September 30, 2014

Docket Management System
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
Room W12-140
1200 New Jersey Ave., S.E.
Washington, DC 20590

RE: Docket No. PHMSA – 2012-0082 (HM-251);
Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

The undersigned agricultural producer and agribusiness organizations, whose members grow, handle, market, process and export the vast majority of U.S. agricultural commodities, crop inputs and processed products transported by freight rail, submit this joint statement in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) notice of proposed rulemaking that would establish new standards and operating controls for trains and tank cars transporting Class 3 flammable liquids, as published in the August 1, 2014 ***Federal Register***.

Our organizations support practical, feasible and economically viable steps demonstrated to be effective in further enhancing the safety of rail transport of crude oil and other flammable liquids. However, we believe that in several major respects, the proposed rule contains Draconian measures that are contrary to these principles, and would not achieve the desired outcome. Rather, we believe the proposed rule, as currently drafted, would have the unintended consequence of further exacerbating already degraded rail service to agriculture and other rail users, threaten to increase rail congestion, strain the capacity of rail tank car builders and repair shops, and impose major costs not accounted for in PHMSA's flawed cost-benefit analysis.

The U.S. agricultural sector began experiencing severe rail service disruptions early in the fall of 2013 as a result of a combination of factors. These included dramatic increases in the volume of coal, crude oil and intermodal shipments transported by rail, a large and compressed U.S. grain harvest, and a lack of capacity within the rail industry in terms of available locomotives and crews. The deteriorating service situation was exacerbated by severe weather during the 2013-14 winter season. The service disruptions reached such a level that the Surface Transportation Board (STB) conducted a hearing on agricultural rail service issues in April, subsequently issued an order directing that the BNSF and Canadian Pacific Railways report on shipments of fertilizer this past spring due to severe backlogs to facilitate the planting of the spring crops, and launched an ongoing proceeding on grain rail service issues (Docket No. EP 724, Sub-No. 2) that requires weekly reporting of service metrics by the BNSF and CP. The STB followed those actions with a subsequent public meeting on rail service issues conducted earlier this month in Fargo, N.D., as well as with numerous private meetings with individual agricultural shippers in the northern plains states.

In addition, severe strains on rail capacity and resulting service levels are expected to continue this fall, as the United States harvests and transports a record or near-record grain and oilseed crop, and continues to experience strong demand for freight rail service from other sectors of the agricultural and non-agricultural segments of the U.S. economy.

It is in the context of this severely constrained rail capacity and continuing service challenges that our organizations urge the PHMSA to reevaluate and revamp its proposed rule to better comport with the current freight rail environment. We believe the agency can do this in a way that is consistent with its stated objective of further enhancing the safety of freight rail movements of crude oil and other flammable liquids, while avoiding the severe adverse economic impacts its current proposed rule would impose on U.S. agriculture and other sectors of the economy dependent upon freight rail service.

Specifically, our organizations strongly urge PHMSA to:

- Reconsider its proposed speed-restriction options to more carefully weigh anticipated safety benefits with the significant adverse rail service, rail network fluidity and economic impacts that would result. We particularly believe it makes little sense to impose the same speed restrictions in sparsely or non-populated rural areas, where train speeds can be optimized without posing a safety risk, as apply to High Threat Urban Areas.

  In addition, the proposed railroad routing protocol and speed restrictions would result in more circuitous routes and longer transit times, which would require rail users to incur the cost of acquiring more tank cars to move the same volumes. Such costs inevitably would be borne by shippers and receivers in the form of higher rail rates and charges.

  One major Class I rail carrier has estimated that the proposed speed restrictions alone would negate the capacity gains achieved through $9 billion in infrastructure investment over the past two years. Still another Class I carrier has stated that the proposed rule would severely constrain or eliminate growth capacity on major segments of its network, including such major areas as the Chicago terminal and the Upper Midwest, Texas/Mexico corridor and Southern California.

  Further, network disruptions caused by such factors as severe weather would result in a much larger impact and a slower recovery throughout the rail network.

  Finally, while it appears in the proposed rule that PHMSA may have intended for such speed restrictions to be a short-term measure that would be lifted once existing tank cars either were retrofitted or phased out of crude oil or ethanol service, the practical consequences of further expanding speed limitations during such a "transition period" – and perhaps beyond – would be severe and highly disruptive to rail service.

