

REGULATIONS IMPLEMENTING THE TRANSPORTATION MODERNIZATION ACT

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On April 1, 2019, the Canadian Transportation Agency (“**Agency**”) [announced](#) the publication of proposed regulations (the “**Proposed Regulations**”) in the Canada Gazette to implement certain aspects of the *Transportation Modernization Act* (Bill C-49) (“**TMA**”). This bulletin analyzes the Agency’s proposals in light of our representations.

The TMA amended the *Canada Transportation Act* (the “**Act**”) as of May 23, 2018. Many stakeholders made representations regarding the TMA before the House of Commons Standing Committee on Transport, Infrastructure and Communities and the Senate Standing Committee on Transportation and Communications. Our representations are found [here](#), [here](#), [here](#) and [here](#).

In May of 2016, the Agency launched its Regulatory Modernization Initiative (“**RMI**”) and in June of 2018 circulated its [Discussion Paper on Regulatory Modernization for Rail Transportation](#) seeking submissions. On behalf of Teck Resources Limited and its affiliates, we made submissions regarding the rail transportation portion of the RMI, which were supported by the Western Grain Elevator Association, the Canadian Canola Growers Association, the Western Canadian Shippers Coalition and the Mining Association of Canada.

The Proposed Regulations would amend:

- the Railway Interswitching Regulations to remove interswitching rates, which will now be determined annually by Agency decision (for example, see [Agency Determination No. R-2018-254](#)), rather than by a regulation.
- the Canadian Transportation Agency Designated Provisions Regulations to broaden the range of rail-related requirements in the Act the Agency can enforce by imposing administrative monetary penalties payable to the federal government.
- the Railway Third Party Liability Insurance Coverage Regulations to prescribe information that rail service providers must submit to the Agency when applying for or seeking to vary certificates of fitness and to require them to update that information on an annual basis.

The Proposed Regulations are as important for what they do not do. For example, the Agency considered

changing the Railway Costing Regulations, but the Proposed Regulations would not change them at this time. Instead, the [Regulatory Impact Analysis Statement](#) (“**RIAS**”) confirms that the Agency will be consulting with interested stakeholders in respect of interswitching rate-setting methodology and the Railway Costing Regulations later in 2019. Further, the RIAS confirms that the Agency will not consolidate its rail regulations into a single regulation.

Please do not hesitate to contact us if you wish to set up a private briefing to discuss the Proposed Regulations or any other matter relating to the TMA or the Act.

by Ryan Gallagher, Lucia Stuhldreier and François Tougas

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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