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Re: *Comments on the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") Advance Notice of Proposed Rulemaking ("ANPRM"): Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation*

To Whom it May Concern:

The North America Freight Car Association ("NAFCA") hereby submits the following comments in the above referenced docket. These comments focus on Petition P-1577 submitted by the Association of American Railroads ("AAR"), and related petitions (P-1587, P-1595, P-1612, R-12-5, R-12-6, and R-12-7). NAFCA generally supports the comments of the Railway Supply Institute on P-1577, and adds these more general, non-technical comments for the agency to consider.

NAFCA is an unincorporated association made up of 30 members who are owners, manufacturers, lessors or lessees of private railcars. NAFCA's members collectively represent the owners or lessees of over 625,000 private railcars operating in North America, including a significant number of rail shippers likely to be impacted by a rulemaking on railroad tank cars whether or not they are currently engaged in the rail shipment of hazardous material.

NAFCA fully supports and encourages the development and maintenance of a safe and efficient national rail system. Such a system must include safe locomotives and rail cars, properly constructed and maintained rail infrastructure, and properly trained railroad personnel and safe railroad operating practices. Achieving PHMSA's safety goals and minimizing railroad accidents must consist of a balanced combination of standards governing all of these factors, with all industry stakeholders bearing their appropriate level of responsibility.

In Petition P-1577 the AAR has proposed that PHMSA adopt several new standards for newly constructed DOT Specification 111 ("DOT-111") railroad tank cars that transport Packing Group I and II

4

commodities. The ANPRM notes that adoption of the changes proposed by AAR might result in additional safety benefits, but might also result in additional regulatory burdens. While some analysis of costs and benefits has been submitted to PHMSA on the proposal, the ANPRM asks for more information on the costs and benefits of the proposals included in the AAR Petition. Also discussed in the ANPRM is the extent to which existing DOT-111 tank cars should be modified to achieve compliance with the new standards, as P-1577 contains no retrofit proposal for the existing DOT-111 fleet.

While railroads often supply non-tank railcars from their fleets to their customers to transport those customers' commodities, the railroads provide no tank railcars for this purpose. Instead, the railroads require their customers to supply their own tank cars in full compliance with all applicable regulations and standards, all at no cost to the transporting railroad. Accordingly, all rail tank cars accepted into service in interstate commerce are built to the specifications established by PHMSA and FRA, as well as the standards developed and maintained by the AAR. These specifications and standards are consistent with the intended service/commodity into which the cars will be deployed. These current standards allow a 50-yr service life for tank cars, which are presently constructed, purchased, leased, and maintained, with such a service life in mind. In addition, all tank cars operated on the Nation's railroad network undergo specific and extensive requalification inspections on cycles defined by the commodities carried therein.

Private car manufacturers, lessors, and rail shippers will continue to meet their obligations to comply with all applicable PHMSA, FRA and AAR standards as they are adopted. However, NAFCA urges PHMSA, when considering the changes proposed for DOT-111 cars in Petition P-1577, to balance the need for rail car modifications against the need to improve safety in railroad operations and maintenance practices. This would seem appropriate and logical, since none of the recent high-profile rail accidents have been caused by DOT-111 tank cars. Moreover, the consequences of any action by PHMSA must be fully investigated and understood.

As a result, while NAFCA believes that it is appropriate to consider improvements to DOT-111 tank car specifications, NAFCA believes a broader approach must be taken by PHMSA, as follows:

1. PHMSA should oversee a rigorous and objective root-cause analysis of all of the rail accidents to date which have led to the ANPRM, and ensure there is a clear nexus between those findings and any proposed changes to tank car design requirements.
2. PHMSA should carefully analyze and clearly support any proposal to require retro-fitting of existing DOT-111 tank cars. This analysis should specifically address design problems, if any, identified in the foregoing root-cause analysis.
3. To the extent retrofitting of existing DOT-111 railcars is considered, it is critically important that PHMSA develop an orderly transition that includes a reasonable and cost-effective time-frame to accomplish it. The elements of such a transition plan should account for such practical constraints as (a) shop capacity constraints; (b) ongoing requalification inspection activity; and (c) tank car supply/demand factors, etc. NAFCA believes that the minimum reasonable timeframe for the phase-in of any new set of tank car regulations is 10 years, and that a shorter phase-in period would result in traffic diversion to less safe modes of transport, such as over-the-road trucking.



4. PHMSA should closely examine the impact of additional compliance costs incurred by non-railroad parties upon rail capacity utilization and the supply chains required to support continued economic growth. For example, additional investment in railcars may not translate to additional volumes per railcar. In some cases, increased steel and corresponding weight will mean less product can be loaded in each railcar. This will mean that more railcars will be required to ship the same volume of product, or that product will be shipped in trucks.
5. Some proposed modifications to existing tank cars may simply not be feasible from an operational, cost or engineering perspective. These include:
  - a. Application of jackets to non-jacketed cars, which could result in unintended stresses to car structures and premature fatigue, and which in any event, could prove economically infeasible even if technically possible. NAFCA believes that an alternative approach to thermal protection and puncture resistance, including a combination of head shields and an improved pressure relief device, represents a safer and more feasible approach to modification than the application of a jacket.
  - b. Removal of bottom outlet valves ("BOV") which could have severe financial impact on numerous facilities that would have to be modified to unload tank cars without bottom valves. NAFCA believes that modification to existing BOV designs, rather than elimination of BOV's is appropriate.
6. Proposals for modifications and retrofitting cars must consider their effect on already limited shop space or the additional cars needed to maintain supply when cars are unavailable while being modified. The modification and retrofitting of equipment will create backlogs at shops which will create numerous problems in moving product and causing delays in shipments which will create financial burdens on all parties.
7. NAFCA believes that any rulemaking should be limited to packing group I and II flammable liquids. Packing group III commodities, which typically move in manifest service and have not been involved in the recent high-profile accidents, should not be included in any rulemaking, and existing unmodified DOT111 tank cars should continue to be allowed to haul packing group III commodities.

In conclusion, NAFCA's members represent the overwhelming majority of the Nation's tank car fleet, and so they will be directly affected by the outcome of this ANPRM. NAFCA fully supports and encourages a safe and efficient rail system, and NAFCA strongly believes this must be pursued with a balanced approach that makes changes to tank car design when proven to be necessary. However, a balanced approach must also focus on the broader rail transport process, operational handling of each commodity, and considers the broader consequences of any PHMSA action.

Respectfully submitted,

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