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## **TRANSPORT: Rail giant goes one on one with White House over tank car rules (Wednesday, June 11, 2014)**

**Blake Sobczak, E&E reporter**

Warren Buffett's BNSF Railway Co. landed a one-on-one meeting with the Obama administration's regulatory "czar" to discuss sweeping new crude-by-rail rules, White House documents show.

Howard Shelanski, who heads the small but influential Office of Information and Regulatory Affairs at the White House's Office of Management and Budget ([E&ENews PM](#), March 31), heard from BNSF's executive vice president of law and corporate affairs Roger Nober in a closed-door session Friday, according to OIRA records.

Shelanski's office is charged with reviewing federal agencies' proposed regulations before they reach the public -- a process that often entails listening to affected companies as they pick apart the costs and benefits of a given rule. BNSF has met twice with OIRA to talk about a "comprehensive" set of Department of Transportation regulations that would overhaul decades-old oil tank car standards. The Fort Worth, Texas-based railroad's first meeting with OIRA on June 3 included BNSF Executive Chairman Matt Rose, who has called for upgrading the DOT-111 tank car commonly used to haul crude.

A series of recent derailments and fires involving DOT-111 cars has renewed calls for their replacement, most notably in Lac-Mégantic, Quebec, where an oil train crash killed 47 people in an explosion last July.

The proposed rule under review at OIRA will likely offer a deadline for phasing out the oldest, most puncture-prone cars. Canadian transportation authorities have already ordered crude-by-rail shippers to retire or update DOT-111 tank cars within the next three years.

BNSF spokeswoman Roxanne Butler said in an email yesterday the company would "continue to advocate our position to policy makers in the rulemaking procedure for tank cars and for the aggressive phase out of the DOT-111." The rail industry voluntarily started building tougher tank cars in 2011, two years after an ethanol train derailment in Cherry Valley, Ill.

Earlier this year, BNSF solicited bids from manufacturers for building 5,000 "next-generation" oil tank cars to kick-start the market for cars built beyond even the 2011 standards. That may seem like small change when held up to the 92,000 tank cars now moving flammable liquids across the U.S., but analysts say it would be an unusual step if BNSF goes through with the purchase. Typically, leasing companies such as GATX Corp. or GE Capital Rail Services -- not railroads -- own tank cars and rent them out to oil producers or logistics companies.

Butler added in her email that BNSF "believe[s] the next-generation tank cars should exceed the 2011, stronger new standard known as the CPC-1232 tank car."

The Association of American Railroads, which represents BNSF and other major freight rail carriers such as CSX Corp., has suggested adding an eighth of an inch of steel to the CPC-1232 as a buffer against potentially volatile crude oil from North Dakota's Bakken Shale play, among other changes.

Critics of the AAR's 2014 tank car standard say there is not enough evidence to show the modifications would make a difference for crude-by-rail safety.

## **Big Oil versus Big Rail?**

The AAR has not yet visited OIRA. The trade group is expected to meet with White House officials before the rule is sent back to DOT's Pipeline and Hazardous Materials Safety Administration and published as a Notice of Proposed Rulemaking, a step scheduled to come in July.

To date, BNSF is the only railroad to have aired its take on the tank car rules, whereas a slew of oil and refining companies have already weighed in on the proposal ([EnergyWire](#), June 10).

Representatives from Exxon Mobil Corp., Chevron Corp., Phillips 66 and Tesoro Corp. have met with OIRA in recent weeks. The oil industry's top trade group, the American Petroleum Institute, was the first to be granted a meeting with the office on May 19, records show.

"There's a sense in the rail industry that the oil companies are telling their stories sometimes to the detriment of the railroads," said Anthony Hatch, principal of New York-based freight transportation and research firm ABH Consulting. "The railroads are sort of catching up in terms of making their case" with OIRA, he added.

The two industries don't always see eye to eye, especially when it comes to the volatility of North Dakota's Bakken crude. Oil producers point to several recent industry-backed studies showing the crude is no more dangerous or flammable than other types, while railroads have been more skeptical, according to Hatch.

"[Railroads'] perspective is that 'We have to carry this [tank car] under common carrier law -- you put dangerous things in it, you own or lease the car and you load the car,'" he said. "If this is all of a sudden going to be dangerous and the focus of the entire nation, we want the safest car possible."