All Aboard? US and Canada Announce New Joint Regulations for Rail Tank Car Safety Standards

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In a joint Canada-US press conference held earlier this month, Canada’s Transport Minister Lisa Raitt and US Transportation Secretary Anthony Fox announced harmonized cross-border regulations aimed at strengthening safety standards for rail tank cars used to transport crude oil and other dangerous goods. The announcement comes after ongoing discussions between regulators and industry stakeholders in both countries and is in response to increasing public concern over the safety of transporting crude by rail.

The New Regulations
The proposed new Canadian regulations introduce the following three changes to the existing framework:

- new requirements for manufacturers to build rail tank cars with upgraded safety features, specifically to reduce the risks of puncture, derailment and leaks;
- new performance-based standards to retrofit older tanks;
- a schedule to phase-out the use of some older tank cars.

The US regulations mirror the Canadian regulations and include additional braking requirements for trains carrying large quantities of crude oil. After 2023, trains carrying large quantities of crude and other flammable goods will only be allowed to exceed 30 miles per hour if they have electronically controlled pneumatic brakes installed. Minister Raitt will look to find a Canadian solution to harmonize breaking requirements with the US but stopped short of making any statement about what the Canadian requirements would include.

Implications
The regulations aim to balance the interests of the burgeoning crude oil transport industry with safety concerns. Attention to these regulations is particularly high in Texas and North Dakota where growth in production from shale deposits is increasing demand for rail transport drastically. For example, in North Dakota’s Bakken patch, 70 percent of oil produced moves by train. Domestically, the transport of crude and other fuel oils by rail almost tripled in Canada between 2011 and 2014, in part due to increasing opposition, cost and delay facing pipeline projects.

The new joint regulations on rail reflect a cross-border response to the tragic train derailment at Lac-Mégantic, Québec in 2013 and increasing public concern over transporting crude by rail. They will add additional costs to the transport of crude and undoubtedly have impacts across the oil and gas industry. The amendments are not yet in force in Canada and there has been no indication of when they will be introduced. Borden Ladner Gervais LLP will monitor and report on these legislative changes as they occur, which are expected before the end of the current Parliamentary session.
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