

DEPARTMENT OF LABOR  
OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION

---

DOCKET NO. OSHA–2019-0001  
HAZARD COMMUNICATION STANDARD

---

COMMENTS OF  
THE ASSOCIATION OF AMERICAN RAILROADS  
AND THE AMERICAN SHORT LINE AND REGIONAL  
RAILROAD ASSOCIATION

---

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of themselves and their member railroads, submit the following comments in response to OSHA’s February 16, 2021, notice of proposed rulemaking to revise its hazard communication standard at 29 C.F.R. Part 1910.<sup>1</sup> The railroads have a significant interest in this rulemaking proceeding. AAR and ASLRRA member railroads transport over 2.2 million shipments of hazardous materials each year in the U.S., and nearly 3 million shipments in North America. Further, the railroad industry has a tremendous safety record transporting hazmat via rail. Over 99.99% of all hazardous materials shipped via rail reach their destination without any release from an accident.

---

<sup>1</sup> AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, touching in origination or termination one out of every four cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. 86 Fed. Reg. 9,576 (Feb. 16, 2021).

The railroads' concern with this proposed rule involves OSHA's proposal to amend existing 29 C.F.R. § 1910.1200(f)(5), which describes the obligations of chemical manufacturers, importers, and distributors to mark containers of hazardous chemicals that leave their workplaces. In particular, OSHA is proposing to add new paragraph (f)(5)(ii) to address the transport of bulk shipments of hazardous chemicals (*e.g.*, in tanker trucks or rail cars), and new paragraph (f)(5)(iii) addressing pictograms on labels of shipped containers. The proposals would specify that labels for bulk shipments of hazardous chemicals may either be on the immediate container or may be transmitted with shipping papers, bills of lading, or other technological or electronic means so that the information is immediately available in print to workers on the receiving end of the shipment. OSHA states that the proposed new provision would codify policy from a 2016 guidance document that OSHA created jointly with DOT's Pipeline Hazardous Materials Safety Administration (PHMSA), and requests comments on whether it is appropriate to amend paragraph (f)(5) and whether the proposed additions would provide clarity regarding labeling of bulk chemical shipments.

Currently, 29 CFR § 1910.1200(f)(5) imposes obligations only on chemical manufacturers, importers, distributors – not railroads, who are subject to comprehensive regulation by PHMSA. In particular, existing DOT regulations at 49 C.F.R. Part 172 address the proper labeling, marking, placarding and shipping information of hazardous materials transported via rail.<sup>2</sup> Hazmat shipments must be properly marked for the duration of

---

<sup>2</sup> Under the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.), Congress gave the Secretary of Transportation authority to regulate the transportation of hazardous materials, including via rail. Pursuant to this authority, PHMSA has promulgated a comprehensive set of regulations that govern the transportation of hazardous material, including requirements regarding hazmat description, labeling/marketing/placarding, shipping

transportation, a requirement that continues until the package containing the hazardous material is delivered to its destination. 49 C.F.R. § 171.1(c). Shipping papers upon which hazard information is communicated to persons transporting hazmat shipments accompany those shipments for the same duration. *Id.*

The railroads' concern is that by including rail cars or intermodal containers in the definition of "bulk shipment," OSHA is sweeping railroads into a second, overlapping regulatory scheme. Compliance with both the existing PHMSA requirements for marking hazmat in rail transport and the new requirements proposed by OSHA would be not only unnecessarily duplicative, but also difficult if not impossible. No system currently exists to distribute labels to a receiver of a hazmat rail shipment separate from existing DOT requirements. The vast majority of railroad shipping papers today are generated by Electronic Data Interchange or "EDI" systems. EDI systems can accept only text information and not the pictograms or other electronic material contemplated by OSHA's proposal. In addition, railroad bulk packagings, such as railroad tank cars, are not designed to transport any additional shipping labels or forms to a receiver beyond the placards and markings that are required under existing DOT hazmat transportation regulations. Any pictograms would have to be transferred in some separate communication channel between the chemical manufacturer/distributor and the receiving facility.

---

information, emergency response information, and appropriate employee training when hazmat is transported via rail. (Hazardous Materials Regulation; 49 C.F.R. Parts 171-180).

OSHA should clarify that the proposed rule change is not intended to place additional regulatory requirements on railroads. The safe transportation of hazardous material via rail is already prescribed by the HMTA and the relevant PHMSA regulations. For purposes of consistency, compliance, and safety, DOT's existing regulations should continue to govern all aspects of railroads' transportation of hazmat. The railroads appreciate OSHA's consideration of these comments.

Respectfully submitted,



Robert E. Fronczak, P.E.  
Asst. Vice President, Environment and Hazmat  
Association of American Railroads  
425 3<sup>rd</sup> Street, SW, Suite 1000  
Washington, DC 20024



JR Gelnar  
Vice President, Safety and Compliance  
American Short Line and Regional Railroad  
Association  
50 F Street, NW, Suite 500  
Washington, DC 20001

May 19, 2021