



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

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Vice President and

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February 20, 2007

Docket Clerk
DOT Central Docket Management Facility
Room PL-401
400 7th Street, SW (Plaza Level)
Washington, DC 20590-0001

Re: Docket No. RSPA-2004-18730
Docket No. TSA-2006-26514

Dear Docket Clerk:

On December 21, 2006, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and the Transportation Security Administration (“TSA”) each published a Proposed Rule with respect to rail transportation security. 71 FR 76834–76850, 76852–76888. The PHMSA Proposed Rule was assigned to DOT DMS Docket No. RSPA-2004-18730, as Document 113, and the TSA Proposed Rule was assigned DOT DMS Docket No. TSA-2006-26514.

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads. Consequently, PHMSA’s and TSA’s Proposed Rules would have a significant impact upon our members.

We will comment only on certain sections of the Proposed Rules. Our silence concerning sections for which we offer no comment should not be taken either as support for or opposition to those sections. Also, we endorse the comments filed by the Brotherhood of Maintenance of Way Employees Division of the Teamsters Rail Conference (“BMWED”), and incorporate them by reference herein. Further, we incorporate by reference herein our October 15, 2004 comments concerning the notice entitled “Hazardous Materials: Enhancing Rail Transportation Security for Toxic Inhalation Materials,” and the October 18, 2004 comments submitted by the AFL-CIO’s Transportation Trades Department. *See* RSPA-2004-18730-44, RSPA-2004-18730-84.

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As a general matter, we have long supported comprehensive rail security measures, and applaud PHMSA and TSA for their efforts. Much of the content of the Proposed Rules reflects a common sense approach to rail security. That said, however, there are aspects of both Proposed Rules with which we disagree, at least as proposed. Moreover, we wish to point out a couple of omissions that we believe are critical to developing and enforcing a sound rail security scheme.

The first omission involves the failure to specify appropriate training for railroad workers who will be subject to the Proposed Rules. The railroad industry is in the midst of a rapid turnover—fueled by the first wave of retirements of Baby Boomer generation railroad workers — that strains the industry’s training programs for all crafts. The industry simply does not devote sufficient resources either to providing initial training for new workers or for periodic retraining for more experienced workers. Far too often, training schedules are dictated by the need to deploy new workers in the field, rather than ensuring that those workers, and their more senior co-workers, have the necessary tools to work safely and efficiently.

Worker training in the handling of hazardous materials has been a particular sore point for the BLET, and for all of Rail Labor. The training provided by the industry is so minimal that we, long ago, took matters into our own hands. Hazardous materials training programs have been provided under labor sponsorship at the National Labor College, which is located at the George Meany Center in Silver Spring, Maryland.

Our Railway Workers Hazardous Materials Training Program has been a resounding success. The program has, over its fifteen years, continually evolved and expanded to meet the training and competency needs of rail workers that are not met by the railroads. Initially offering only one course, the program now offers five. Training has moved beyond the conventional classroom to include simulation and on-line activities. A core of professionally trained instructors has been replaced with a corps of peer instructors. Because of this program’s 16+ years of success, tens of thousands of rail workers are working more safely and in safer environments.

Since the onset of training in April 1991, the union-run program has trained more than 20,000 rail workers. Evolving from an 8-hour program of awareness training only, the National Institute for Environmental Health Sciences (NIEHS)-funded and George Meany Center-sponsored program now offers five courses: a 5-day Chemical/Emergency Response training in the classroom; an on-line Emergency Responder Awareness Level 101 course; the OSHA 10-hour General Industry Safety and Health Outreach Program; disaster site training; and the newest addition, a Radioactive Material Transportation Safety Program, which is funded by a separate grant from the U.S. Department of Energy.

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The newest program began last summer at the National Labor College, and includes a Modular Emergency Response Radiological Transportation Training (MERRTT) “train the trainer” course. By contrast, we are unaware of any railroad currently conducting training focusing on transportation of spent nuclear fuel and high-level radioactive waste, even though the Department of Energy is expected to begin a 38-year project to transport such waste from DOE sites to storage and disposal facilities as early as next year. The labor hazmat program has trained workers in 49 states and the District of Columbia. We also have fostered the creation of community partnerships that include joint rail worker, fire fighter, EMT, and public safety personnel training in communities throughout the U.S.