- Reconsider and modify the proposed schedule for retrofitting or replacing the 30,000 tank cars currently in ethanol service that, in effect, would require their phase-out by Oct. 1, 2018. We believe this aspect of the proposal is infeasible, both from a practical

and economic perspective. It is projected that only about 60 percent of the estimated annual capacity to build new tank cars will be available for Class 3 flammable liquid tank cars, with the remaining 40 percent capacity used to meet demand for other products hauled in tank cars. It is our understanding that existing shop capacity will be insufficient to handle all of the maintenance and retrofit work that would be required under the proposed rule's timeline. In fact, the North America Freight Car Association (NAFCA) – the organization representing private tank car owners, lessors and companies that lease tank cars – has informed us that its members estimate it could take up to 10 years to complete modifications of the existing fleet of such cars used to transport crude oil and ethanol.

Further, it appears that PHMSA has woefully underestimated the costs to retrofit the existing fleet. For example, most of the current ethanol car fleet was built in 2007-08, and each of those legacy cars has a 50-year lifespan. The estimated cost provided by NAFCA to retrofit these tank cars to meet the proposed rule's requirements would amount to as much as $65,000 per car. PHMSA's cost-benefit analysis also failed to account for many other costs that non-railroad parties would incur that are above-and-beyond the direct cost of retrofitting existing tank cars. These include increases in costs for materials and construction that would result from the massive increase in demand for new or retrofitted tank cars in the compressed time period required under the proposed rule. Costs also would be incurred for expanding shop capacity and hiring additional labor, given the insufficiency of existing capacity to meet the proposed rule's timetable. Still more costs would be incurred by non-railroad parties as a result of tank cars sitting idle while waiting for shop capacity to become available. Contrary to the rule's intent, the ripple effects of these developments actually could result in increased shipment of flammable liquids by truck through populated areas.

For these reasons, our strong preference is for PHMSA to grandfather existing ethanol cars, allowing them to remain in service with PHMSA relying upon voluntary efforts by shippers and tank car owners to phase out use of older cars, while prohibiting additional DOT-111 tank cars to be placed in ethanol service once the new ethanol tank cars can be reasonably obtained.

- Consider taking a more comprehensive, risk-based approach to the issue of safe rail transportation of flammable liquids by addressing the impact on derailments of such factors as substandard track conditions, inadequate track and/or roadbed maintenance, and human error. By PHMSA's own admission, its proposed rule "does not directly address regulations governing the inspection and maintenance of track" despite the fact that these factors play a direct role in the derailment incidents cited by the agency. Instead, PHMSA has chosen to issue proposed rules that would impose significant additional burdens and costs on rail shippers, as well as car owners and lessors, in an attempt to mitigate damage that might result from future derailments of trains hauling flammable liquids. In particular, the proposed rule's failure to address railroad track inspection and maintenance is egregious and should be rectified as part of a more "holistic" approach to rail safety.

- Reconsider the proposal to require electronically controlled pneumatic (ECP) brakes on certain flammable fuel trains. Our understanding is that as recently as a 2008 rulemaking, the Federal Railroad Administration concluded it could not justify imposing an ECP brake requirement whose estimated $10,000-per-car cost would be borne by rail carriers and car lessors. Further, from an operational standpoint, ECP brakes do not work unless every car in a train is converted to this technology. In addition, the majority of locomotives would require the installation of ECP equipment to ensure adequate and available power for such trains.

In closing, the undersigned organizations urge PHMSA to reconsider and revamp its proposed rule to address the aforementioned major concerns, as well as deficiencies cited by others commenting on this proposed rule. As a threshold matter, we urge the agency to keep uppermost in mind – along with rail safety – the impact its final rules will have on an already challenging rail service environment, as well as on the fluidity and efficiency of the national freight rail network.

We appreciate your consideration of our views.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation
American Soybean Association
Corn Refiners Association
National Association of Wheat Growers
National Barley Growers Association
National Corn Growers Association
National Council of Farmer Cooperatives
National Grain and Feed Association
National Oilseed Processors Association
National Sunflower Association
U.S. Canola Association
U.S. Dry Bean Council
USA Dry Pea & Lentil Council

Agribusiness Council of Indiana
Grain and Feed Association of Illinois
Michigan Agri-Business Association
Michigan Bean Shippers
Kansas Grain and Feed Association
Minnesota Grain and Feed Association
Missouri Agribusiness Association
Montana Grain Elevators Association
Nebraska Grain and Feed Association
North Dakota Grain Dealers Association
Northeast Agribusiness and Feed Alliance

Oklahoma Grain and Feed Association
Pacific Northwest Grain and Feed Association
South Dakota Grain and Feed Association
Texas Grain and Feed Association
Wisconsin Agri-Business Association