



# Recent PHMSA Developments

Scott Janoe

# Issues to Cover

---

- Proposed Rule
  - Safety of Hazardous Liquids Pipelines (Proposed October 2015)
    - Increased regulatory jurisdiction and inspection requirements
- New Rule
  - Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (Final Rule Published May 2015)
    - Train regulations and sampling and testing program requirements
- Recent PHMSA Positions
  - Sampling and testing frequency
  - Definition of "offeror"



# Safety of Hazardous Liquid Pipelines

---

- New Inspection requirements
  - Inspections of pipelines in areas affected by extreme events must be done within 72 hours after event
  - All hazardous pipelines in High Consequence Areas (HCAs) and areas that could affect an HCA must be made capable of accommodating inline inspection tools within 20 years
  - Periodic assessments of non-HCA (Non-IM) pipeline segments with an inline inspection tool at least once every ten years
    - Would also subject regulated onshore gathering lines to periodic assessment

# Safety of Hazardous Liquid Pipelines

---

- Leaks and repairs
  - All new hazardous liquid pipelines must be designed to include leak detection systems, including all regulated onshore gathering lines
    - Operators must perform an evaluation to determine what kinds of systems must be installed to protect the public, property, and the environment
  - For IM repairs
    - Bottom-side dents with stress risers would be immediate repair conditions, immediate repair required whenever calculated burst pressure is less than 1.1 times operating pressure, and replace the 60 and 180 day repair categories with consolidated 270 day repair category
  - For non-IM repairs
    - Same repair requirements as above for IM, but 18 month repair category for pipelines not subject to IM requirements

# Final Rule: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains

---

- Multiple components
  - Defines trains transporting large volumes of flammable liquids as "high-hazard flammable trains"
    - Regulates speed restrictions, braking systems, and routing
  - Safety improvements in tank design standards
  - Sampling and testing program for unrefined petroleum-based products
  - Notification requirements



# Big Issue from Final Rule: Sampling and Testing Program

---

- PHMSA views this as "part of a comprehensive approach to improving the safe transportation of flammable liquids by rail"
- Requirements: Must have a sampling and testing program that specifies
  1. A frequency of sampling and testing that accounts for any appreciable variability of the material
  2. Sampling prior to the initial offering of the material for transportation and when changes that may affect the properties of the material occur
  3. Sampling methods that ensure a representative sample
  4. Testing methods that enable classification of the material under the HMR
  5. Quality control measures for sample frequencies
  6. Duplicate sampling methods or equivalent measures for quality assurance
  7. Criteria for modifying the sampling and testing program
  8. Testing or other appropriate methods used to identify properties of the mixture relevant to packaging requirements



# Recent Enforcement Initiatives by PHMSA Central Region





# Stretching Applicability of the Sampling and Testing Requirement

---

- The sampling and testing requirements apply only to "offerors"
  - Offeror is one who
    - (i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.
    - (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.
- BUT PHMSA Central Region has taken the position that oil and gas operators are offerors for purposes of the Hazardous Material Regulations
  - Recently cited Bakken operators for failure to have a plan
- Frequency also at issue

# Contact

---

- **Scott Janoe**  
Baker Botts L.L.P.  
One Shell Plaza  
910 Louisiana  
Houston, Texas 77002  
Phone: 713.229.1553  
Fax: 713.229.7953  
Email: [scott.janoe@bakerbotts.com](mailto:scott.janoe@bakerbotts.com)

AUSTIN

BEIJING

BRUSSELS

DALLAS

DUBAI

HONG KONG

HOUSTON

LONDON

MOSCOW

NEW YORK

PALO ALTO

RIYADH

SAN FRANCISCO

WASHINGTON

[bakerbotts.com](http://bakerbotts.com)

---

©Baker Botts L.L.P., 2016. Unauthorized use and/or duplication of this material without express and written permission from Baker Botts L.L.P. is strictly prohibited. Excerpts and links may be used, provided that full and clear credit is given with appropriate and specific direction to the original content.