

December 4, 2023

Mr. William S. Schoonover
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Hazardous Materials: Modernizing Regulations To Improve Safety and Efficiency –
Docket No. PHMSA-2019-0031**

Associate Administrator Schoonover:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Advanced Notice of Proposed Rulemaking (ANPRM) on the modernization of the Hazardous Materials Regulations (HMR). TTD consists of 37 affiliated unions, representing the totality of rail labor and first responders who are vital to the safe transportation of hazardous materials.¹ We therefore have a vested interest in this matter. Additionally, TTD endorses the comments of our affiliates, the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD). We respectfully request that the PHMSA take our feedback into consideration.

Background

The PHMSA published an ANPRM regarding potential updates to hazardous materials regulations on July 5, 2023. The PHMSA requested information on a number of topics impacting rail transportation, including emergency response, training, workforce issues; identification of containers and rail cars; and train makeup issues. TTD would like to reiterate the information from workers' perspectives included in SMART-TD and BLET's comments on this matter. We urge the PHMSA to proactively engage with rail labor organizations given workers' firsthand experience dealing with hazardous materials on a daily basis.

Emergency Response

As our affiliate, the BLET, notes in its comments, Emergency Response Information (ERI) must continue to accompany all shipments of hazardous materials. Having this information readily accessible to rail workers and first responders is critical in emergencies given that rail workers are often the first to respond to a derailment. ERI should also be provided in a redundant fashion to ensure that if one copy is compromised another is available, particularly in emergency situations. The ERI information is too important to only have one method to access it and transportation incidents have time after time demonstrated the importance of safety redundancy. For example, a paper copy can provide a vital failsafe when technology failures occur. Regarding electronic copies, railroads must be required to ensure that digital devices have battery life sufficient to the length of the trip and can be charged en route.

¹ Attached is a complete list of TTD's affiliate unions.

Training and Workforce Issues

We strongly support both the current requirement under 49 CFR § 172.702 that all hazmat employers, including railroads, properly train and test all hazmat employees and the current definition in 49 CFR § 172.702 of a hazmat employer and a hazmat employee. Comprehensive training is an essential component of safety. As the PHMSA notes in the ANPRM, “the HMR training requirements are intended to ensure that each hazmat employee has familiarity with the general provisions of the HMR, can recognize and identify hazardous materials, has knowledge of specific requirements of the HMR applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures, and accident prevention methods and procedures.”²

Having a sufficient number of rail workers who are well-trained is of foundational importance to the safe transportation of hazardous materials by rail. Ensuring that rail workers feel safe transporting hazardous materials is important to recruiting new workers in the industry and the retention of current workers. As our affiliate, the BLET, notes in its comments, the railroads have not recognized that the industry is only successful if workers can operate safely and effectively. The rail industry has had workforce retention difficulties for decades.³ The Class I railroad industry’s adoption in the last few years of so-called Precision Scheduled Railroading (PSR) has only exacerbated this problem. The industry’s adoption of PSR has led to a nearly 30% reduction in the Class I workforce since 2016, with a 10% reduction having occurred since 2019 alone even though the volumes of cargo the Class I railroads are moving is roughly the same now as it was in 2016. The Class I railroads’ desire to use less workers to transport the same volume of cargo places additional stress and fatigue on rail workers and is dangerous, especially when it comes to transporting hazardous materials. It is no wonder that our affiliates have reported rail workers with five, ten, or fifteen years of experience voluntarily leaving the industry because of how unsafe and demoralizing it has become, which further reduces the safety of our rail system.

At the same time, the Class I railroads are dangerously cutting back on the training they provide their workers so they can save money. The Class I railroads have [repeatedly requested waivers](#) to provide virtual training instead of hands-on training and rail labor has been united in opposing such requests because of the harm it would have on rail safety. The FRA found that at least one large Class I railroad, Norfolk Southern, had a non-compliant Part 242 conductor certification program for over a year-and-a-half because it provided insufficient training to its conductors.⁴ Recently, another Class I railroad, CSX, has had multiple fatalities and serious injuries of more junior conductors in switching operations because of a lack of training that CSX provides. The FRA earlier this year issued safety advisory 2023-06 in response to these deaths and injuries, which in part states that:

“FRA reminds railroads of the importance of ensuring switching operations are conducted safely, including ensuring...