The program has a new emphasis on railroad security and disaster response and teaches the five-day students how to serve as skilled support personnel in an incident command emergency setting. Much of the program material is available in Spanish and a comprehensive web site serves both the English and the Spanish-speaking work forces. The five-day program addresses the training requirements of the Department of Transportation’s Hazardous Materials Regulations at 49 CFR Part 172, as well as the requirements of OSHA First Responder and Operations Level training under 29 CFR Part 1910.120. Railroads generally do not provide wages or support for workers attending the program. In fact, — and this is most unfortunate — members sometimes are not allowed time off from work to attend the program, even though the railroad is not paying wages.

The program currently serves eight rail unions,¹ and at least ten crafts,² from major railroads as well as from commuter and short-line railroads. This cross-company, cross-union, cross-craft training has proved invaluable, as one group learns from another. Each union has its own craft-specific tasks and challenges, and prior to this hazmat training program there was little, if any, cross-union training. Hazards and challenges faced by those in the yards may be different than those faced by road train crews, and different still from those who work along the track or in the shops. Understanding the work of other crafts, the safety and health challenges that each face, and the coordination of each craft’s efforts in an emergency, enhances railroad hazardous materi-

¹ Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB); SEIU’s National Conference of Firemen & Oilers (NCFO); Transport Workers Union (TWU); Transportation-Communication International Union (TCU); Brotherhood of Railway Carmen; and United Transportation Union (UTU).

² Brakemen, Laborers, Workers from the Building & Bridge Department, Signalmen, Carmen, Switchmen, Conductors, Track Department Workers, Locomotive Engineers, Yardmasters, and Hostlers.

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als safety and security. A well-trained and knowledgeable workforce is the first line of defense and can prevent a minor incident from becoming a major hazardous materials accident. The eight rail unions have worked together to enhance rail safety by providing comprehensive training to its members and by providing substantial administrative and personnel support to the union-run Railway Workers Hazardous Materials Training Program.

Labor has been able to offer these programs through a combination of federal funds and subsidies from the North American Railway Foundation, which is a private non-profit organization. However, subsidies and contributions are hard to come by. Nonetheless, we take great pride in having trained well over 20,000 railroad workers since the program's inception. At the end of the day, though, this represents but a small fraction of the railroad workers who require thorough, in-depth training, and recurrent training. Simply stated, mandatory in-depth training and recurrent training concerning hazardous materials and security should be a key feature of the Final Rules.

The other omission is the failure to provide any whistle-blower protection for railroad workers who may be compelled to report a security shortcoming or failure to the appropriate governmental authority. We support the amendment on this subject specified in the BMWED's comments, and will now turn to the Proposed Rules.

PHMSA Proposed Rule

Proposed Section 172.820(c)–(f) would require rail carriers to perform route risk analyses identifying primary and alternative routes each calendar year in determining which routes will be used for the shipment of certain specified hazardous materials. In addition, a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, or other changes affecting the safety or security of the movements of the specified hazardous materials must be performed at least every five years. 71 FR 76848.

We wholeheartedly support risk and route analyses, and PHMSA's proposal will accomplish its goal, because proposed Appendix D identifies the appropriate metrics essential to a detailed risk analysis. Moreover, we believe the frequencies set forth in the Proposed Rule are appropriate, except that the comprehensive review specified in Section 172.820(f) should be performed every three (3) years.

However, we do not support the mandatory re-routing of hazardous materials. Mandatory re-routing of hazardous materials for safety reasons sounds like a good idea in theory, but it is not a practical solution, except on very rare occasions. Based on our experience, there are several serious flaws with a broad program of mandatory re-routing:

