Transportation Update

April 2015

Rail Transportation: Recent Developments

This bulletin addresses recent actions that could have a significant impact on rail transportation. Two bills have been introduced in Congress, one concerning tank cars used to transport crude oil and another addressing rail regulatory reforms. In addition, five major trade associations have filed a complaint at the Surface Transportation Board (STB) against a recent Union Pacific Railroad tariff that would assess charges for the movement of tank cars to repair facilities.

Crude-By-Rail Safety Act

The Senate is considering the Crude-By-Rail Safety Act of 2015 (Safety Act), Senate Bill 859, which was introduced in late March. If adopted into law, the Safety Act would immediately prohibit use of DOT-111 tank cars and unjacketed CPC-1232 tank cars for transportation of crude oil. The Safety Act also would prohibit ethanol shipments in such tank cars two years after adoption. These tank cars could still be used for crude oil and ethanol shipments if they are retrofitted to the enhanced CPC-1232 standard, with an 11-gauge steel jacket and electronically controlled pneumatic brakes. Among other things, the Safety Act also would:

- Require new standards for tank cars manufactured after October 1, 2015 and intended to be used for crude oil, ethanol and other Class 3 flammable liquids
- Heighten track inspection requirements for high hazard routes
- Require crude oil shippers to test volatility of the crude oil in 5 percent of tank cars offered for rail transportation
- Create significant fines for violations
- Direct railroads to expand their oil spill response plans
- Require railroads to notify states and localities prior to operation of a high hazard flammable train

Surface Transportation Board Reauthorization Act

The Surface Transportation Board Reauthorization Act of 2015 (STB Act), Senate Bill 808, was introduced in mid-March. It would modify the STB’s structure and operations in several ways. Specifically, it would authorize the STB to commence investigations into possible violations of the Interstate Commerce Act on its own initiative; currently, the STB only begins such proceedings upon receiving a complaint. The STB Act also would:

- Direct the STB to establish a voluntary arbitration process for rate and practice complaints
- Specify deadlines for adjudication of stand-alone cost rate cases
- Expand the STB from three members to five and facilitate greater communication among members
- Remove the STB from the Department of Transportation
- Require the STB to submit routine reports on the status of pending cases
- Direct the STB to maintain a database of complaints it receives and to publish quarterly reports summarizing those complaints
- Require studies of rate bundling by railroads and methodologies for challenging rates

Complaint Against UP Empty Tank Car Movement Tariff

A coalition of individual shippers and five trade associations who use tank cars filed a complaint at the STB on March 31, North America Freight Car Association, et al. v. Union Pacific
Railroad Company, STB Docket No. NOR 42144. The complainants allege that a recent tariff issued by Union Pacific Railroad Company (UP) is an unreasonable practice because it requires tank car providers to pay for UP to transport empty cars to repair facilities. UP previously did not charge for such movements. The complaint alleges that UP has a statutory obligation to supply cars on reasonable request, and that UP must compensate providers of private cars if UP chooses not to supply cars itself. The complaint further alleges that nearly all tank cars used by UP and other U.S. railroads are provided by shippers, not railroads, and UP’s new tariff does not include any compensation for the providers of the tank cars. This proceeding has important implications for shippers with large tank car fleets because the new UP charges could add millions of dollars annually to the cost of owning and maintaining tank cars.

FOR MORE INFORMATION

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