2. Employees receive adequate field training to enable them to recognize risks associated with improperly secured “kicked” cars and understand proper procedures for responding

² ANPRM, Page 43027

³ <https://railroads.dot.gov/elibrary/examination-employee-recruitment-and-retention-us-railroad-industry>

⁴ https://www.railwayage.com/wp-content/uploads/2023/07/FFRA-23-00323_Outgoing-Record.pdf

to a rolling car, mounting equipment, and applying handbrakes safely”.⁵

Both our affiliates and the FRA have found that the current level of training provided by the Class I railroads to its employees is inadequate and is leading to rail workers getting killed or severely injured. This is extremely alarming as the FRA has highlighted the important role that train crew members play in responding to train derailments involving hazardous materials, including communicating with first responders and reducing the likelihood of a release of said materials.⁶

Given all the dangerous trends in the Class I rail industry, we are gravely concerned by the Association of Hazmat Shippers’ (AHS) request to the PHMSA that it create a training exception for limited quantity (LTD QTY) shipments of hazardous materials by highway, rail, and vessel. Such an exception would likely lead to the Class Is to reduce the amount of training they provide to their rail workers, further exposing them to harm. Even a limited quantity of hazardous materials can put rail workers and first responders’ lives at risk if the type of hazardous material is sufficiently dangerous. Providing an exemption for training would be a large step backward for safety. The cost of providing hazardous materials training to rail workers is small compared to both the cost of a potential train derailment like the one that occurred in East Palestine, Ohio and the value of a worker’s life or livelihood.

Instead of creating any additional exceptions to the current training requirements under Part 172, we respectfully request that the PHMSA strengthen the existing training standards for all employees involved in the transportation of hazardous materials by rail given the ongoing, severe issues with the training provided by the Class I railroads to their workers.

Container Identification

The PHMSA should require consistency with regard to the size, placement, durability and legibility of freight identifier markings. Consistent standards for these markings are a critical safety measure. For firefighters and other first responders responding to train derailments, especially those involving hazardous materials, having immediate access to clear, durable, and legible markings is vital for quick hazard identification. This is not just a matter of operational efficiency; it's a fundamental safety issue. When first responders can rapidly discern the contents and risks associated with each container, they can take appropriate protective measures, reducing their exposure to toxic substances, explosions, or fire hazards. Standardized, easily visible markings can be lifesaving in emergencies, especially under challenging conditions like smoke or low light, directly contributing to the safety and well-being of the workers and the public.

The PHMSA should consider requiring freight container identification markings to be clearly visible on the sides and tops of containers. Requiring markings in these locations will provide train crews and emergency responders with the necessary visibility in case of overturned containers and in situations where aerial observation may be necessary. With regard to the size of such markings, the PHMSA should require that markings adhere to the standards prescribed in 49 CFR 172.332 to ensure consistency. Furthermore, the PHMSA should prescribe one specific background color for marking requirements. This color should contrast with the text of the markings and be easily

⁵<https://railroads.dot.gov/sites/fra.dot.gov/files/2023-09/Safety-Bulletin-2023-06-Car-Kicking-Amputation-final-090823.pdf>

⁶ See Crew Size NPRM, Federal Register / Vol. 87, No. 144, page 45576

visible and legible.

In addition, the PHMSA should consider establishing *specific* requirements for the durability of freight container identification marks. Current regulations do not delineate specific standards for durability of freight identifier markings. As the PHMSA is no doubt aware, a number of hazardous materials are flammable and combustible, which could easily destroy markings that are not heat resistant. The PHMSA should therefore determine a reasonable level of durability for these markings. As our affiliate, SMART-TD notes in its comments, the PHMSA would be well within its role as a federal regulator to require placards to be made of a specific material in order to ensure they will be more likely to be present, visible, and legible in the real world conditions of rail emergencies.

The adoption of marking standards would likely lead to a reduction in the time and resources required for emergency responders. This efficiency is not merely about resource management; it directly correlates with increased safety for first responders and the public. With faster, more accurate identification of hazards, firefighters can implement more effective and safer response strategies, minimizing their time in dangerous environments. A swift response not only lessens the risk of incident escalation but also diminishes potential public health and environmental risks.

Container Inspections

We urge the PHMSA to continue requiring visual inspections of tank cars and other containers used to transport hazardous materials. These inspections *must* be conducted by trained Qualified Mechanical Inspectors (QMIs). No adequate substitute for a thorough visual inspection by QMIs exists that would ensure an acceptable level of safety. The Class I rail industry's current rail car inspection practices, including the elimination of thousands of carmen and other shopcraft workers who performed important rail car and locomotive inspections, have greatly reduced safety, as evidenced by the National Transportation Safety Board's (NTSB) investigation into Norfolk Southern's toxic train derailment in East Palestine, Ohio. The NTSB's June hearing on the derailment highlighted the lack of inspections that the rail cars in that train received, with most of the cars in that consist not receiving a full mechanical inspection before being added to the train. In a post-derailment inspection, the Federal Railroad Administration (FRA) found defects in 25% of the 77 cars it reviewed. If given the opportunity, it is extremely likely that a full inspection performed by a QMI would have detected those defects.

In addition, the current language in 49 CFR § 173.31(a)(3) is not sufficient to address the scenario of loading a tank car prior to the next required requalification date and offering it after it is overdue for requalification. The PHMSA should work in conjunction with the FRA to issue guidance on this topic. Specifically, movement of a car that was loaded prior to its required requalification date but is now overdue for requalification should not be permitted. As the PHMSA notes in the ANPRM, permitting cars to be loaded prior to expiration of the requalification interval and offered after could allow an indefinite period of time to pass before the expired car is actually offered into transportation, particularly if it was stored on private track for months or years. This scenario constitutes a significant safety issue, and we urge the PHMSA to prohibit this practice.