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- Current conditions in the railroad industry would make it difficult to re-route hazardous materials. In many parts of the country during the 19th Century, population growth followed railroad construction; therefore, rail lines, and particularly the older yards and terminals, tend to cluster around major urban areas.
- Much of the infrastructure in the industry is at or near capacity, and there are both labor and equipment shortages in many areas. Furthermore, given the nature of train operations and FRA requirements, locomotive engineers and conductors cannot simply be shifted from route to route in the way that a truck can be diverted from one Interstate highway to another; qualification requirements are territory-specific and exacting. Simply put — there is not enough slack in the system to re-route hazardous materials on a large scale without the system experiencing significant delays and disruption.
- The very nature of the system would make it difficult to re-route on such a scale. Due to the limited areas in which railroad tracks run — and depending upon what part of the country is involved — re-routing could add hundreds of miles to a trip. The areas through which hazardous materials are re-routed may adopt a “not in my back yard” posture against the materials being moved through their area, which is a problem this nation already has concerning long-term storage of spent nuclear fuel and high-level radioactive waste.
- Re-routing on a large scale also could have the unintended consequence of making us less safe, because hazardous materials shipments would be gathered into a small number of designated corridors — creating a security problem by making each of those corridors a more attractive target for a terrorist attack.

Two of the most horrific hazardous materials accidents in recent years happened in non-signaled, or “dark,” territory and were the result of misaligned main track switches.³ There is switch position detection technology available off-the-shelf today that can eliminate this risk altogether, and requiring the use of this technology can realize some of the same goals as re-routing in a more cost effective and less disruptive way.

Proposed Section 172.820(h) sets forth a procedure to be employed when the specified materials must be stored or are delayed in transit. 71 FR 76848–76849. We believe the procedure is ade-

³ The first occurred in Macdona, Texas, on June 28, 2004, resulting in a chlorine gas release that killed three and injured twenty-nine. *See* National Transportation Safety Board Railroad Accident Report No. NTSB/RAR-06/03. The second occurred in Graniteville, South Carolina, on January 6, 2005, resulting in a chlorine gas release that killed nine and injured 544 people, 75 of whom were admitted to the hospital. *See* NTSB Railroad Accident Report No. NTSB/RAR-05/04.

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quate, and support its inclusion in the Final Rule. Proposed Section 174.9, requiring safety and security inspections, fails to specify the type and manner of training that should be provided to a person making the inspection, and should be so amended.

TSA Proposed Rule

In its Section-by-Section Analysis of proposed Section 1580.103, TSA has solicited “comments on the feasibility of the freight rail industry using GPS tracking systems to determine the location of rail tank cars, including information on the anticipated costs and benefits of employing GPS technology for this purpose.” 71 FR 76865. GPS technology is a core element of several positive train control (PTC) systems that are in various stages of development and testing.

As implementation of PTC proceeds in the coming years, we believe that a tank car equipped with a GPS transponder being hauled on a PTC route can provide almost instantaneous location information, and urge TSA to monitor developments with an eye toward reducing the one hour location notification standard set forth in proposed Section 1580.103(d) for these routes in the future. That said, however, we continue to have serious reservations that the cost of deployment of such technology on each tank car that travels over the railroad system in the U.S. would greatly outweigh the benefits, as we pointed out in the past. *See* RSPA-2004-18730-44 at p. 5.

Proposed Sections 1580.107(c) and 1580.107(d), which set forth chain of custody and control requirements, mandate that when a car containing a specified hazardous material is transferred from one rail carrier to another, each carrier “must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody.” 71 FR 76884. Similarly, proposed Section 1580.107(e), governing the transfer of a car from a carrier to a hazardous materials receiver in a high-threat urban area, prohibits “leav[ing] the rail car unattended in a non-secure area until the rail hazardous materials receiver accepts custody of the rail car.” Id.

We understand the rationale underlying these commands — that a watchful eye be kept on the car so that a potential security threat can be immediately identified — and we fully support the concept. However, is our expectation that railroads will, most likely, assign this surveillance task to the train crew delivering the car, because those crew members already are on the scene.

We have grave concern that these crew members would be exposed to a high risk of injury or death in the event one or more persons attempts to “capture” the car, and point out that a determined, well-prepared terrorist would know of these regulatory requirements, which will be in the public domain. Accordingly, we request that the proposal be amended to specify that a train crew member may not be assigned for purposes of compliance with these requirements.

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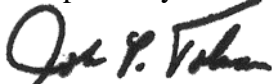
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We appreciate the opportunity to participate in this rulemaking and the agencies' most serious consideration.

Respectfully submitted,



Vice President and National Legislative Representative

cc: Advisory Board
All General Chairmen
All State Legislative Board Chairmen
Thomas A. Pontolillo, Director of Regulatory Affairs