



Key Tank Car Regulation and Rail Transportation Issues

Argus Americas Crude Summit
January 29, 2015

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Overview

- ◆ Pending Regulations Relating to Tank Railcars
- ◆ Industry Activities and Market Reactions to Proposed Rules
- ◆ Railroad Regulatory Topics Affecting Crude Oil Shippers

GKG Law, P.C.

- ◆ Located in Washington, D.C.
- ◆ Founded in 1955 – Transportation focused
 - Railroad, Oil Pipeline, Truck, Ocean Carrier, Customs and International Trade, Aviation
- ◆ Shipper-oriented practice

Tank Car Regulation: Overall Context

- ◆ Railroads have safely hauled hazardous materials for decades
- ◆ 7/6/13 Lac Megantic and subsequent crude oil derailments, combined with oil boom, turned on the political spotlight in Canada and United States
- ◆ Regulatory emphasis is on keeping oil in cars
- ◆ Class I railroads' can influence shipper behavior independent of regulators
- ◆ No notable crude oil derailments since May, 2014

PHMSA-2012-0082 (HM-251) NOPR

- ◆ Published 8/1/14, but genesis was petitions filed by AAR and others back to 2011
- ◆ The Basics:
 - Classification and Certification
 - Railroad routing and speed restrictions
 - Revised tank car specifications
- ◆ Thousands of comments; dozens of positions; billions of dollars at stake
 - Could affect up to 150,000 tank cars
 - International component

PHMSA-2012-0082 (HM-251) NOPR

- ◆ Containment emphasis
 - Puts onus primarily on car suppliers and shippers
 - ◆ Classification and certification burdens
 - ◆ Huge capital commitments to retrofit cars and/or acquire new railcars
 - ◆ Liability allocation
- ◆ Routing and speed restrictions; reporting
 - Adverse effects for rail shippers
 - Public disclosure of routing information issues

PHMSA-2012-0082 (HM-251) NOPR

- ◆ Significant pressure to finalize rules, but date could be in 2Q15
- ◆ Judicial challenge seems likely
 - Industry stakeholders; environmental groups; communities, etc.
- ◆ Unlikely to be judicially stayed on appeal
- ◆ Big challenges await in terms of shop capacity; materials; idled railcars; related line haul issues, etc.

DOT/FRA/NTSB

- ◆ Positive Train Control
 - Related to PHMSA tank car NOPR
 - Initial timeline 2016; now more like 2018
- ◆ Idle train Securement – FRA-2014-0032 NOPR
 - Codification of (most of) DOT Emerg. Order 28
- ◆ Increased FRA track inspections
 - Increasing state involvement?
- ◆ NTSB 2015 “Most Wanted List”
 - Reinforced tank cars is No. 5 (PTC is No. 4)

Transport Canada

- ◆ Lac Megantic put Canadians in overdrive and PHMSA in “catch up” mode
- ◆ “Harmonization” is a major issue
 - Consistent as to containment focus
 - Commodity vs “HHFT” approach
 - Tank car specifications; timelines
 - Train securement – hand brake standards

Industry/Market Reactions

- ◆ Railroads
 - Voluntary actions to increase safety
 - Influencing tank car fleet composition
 - ◆ CN, BNSF, and CP tariff surcharges on non CPC-1232 compliant cars
 - ◆ BNSF “moratorium” on new crude oil trains
 - ◆ UP tariff imposing charges on moves of tank cars to repair shops
- ◆ Crude Oil Rail Shippers
 - Increased classification and certification burdens
 - Investment in new CPC-1232 cars
 - Crude oil now going east-west, not north south

Key Railroad Regulatory Issues

- ◆ Surface Transportation Board
 - Rail Service
 - ◆ NOPR on service metrics –EP 724
 - Rail Rates
 - ◆ “Revenue adequacy” – EP 722
 - ◆ Fuel surcharges
 - Demurrage
 - Routing Rules
- ◆ Pending Legislation – S. 2777, STB Reauthorization Act



Thank you for your attention

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