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Guest opinion: Tank car rules should aim for consensus, expert says

Washington, 9 January 2015 (Brigham McCown) — *Brigham McCown is a transportation safety consulting expert who has worked in all modes. His 28-year career includes a stint as acting administrator of the Pipeline and Hazardous Materials Safety Administration. He is now chief executive of Nouveau, a company that provides safety and regulatory compliance consulting services.*

His views are his own and are presented here to give readers his perspective on forthcoming tank car rules that will affect the industry and the movement of flammable liquids by rail.

New US tank car rules that could be issued in early 2015 provide an opportunity for government, shippers and equipment makers to work together in advancing the safety of crude and ethanol moved by rail.

The new rules from the US Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) will have significant consequences for America's energy sector and the action follows over a year of intense engagement between the Obama administration and stakeholders.

This process is an opportunity for PHMSA to capitalize on a rare moment of industry consensus favoring strong, reasonable and reality-based regulations. In 2011, absent federal action, industry voluntarily adopted more-robust standards to respond to the challenges posed by a booming crude-by-rail sector. The shipper and rail communities have again come together with a new consensus standard that would build on the 2011 improvements. If PHMSA and its DOT parent disregard the new consensus and miscalculate, it may impose a final rule so costly that it creates tank car shortages, disrupts US fuel supply, aggravates oil price volatility in North America and costs money at the pump while doing little to reduce rail accidents.

The rules will set new rail car manufacturing standards, accelerate the phased retirement of older DOT-111 cars, and likely impose draconian retrofitting costs on an industry

already struggling with surging transportation costs. Many experts are concerned the proposed rule would place too great a focus on tank cars, which do not intrinsically cause spills, rather than the system improvements needed to avoid accidents. Some argue the real impediment to rail safety is not being addressed at all; the rail infrastructure upon which tank cars must operate.

The shale boom has nearly overwhelmed America's petroleum transportation network. Between 2008 and 2013, US domestic crude oil production surged from 5mn b/d to 8.5mn b/d, an increase of more than 70pc. During the same period, shipments of crude by rail spiked, from 9,500 tank cars in 2008, to 415,000 in 2013. In pipeline-deficient regions like North Dakota, more than 60pc of the crude rolls by rail.

Surging rail activity has resulted in logistical flexibility for industry that has historically been limited by pipeline agreements. Critics point to a legacy fleet of unimproved DOT-111 cars, with manufacturing standards dating back to the 1960s, that are insufficiently durable for crude-by-rail movements.

Stakeholders largely agree. Indeed, in 2011, the industry voluntarily agreed to use a more-robust design known as the CPC-1232 tank car. Since then, concerns over the volatility of Bakken crude renewed calls for an even tougher standard. Some believe the tank car issue has distracted from larger challenges related to rail infrastructure.

The heart of PHMSA's proposed new rule is the tank car design standard that will apply for all tank cars built after 1 October, for use hauling flammable liquids. The agency named three options PHMSA will consider for its final rule that is expected before 15 March. All three options include enhancements such as thicker shells, full-height head shields and obligatory jacketing; thermal protection to survive a fire, greater puncture resistance and robust top fittings and bottom outlets to better protect critical valves and seals.

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PHMSA will also propose guidelines for retrofits to the existing crude-by-rail tank car fleet. Of the 335,000 tank cars now active on US rails, an estimated 97,800 are in flammable liquids service. Under the new rule, manufacturers must either retire the older tank cars, or retrofit them according to the new standard, by 1 October, 2017.

Retrofit costs range from \$20,000 to \$60,000 per car and the industry faces lengthy turnaround delays because of a lack of shop capacity. Tank car manufacturers report a current 52,000-unit backlog for new cars, each with an estimated \$120,000 price tag, which is expected to jump with whatever new standard is adopted. While one manufacturer has trumpeted its ability to meet whatever PHMSA demands, it has been a lone voice in an otherwise cautious community.

PHMSA's preoccupation with the tank car may prove costly. According to a Brattle Group report, PHMSA's proposed

rule could cost the US economy as much as \$60bn, and two-thirds of rail tank cars could be lost to early retirement and idle time. These costs dwarf PHMSA's regulatory impact analysis that estimated a cost of \$5.8bn to enact the new rule over the next 20 years, and far exceed the government's own benefit statistics. Meantime, the American Petroleum Institute said DOT's own data prove that broken rails, not tank cars, caused more major derailments than any other factor, between 2001 and 2010. Nonetheless, mitigating the potential consequences of a crude incident must be addressed and regulators should embrace the industry consensus for a manufacturing standard, allow jacketed CPC-1232s to remain on the tracks, and encourage the retirement or retrofit of all pre-2011 tank cars on an aggressive, yet realistic schedule that prioritizes older cars first.

Finally, all involved must work together to prioritize rail safety to further reduce accidents and derailments.

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