, every accident involving crude oil, ethanol and other flammable materials since 2006 has resulted in a hazardous materials release of less than 1,000,000 gallons, according to information provided by the National Transportation Safety Board. These accidents resulted in flammable materials spills far below the reporting threshold in the proposal,

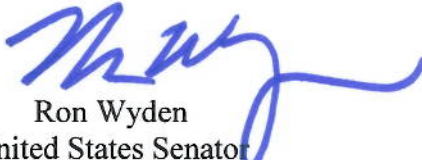
and/or involved non-Bakken oil, leading to serious fires, explosions or environmental contamination. Furthermore, we provide examples of serious flammable liquids train accidents in Luther, Oklahoma and Columbus, Ohio, in which the trains would not have been subject to the proposal's reporting requirements since they carried 14 and 18 carloads of flammable liquids, respectively.


- **West Coast refineries and terminals already receive non-Bakken crude oil therefore the proposal should be expanded to include that information:** The delivery of Bakken oil-by-rail to the West Coast necessitates the delivery of non-Bakken oil to and through West Coast states, including Oregon. Crude oil from beyond the Bakken is used primarily to blend with other oils to mimic Alaska North Slope crude that refiners have historically processed. California Energy Commission data show that crude oil from North Dakota, where the Bakken region is centered, accounted for just 26 percent of crude-by-rail deliveries to California since 2012. Canadian oil, which travels south by rail through Oregon and Washington, accounted for as much as 76 percent of California oil deliveries. Furthermore, non-Bakken crude oil is already delivered by rail to refineries and trans-load facilities near major sources of water in Oregon and Washington. Non-Bakken crude oil volumes delivered to all three states are expected to grow in the coming years based on media reports and public filings.
- **The number of crude-by-rail-loading facilities are growing inside and outside of the Bakken, and the proposal should take that into account:** As of December, 2013, there were crude-by-rail facilities in at least seven states and two Canadian provinces outside of the Bakken region. Furthermore, facilities outside the Bakken have twice as much oil-loading capacity as those within it. In addition, non-Bakken oil-loading capacity is projected to grow more quickly than Bakken oil-loading between now and 2016.


We encourage you to improve the proposal by immediately expanding the emergency restriction/prohibition order DOT-OST-2014-0067 on which the proposal is based.


We appreciate your continued commitment to this important issue and hope to continue working with you to ensure that hazardous materials are transported safely.

Sincerely,


Ron Wyden
United States Senator


Jeffrey A. Merkley
United States Senator


Dianne Feinstein
United States Senator


Barbara Boxer
United States Senator