Common Carrier Obligation: Why Freight Railroads Must Transport Hazmat

Key Takeaway: As the safest way to move hazmat over land, freight railroads are legally required to transport this commodity under a common carrier obligation. While the industry's safety efforts have significantly decreased the hazmat accident rate, railroads have limited control over hazmat transportation decisions, and the true costs and risks are not fully reflected in shipping rates. The industry advocates for sensible regulatory solutions to address these challenges.

Under their common carrier obligation, railroads move large quantities of hazmat, including fertilizer, ethanol, crude oil, refined petroleum and chlorine. The rail industry has invested enormous resources to ensure that the overall movement of hazmat is safe — with the aspiration of eliminating accidents and incidents altogether.

Thanks to ongoing private investments, technological innovation, rigorous employee training, and community safety efforts, the hazmat accident rate is down 75% since 2000 to its lowest-ever rate. Rail is still the safest way to move hazmat, with more than 99.99% of all hazmat reaching its destination safely. The rail industry has not asked — and is not now asking — to be relieved from its obligation to carry these materials.

Limited Control

Railroads are just one step in the production, distribution, and consumption chain for hazmat and have limited control over decisions about transporting hazmat. Even though the transportation of hazmat involves actions and decisions by many parties, railroads bear most of the risks of an accident or incident during transportation. Ultimately, the railroad is responsible for moving trains and maintaining lines — no matter that the railroad would have declined a particular shipper's request if it had the discretion to do so.

Railroads typically do not own the tank cars used to transport hazardous materials; instead, rail shippers and leasing companies possess these cars. Shippers, rather than railroads, dictate the origin and destination of hazmat movements within the railroad network. Railroads employ the Rail Corridor Risk Management System (RCRMS), a software developed in collaboration with the government, to select the safest routes between the origin and destination. Historically, the rail industry has lobbied for stricter safety standards for tank cars in order to mitigate the potential risks of accidents and incidents.

Transporting Hazmat & Shipping Rates

The true costs of transporting hazmat are poorly reflected in rates. Railroads do not necessarily have the option to charge rates to recover all the associated costs of moving hazmat. The law governing common carrier rates limits the extent to which the costs involved in transporting hazmat are assigned to those movements. Railroads incur significant costs from their obligation to transport hazmat.

For example, the risks of transporting hazmat require railroads to pay higher insurance premiums — and there is no market for insurance that would fully protect railroads, leaving them to bear uncompensated risks. Railroads must also make capital expenditures and pay for special operating procedures to implement federal safety laws and regulations.

In the past five years, the rail industry has made over $23 billion in annual investments for infrastructure and technological innovation, rigorous employee training, and community safety efforts — a meaningful share of which responds to the need to properly handle hazmat shipments. Rates for common carrier service must be "reasonable." Although there are several methods the STB can use to assess whether a rate is reasonable, they do not adequately account for the full costs of transporting hazmat.

Problems With the Current Regulatory Scheme

The current regulatory scheme disserves the public. If the costs and risks of transporting hazmat were better incorporated into rates, then shippers would "make economically rational decisions concerning production, use, and shipping of hazardous materials," according to one Harvard report.

For example, faced with increased rates for transporting hazmat that reflect the full costs and risks incurred, shippers might reduce their usage of such materials in favor of substitutes that pose fewer public safety risks. Moreover, the potential for a catastrophic event to bankrupt the railroad involved means that the public could wind up without adequate recovery or the harm caused by such an event. Over the years, the rail industry has advocated for common-sense regulatory solutions to these problems.