Tank Car Thermal Protection Standard

Thermal blankets are important to reducing the risk of a fire heating up and/or increasing the

pressure on a hazardous material inside of a tank car and causing an explosion or releasing dangerous materials that could kill or injure rail workers, first responders, and other persons near the site of the explosion. Unfortunately, the Association of American Railroads (AAR)'s Thermal Blanket Task Force has not been transparent. Rail labor has not been afforded the opportunity to engage meaningfully in this process and is not an official stakeholder of AAR's Tank Car Committee that currently plays a large role in setting standards for the design of tank cars. The PHMSA must not accept any proposal by the AAR or any railroad as a consensus standard on safety without consulting with rail labor organizations and other safety focused entities to ensure that the representations made by the AAR are accurate and reflect conditions on the ground.

The PHMSA should take into account that the National Transportation Safety Board (NTSB) [back in 2015 raised concerns](#) about the proposal from the AAR involving thermal protection systems and DOT-111 and CPC-1232 tank cars and how it was not sufficient enough. The PHMSA should also note with strong caution that Norfolk Southern, the Class I railroad submitting this proposal regarding Thermal Blankets, is the same railroad involved in the East Palestine, Ohio derailment.

Train Makeup Issues

We strongly oppose the AAR's petition that the PHMSA amend § 174.85 to no longer require the use of buffer cars to separate placarded rail cars from unoccupied locomotives, also known as unoccupied head end locomotives, distributed power units or dead in tow locomotives.

The AAR's petition would jeopardize the safety of railroad employees on the train and in the adjacent right of way, and the surrounding community. As the BLET notes, a distributed power unit, even unoccupied, could represent an ignition source and should be separated from hazardous materials, regardless of the presence of crew. Without buffer cars, the risk of a hazardous material fire increases because of the lack of a barrier between the potential ignition source and cars carrying hazardous materials. Maintaining a universal standard for all hazardous materials is the simplest way to ensure that required buffer cars are always used. [The NTSB in December 2020 issued](#) a "recommendation that requires all trains have a minimum of five non-placarded cars between any locomotive or occupied equipment transporting hazardous materials, regardless of train length and consist." We strongly urge the PHMSA to heed the NTSB's recommendation and not only reject the AAR's petition, but implement NTSB's recommendation that there be a minimum buffer of five cars.

Without commenting either way on the accuracy of the PHMSA's figure, we note that the PHMSA's citing of a potential annual savings of \$180,000–\$450,000 per Class I railroad resulting from changes in buffer car requirements would not be significant compared to the billions of dollars in profits that the Class I railroads make annually and the costs of a derailment involving hazardous materials. Additionally, as SMART-TD and BLET each note in their comments, utilizing buffer cars on manifest trains would not decrease the number of cars in revenue service. The railroads will still make as much revenue as they did before even if they are required to add additional buffer cars.

For example, the clean up costs for the East Palestine, Ohio derailment [is approaching \\$1 billion](#) for one derailment involving hazardous materials. That number does not include things like the

cost of the decrease in property values of the community or the emotional damage inflicted on the residents of East Palestine and the surrounding communities. The PHMSA's estimate of potential cost savings is also significantly lower than the Department of Transportation's (DOT) [Valuation of a Statistical Life calculation](#) for a single life, which as of 2022 is \$12,500,000. We are confident that having a minimum amount of buffer cars as the NTSB recommends would save multiple lives and therefore by DOT's own calculations, the economic benefits of buffer car requirements outweigh the PHMSA's calculation of cost savings.

The AAR's petition would be a dramatic step backwards in safely transporting hazardous materials and is directly at odds with the stated goals of this ANPRM which is to "(maintain) or (improve) a current high level of safety". AAR's petition is also not compatible with the [DOT's efforts](#) to improve rail safety following the East Palestine, Ohio derailment.

For these reasons we ask the PHMSA to reject AAR's petition.

Conclusion

The safe transportation of hazardous materials is necessary and vital to the day to day function of the United States and rail is a leading method for transporting hazardous materials. The rail workers and first responders that our affiliates represent are on the frontline of safely transporting hazardous materials and responding when an emergency does arise. Many of these hazardous materials could cause death or serious injury if something goes wrong and we are grateful for the skill with which these workers operate and the sacrifices that they make. It is our collective goal, and the PHMSA and FRA's regulatory responsibility, to ensure that these workers go home safely every day. Therefore, we support the strongest possible safety standards for important factors such as operations, rail equipment, training, and the information provided to rail workers and first responders. As the PHMSA takes the next steps on this ANPRM, we urge it to ensure that safety standards are strengthened and not compromised for cost-cutting or expediency's sake.

We appreciate the opportunity to comment on this matter and look forward to working with the PHMSA in the future.

Sincerely,



Greg Regan
President