

Hazmat Transportation by Rail: An Unfair Liability

ASSOCIATION OF AMERICAN RAILROADS

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WHAT SHOULD BE DONE?

Speed up the development and use of **safer substitutes** for toxic inhalation hazard (TIH) materials, and address the **unfair liability** that railroads face by being forced to transport those chemicals.

WHY?

Unlike trucks, barges, and airlines, railroads are **required by current law** to transport TIH materials — **even if they don't want to** and even though transporting TIH materials presents an enormous risk. Since railroads do not have a choice, **they should be protected** against the unfair and potentially ruinous liability associated with transporting TIH materials. And **safer substitutes should be developed**, reducing risks for everyone. After all, if TIH materials are not produced or transported, no one is at risk and liability issues are resolved.

An Unfair Liability

- Each year, railroads transport 1.5 to 1.6 million carloads of hazardous materials. In 2007, **99.996 percent** of rail hazmat shipments reached their destination without a release caused by a train accident. Rail hazmat accident rates **are down 81 percent** since 1980.
- TIH materials are gases or liquids, such as chlorine and anhydrous ammonia, that are especially hazardous if released. In 2007, railroads transported 76,000 carloads of TIH materials (0.24 percent of total carloads), virtually all in tank cars.
- Today, the federal government **requires** railroads to transport TIH materials, **whether railroads want to or not**. This obligation does not apply to trucks, barges, or airlines.
- Every time a railroad transports TIH materials, it faces **potentially ruinous liability** if an accident occurs. Although railroad accidents involving TIH materials are extremely rare, history demonstrates that railroads can be subjected to multi-billion dollar claims, **even when they have done nothing wrong and did not cause an accident**.
- To make matters worse, the government does not allow railroads to raise their rates for transporting TIH materials high enough to cover the enormous risks involved. That means the revenue TIH materials generate **does not come close** to covering the potential liability associated with this traffic. And railroads can't obtain enough insurance to fully protect against the multi-billion dollar risks associated with TIH shipments.

A Reasonable Request

- As long as policymakers continue to require railroads to transport TIH materials, they should address the **unfair risk** this obligation forces railroads to assume.

- Policymakers can address this unfair risk in at least three ways:
 - ✓ Allow railroads to ask TIIH shippers to **indemnify** them for liability above a certain reasonable amount.
 - ✓ **Create a fund**, to which producers and end-users of TIIH materials would contribute, **to pay for damages above a certain amount** (similar to “Price-Anderson” protections in the nuclear energy industry).
 - ✓ Create a statutory **liability cap** for railroads.
- **Railroads are not asking to be free from all liability related to TIIH transportation.** Each of these proposals would still leave railroads with substantial liability if an accident occurred. They would simply mean that those responsible for making and using the dangerous chemicals would share in the liability.

Develop Safer Alternatives

- The National Academy of Sciences, the Government Accountability Office, and many others who have studied the issue agree that **TIIH materials should be replaced with less hazardous substitutes and new technologies** wherever possible.
- **Safer substitutes are already feasible** for many TIIH materials today. For example, many cities around the country have switched from chlorine (one of the most dangerous chemicals) to safer chemicals or new technologies for water and wastewater treatment.
- Where substitution is not currently feasible, research should be undertaken with the goal of making it feasible as quickly as possible. Until safer substitutes are available, unnecessary shipment of these materials, especially over long distances, should be discouraged.

In the Meantime...

- In November 2008, the U.S. DOT announced final rules under which trains carrying TIIH materials must be routed on the safest and most secure rail lines. The rule requires railroads to conduct ongoing comprehensive risk analyses of their primary TIIH routes and any practicable alternative routes over which they have authority to operate.
- Railroads are **constantly working** to improve hazmat safety. For example, they are:
 - ✓ Developing safer tank cars.
 - ✓ Training thousands of emergency responders each year and training employees involved in hazmat transportation.
 - ✓ Providing local authorities with lists of hazardous materials transported through their communities.
 - ✓ Providing the Transportation Security Administration with TIIH movement data.
 - ✓ Conducting rigorous hazmat route risk analyses.
- Proposals to allow state or local authorities to ban TIIH movements through their jurisdictions are misguided. These bans would simply shift risk from one population to another. And by potentially adding several days and hundreds of miles to shipments, TIIH bans could actually **increase** exposure and **reduce** overall safety and security.