

## Transport Canada Provides Clarification Regarding Phase-Out of Certain Tank Cars Used for Transportation of Crude Oil

September 20, 2017

The Transportation of Dangerous Goods Regulations<sup>1</sup> (TDG Regulations) have been amended<sup>2</sup> to provide clarification regarding the phase-out of DOT-111 tank cars used to transport crude oil within Canada. The amendment updates the timeline provided in the TDG Regulations for phase-out of all legacy DOT-111 tank cars<sup>3</sup> for crude oil service. Prior to this amendment, the deadlines in the TDG Regulations to phase out these tank cars were May 1, 2017 for non-jacketed cars and March 1, 2018 for jacketed cars. However, a protective direction issued previously by the Minister of Transport (Protective Direction 38)<sup>4</sup> provided a deadline of November 1, 2016 for phase out of all legacy DOT-111 tank cars transporting crude oil in Canada. Since Protective Direction 38 takes precedence over the TDG Regulations, the TDG Regulations were amended to prohibit the use of all legacy DOT-111 tank cars for crude oil service with immediate effect.

In addition, in respect of dangerous goods classified with UN number 1268<sup>5</sup>, the amendment clarifies that the phase-out requirements apply only with respect to transportation of UN 1268 dangerous goods that are crude oil. Other UN 1268 dangerous goods may be transported in legacy DOT-111 tank cars if they are not crude oil.

The amendments provide clarity and consistency for stakeholders affected by the TDG Regulations and Protective Direction 38.

### **Reminder re: Impact on Documents Previously Deposited Under the *Canada Transportation Act***

Where an existing tank car has been replaced by a new tank car and where a security interest has been granted in the tank car being replaced, the underlying lease or security agreement must be examined to determine if such replacement is permitted.

If the underlying lease or security agreement provides for substitution of collateral, then the tank car can be replaced (generally with the consent of the secured party). Although the lease or security agreement may contain language that allows for substitution and extends the security interest to any replacement or substitution collateral, an amendment to the corresponding deposit under the *Canada Transportation Act*<sup>6</sup> (CTA) may also be required to ensure that the collateral is sufficiently described for the purposes of the CTA.

# Cassels

For further information regarding this matter, please contact Jennifer Wasylyk or any other member of the Equipment & Asset Financing Group.

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<sup>1</sup> *Transportation of Dangerous Goods Regulations*, S.O.R./2001-286, online: Consolidated Transportation of Dangerous Goods Regulations including Amendment S.O.R./2017-137 <<http://www.tc.gc.ca/eng/tdg/clear-tofc-211.htm>>.

<sup>2</sup> *Regulations Amending the Transportation of Dangerous Goods Regulations (International Harmonization Update, 2016)*, S.O.R./2017-137.

<sup>3</sup> DOT-111 tank cars built prior to the introduction of safety standard CPC-1232 - *Requirements for Cars Built for the Transportation of Packing Group I and II Materials with the Proper Shipping Names "Petroleum Crude Oil", "Alcohols, n.o.s." and "Ethanol and Gasoline Mixture"*.

<sup>4</sup> Transport Canada, "Protective Direction No. 38", by Marc Garneau, Minister of Transport (Ottawa: Transport Canada, 13 July 2016), online: <<https://www.tc.gc.ca/eng/tdg/safety-menu-1289.html>>.

<sup>5</sup> PETROLEUM DISTILLATES, N.O.S., or PETROLEUM PRODUCTS, N.O.S.

<sup>6</sup> *Canada Transportation Act*, S.C. 1996, c. 10.

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