

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



February 5, 2008

Honorable Joseph H. Boardman
Administrator
Federal Railroad Administration
1120 Vermont Avenue, N.W.
Washington, D.C. 20590

RE: Request for Modification of Regulations Concerning
Transportation of Hazardous Materials by Rail for Failure to
Properly Secure outlets on Tank Cars, 49 C.F.R. Part 174.9,
Hazardous Materials Regulations of the Department of Pipeline and
Hazardous Materials Safety Administration

Dear Administrator Boardman:

The Arizona Corporation Commission, the California Public Utilities Commission, and the Association of State Railroad Safety Managers, request that the Federal Railroad Administration amend 49 C.F.R. Part 174.9 to better enforce the duty of railroads to secure tank cars carrying hazardous materials. The Office of Chief Counsel has appropriately refused to proceed with violations in which railroads have been cited for failure to secure outlets on tank cars carrying hazardous materials unless there is a chain of evidence establishing that the tank car was unsecured, inspected, and placed within a train consist for delivery while continuously unsecured.

Title 49 C.F.R. Part 173.31 (which provides requirements to be observed in preparing hazardous materials for shipment by rail) provides a "rebuttable presumption" establishing that if a tank car carrying hazardous materials is unsecured at any time during transportation, the "offeror" of the hazardous materials failed to secure the car at the time the car was delivered for transport to the railroad. While this regulation can be used to enforce the shipper's duty to provide a secure hazardous materials tank car for transportation by rail, it fails to address the railroad's concurrent duty to secure hazardous materials tank cars during the course of rail transportation.

Title 49 C.F.R. Part 174 (which prescribes requirements to be observed with respect to the transportation of hazardous materials in or on rail cars), does not provide a "rebuttable presumption" with respect to secure tank cars during the course of rail transportation.

It is important to note that even if the "offeror" of a tank car containing hazardous materials fails to secure the tank car, the railroads have a concomitant duty to secure that tank car during rail transportation. To enforce this duty, a "rebuttable presumption," similar to the one in Part 173.31 for shippers, should be created for railroads so that if an FRA or federally-certified state inspector observes a hazardous materials tank car unsecured after being placed in a train consist for transportation by rail, that unsafe condition shall be rebuttably presumed to have existed at the time the tank car was first inspected when placed in the train. To accomplish this enforcement capability, the Arizona and California Commissions and the Association of State Railroad Safety Managers propose to amend Part 174.9 concerning carriage of hazardous materials by rail in the following manner.

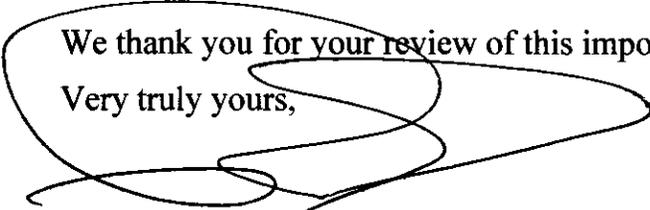
49 C.F.R. Part 174.9:

At each location where a hazardous material is accepted for transportation or placed in a train, the carrier shall inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures and leakage. This inspection may be performed in conjunction with inspections required under parts 215 and 232 of this title. In any action brought to enforce this section, the lack of securement of any closure to a tool-tight condition (see 49 CFR Part 173.31(d)(1)(iv)) will establish a rebuttable presumption that a proper inspection was not performed by the railroad transporting the tank car at the time the tank car was placed in a train. That presumption may be rebutted by any evidence indicating that the lack of securement resulted from a specific cause not within the control of the railroad.

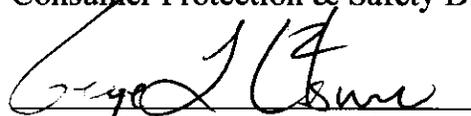
It is our belief that this change conforms to established duties imposed on shippers and railroads carrying hazardous materials by railroad tank cars. If we may be of any assistance to you in closing this loophole in the safe transportation by rail of hazardous materials, please let us know. We are prepared to support this change with evidence of lack of safe and adequate securement by railroads of tank cars carrying hazardous materials.

We thank you for your review of this important safety amendment.

Very truly yours,


Richard W. Clark, Director
Consumer Protection & Safety Division


David Raber, Director of Safety
Arizona Corporation Commission


George L. Elsmore, President
Assoc. of State Railroad Safety Managers

cc: **ARIZONA AND CALIFORNIA COMMISSIONERS**
Mark H. Tessler, Asst. Chief Counsel for Safety, FRA
Mike Gleason, Chairman, Arizona Corporation Commission
Randy L. Wu, General Counsel
Jason Zeller, Asst. General Counsel Julie Halligan, Dep. Director, CP&SD
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