



State of New York  
Department of Transportation  
Albany, N.Y. 12232  
[www.dot.ny.gov](http://www.dot.ny.gov)

Joan McDonald  
Commissioner

Andrew M. Cuomo  
Governor

April 29, 2014

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

Edward R. Hamberger, President and CEO  
Association of American Railroads  
425 Third Street, S.W.  
Washington, D.C. 20024

Dear Secretary Foxx and President Hamberger:

I am writing to request that the U.S. Department of Transportation (DOT) and American Association of Railroads (AAR) partner with the State of New York (NYS) to protect public safety and security, public health and the environment from the risks posed by the rail transport of crude oil in New York. This would expand upon our existing successful partnerships with other federal agencies in this area of growing concern. At the New York State Department of Transportation (NYSDOT), we are continuing to strengthen our rail safety inspection capabilities through our state participation agreement with the Federal Railroad Administration (FRA). However, New York is generally preempted from engaging in regulatory activity with respect to rail freight transportation.

In the wake of the devastating Lac-Mégantic, Quebec derailment, and given the tremendous increase in crude oil transport by U.S. Class I railroads over the last five years from only 9,500 to 400,000 tank carloads, Governor Cuomo issued Executive Order 125 (EO125) on January 28, 2014. Under EO125, NYS is reviewing efforts at all levels of government to prevent and respond to incidents involving the release of crude oil including spill response planning.

We appreciate the voluntary operating practices for moving crude oil by rail announced on February 21, 2014 by Secretary Foxx and the nation's major freight railroads. However, these must be codified into regulations and strengthened, and timeline for those actions should be provided. The agreement falls short in two areas: a lack of actions recommended by DOT and the AAR to reduce incidents caused by human factors, and the use of the high-threat-urban-areas (HTUA) designation to reduce speeds of crude oil trains transiting population centers.



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With regard to human factors in railroad incidents, the voluntary operating practices agreed to by DOT and AAR fail to account for human factors as causes of incidents with any additional precautions or actions to be implemented by the railroads. DOT collects and analyzes incident information to determine the root cause to eliminate risk and take appropriate enforcement action. This ensures the rail industry a process for continuous safety improvement. DOT's incident reporting data for New York State in the period from 2003 through 2013 shows that human factors were found to be the cause of 47 percent of train incidents. Human factors in the packaging of petroleum for rail transport are also not addressed either. Given the high propensity of incidents attributable to human factors and the impact a crude oil-related incident would have on New York State, these issue must be addressed fully.

Further, the actions taken to reduce speeds in urban areas are important to reducing the likelihood of a severe incident. However, the voluntary agreement stipulates that, "No later than July 1, railroads will operate trains with 20 or more tank cars carrying crude oil that include at least one older DOT-111 car no faster than 40 miles-per-hour in the federally designated 46 high-threat-urban areas (HTUA) as established by DHS regulations." Unfortunately, only Buffalo and the New York City metropolitan areas have been designated in NYS as a qualifying HTUA. There are additional major urban areas in NYS that have therefore been excluded from this reduced speed limit including Rochester, Syracuse, Utica, Schenectady, Albany, Kingston and Newburgh, all with metropolitan populations above 50,000 and all located along a primary corridor for crude oil transport. Accordingly, we respectfully request that consideration be given by DOT and AAR to expanding the designation of HTUA's to include urban areas with a minimum population of 50,000 for the purpose of lowering crude oil train speeds. This threshold is similar to the population threshold utilized by DOT for the designation of an urbanized area.

We greatly appreciate your consideration of these requests as well as your continued efforts to work with NYS and our other federal partners, including the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration.

NYSDOT looks forward to working cooperatively with DOT and AAR in addressing these vital areas.

Sincerely,

A handwritten signature in cursive script that reads "Joan McDonald".

Joan McDonald  
Commissioner