

HAZ MAT

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Recent Derailments Cast Spotlight on Upcoming Crude by Rail Rule Revisions

In February and March 2015, four unit trains carrying crude oil derailed in the U.S. and Canada, triggering releases and large fires. These derailments come at a time when both the U.S. and Canada are poised to finalize new tank car standards for the shipment of crude oil, and have attracted attention from lawmakers on both sides of the border. It remains to be seen whether the recent derailments will affect the timing or content of the U.S. or Canadian rulemakings, which have already entered the final stages and are expected to be published this spring.

On February 14, a 100-car train carrying 68 cars of crude oil and 32 cars of petroleum distillates derailed in a wooded area about 50 miles south of Timmins in northern Ontario, Canada. The train had originated in Alberta. The Transportation Safety Board of Canada reported that 29 cars derailed and 21

cars were breached, igniting a fire that burned for several days. The train was traveling at 38 mph at the time of the derailment.

Just two days later, on February 16, a 109-car crude oil unit train derailed near Mt. Carbon, West Virginia. The train had originated in the Bakken fields of North Dakota. Initial reports indicated that 27 cars derailed and 19 cars were breached, releasing crude oil, which ignited and may have entered nearby waterways. Downstream water treatment intakes were closed as a precaution, and hundreds of residents were evacuated. The train was traveling approximately 33 mph at the time of the derailment.

On March 6, another unit train carrying crude Bakken oil derailed in a rural area south of Galeana, Illinois. In that accident, 21 of the 105 train cars derailed, and five cars caught fire. The train was traveling at approximately 23 mph. On the following day, March 7, another unit train derailed in northern Ontario, near the town of Gogama. This accident occurred approximately 23 miles from the previous month's derailment near Timmins. According to initial reports, the train was carrying 94 cars of crude oil from Alberta and was traveling at 43 mph. Thirty-nine cars derailed, of which at least five landed in a waterway, and 15 cars were breached.

The cause of each of these derailments is under review. Preliminary indications suggest that track infrastructure failures may have played a role in both of the Canadian accidents. All four of the trains were traveling below applicable speed limits, and three were travelling slower than the speed limit likely to be established in the forthcoming U.S. rule to be promulgated by the Pipeline and Hazardous Materials Administration (PHMSA). All of the cars involved in these four derailments were DOT-111 tank cars that had been built to the stricter CPC-1232 industry standard. Both the U.S. and Canadian proposed rules would impose design standards for new tank cars that are stricter than the CPC-1232 industry standard; the U.S. rule would also impose operational controls on crude oil trains. As this article went to press, the U.S. rule was under review by the Office of Management and Budget and was expected to be published by PHMSA in May 2015. A similar Canadian rule addressing only tank car standards is expected to be finalized this spring.

Open HazMat-Related Rulemakings

The following summary includes rulemakings that are pending or recently-completed and which have the potential to affect HazMat transportation.

Risk Reduction Program (Docket No. FRA-2009-0038)

The Federal Railroad Administration (FRA) published a Notice of Proposed Rulemaking (NPRM) on February 27, 2015 to implement a provision of the Rail Safety Improvement Act of 2008 (49 U.S.C. 20156). In this rulemaking, the FRA proposes to require all Class I railroads and all other railroads deemed to have inadequate safety performance records to develop and implement an FRA-approved Risk Reduction Program in order to improve operational safety. Each Risk Reduction Program would be required to include a risk-based hazard analysis and a technology implementation plan. The NPRM sets out a proposed method by which FRA would annually identify railroads with inadequate safety performance, and states that each railroad's assessment of its safety risks and mitigation measures would be protected from public disclosure. FRA expects the rule to improve safety on Class I freight railroads by decreasing railroad incidents and workplace injuries. The public comment period closes on **April 28, 2015**.

Hazardous Materials: Adoption of Special Permits (Docket No. PHMSA-2013-0042)

PHMSA published a NPRM on January 30, 2015 to amend the Hazardous Materials Regulations (HMR) to adopt certain provisions that are commonly incorporated in Special Permits. The HMR authorizes PHMSA to grant Special Permits, which allow variances from HMR standards. The alternative requirement prescribed in the Special Permit must achieve at least the same level of safety as do the HMR standards, or when the regulations do not establish a safety level, a safety level consistent with the public

interest. (*See* 49 C.F.R. Part 107). PHMSA has reviewed the more than 3,000 active Special Permits for provisions that could be codified in the HMR, thus reducing the need for Special Permits. The NPRM proposes the adoption of 98 Special Permit provisions into the HMR, in the following categories: cylinders; cargo tanks/rail cars/portable tanks; operational air/vessel; operational highway/rail/shipper/other; and non-bulk packaging specifications. The public comment period closed on **March 31, 2015**.

Hazardous Materials: Miscellaneous Amendments (Docket No. PHMSA-2013-0225)

PHMSA published a NPRM on January 23, 2015 to revise and clarify certain requirements in the HMR, including: eliminating the packing group (PG) II designation for certain organic peroxides, self-reactive substances, and explosives; incorporating requirements for trailers of manifolded acetylene cylinders; providing requirements to allow for shipments of damaged wet electric batteries; revising the requirements for the packaging of nitric acid; revising procedures for testing pressure relief devices on cargo tanks; and revising the requirements for shipments of black or smokeless powder for small arms. These proposed amendments are designed to promote safer transportation practices, address petitions for rule-making, respond to National Transportation Safety Board Safety Recommendations, facilitate international commerce, and simplify the regulatory regime. The public comment period closed on **March 24, 2015**.