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RSPA-03-15327-21

BEFORE THE  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

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DOCKET NO. HM-206B:  
HAZARDOUS MATERIALS; CHANGES TO THE HAZARD  
COMMUNICATIONS REQUIREMENTS

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COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS

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The Association of American Railroads (AAR),<sup>1</sup> on behalf of itself and its member railroads, submits the following comments in response to the notice of proposed rulemaking on changes to the hazard communication requirements.<sup>2</sup> AAR strongly supports RSPA's proposal to permit a tank car containing less than a reportable quantity of a Class 9 hazardous substance to be offered as a packaging containing a regulated substance, with all applicable hazard warning marks, placards, and shipping papers.<sup>3</sup> AAR also supports RSPA's proposal to require that the marking on packages containing non-odorized propane specifically identify the propane as non-odorized and suggests that the accompanying shipping papers contain a "non-odorized" notation.<sup>4</sup>

Currently, rail cars containing less than a reportable quantity of a Class 9 material cannot be placarded and marked because Class 9 materials in quantities less than their reportable quantity are not regulated as hazardous materials. The hazardous materials regulations prohibit placarding and marking of rail cars that do not contain regulated hazardous materials.<sup>5</sup> Consequently, rail cars loaded with Class 9 materials are shipped to facilities with placards and markings, but on the return trip the placards and markings are removed. As RSPA states in the preamble, this has caused confusion for shippers, railroads, and law enforcement personnel since residues of other

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<sup>1</sup>AAR is a trade association whose membership includes freight railroads that operate 77 percent of the line-haul mileage, employ 91 percent of the workers, and account for 94 percent of the freight revenue of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

<sup>2</sup>68 Fed. Reg. 34880 (June 11, 2003).

<sup>3</sup>See 68 Fed. Reg. 34886, 887.

<sup>4</sup>See 68 Fed. Reg. 34882.

<sup>5</sup>49 C.F.R. § 172.502(a).

hazardous materials are regulated and rail cars containing residues of these other hazardous materials retain their placards and markings.<sup>6</sup>

RSPA's proposal to permit placards and markings to remain on rail cars containing Class 9 hazardous materials in quantities less than the reportable quantity would avoid this confusion. Furthermore, no safety problem would be created by RSPA adopting this proposal. Accordingly, AAR urges RSPA to make this suggested change.

AAR also supports RSPA taking action to require shippers to indicate when they are shipping "non-odorized" propane. The concern of the New Jersey State Firemen's Mutual Benefit Association that emergency response personnel may overlook the possibility of a leak of non-odorized propane because of an expectation that any leak would have a detectable odor is well founded, since most shipments of propane contain an odorant.<sup>7</sup> RSPA proposes that shippers mark tank cars as "non-odorized." While AAR does not oppose the marking proposal, AAR believes it would be more effective to add the notation "non-odorized" to the proper shipping name on the shipping papers for shipments of non-odorized propane. Stencils can be obscured or damaged in a derailment. Adding a notation to shipping papers would help ensure that should an accident involving non-odorized propane occur, emergency responders will be informed a shipment of non-odorized propane is involved.

Finally, in this proceeding RSPA proposes to enhance the visibility of the poisonous by inhalation placard by enlarging the upper black diamond and the skull and crossbones symbol at the top of the placard.<sup>8</sup> AAR is concerned that the placard system and other markings on tank cars make it all too easy for a terrorist to identify the hazardous materials transported in tank cars. While not a subject of this proceeding, AAR and the Transportation Security Administration (TSA) are considering a study of alternatives to the placard system for tank car shipments. RSPA should join AAR and TSA in examining whether the current system for identifying hazardous materials, which served the nation well in the 20th Century, needs to be changed in light of new security concerns.

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<sup>6</sup>68 Fed. Reg. 34886, 34887.

<sup>7</sup>See 68 Fed. Reg. 34882.

<sup>8</sup>68 Fed. Reg. 34883.

Thank you for the opportunity to submit comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael J. Rush". The signature is written in a cursive style with a large, prominent "M" and "R".

Louis P. Warchot  
Michael J. Rush  
Counsel for the Association  
of American Railroads  
50 F St., N.W.  
Washington, D.C. 20001  
(202) 639-2503

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