

# Railroad Transportation of Nuclear Waste and Other Hazardous Materials

*Railroads continue to have duties to shippers and the public, and they may not take the law into their own hands. Except for emergencies – and then only for the duration of the emergency – they must carry all commodities without regard to whether they are dangerous, unless the proper agency of the federal government has relieved them of that obligation.*

Michael F. McBride

---

**Michael F. McBride**, twice a past President of the Association of Transportation Law Professionals, the bar association of the Surface Transportation Board (which regulates railroads), is a member in the Washington, DC, law firm of Van Ness Feldman, PC. He specializes in transportation, environmental, and energy litigation. He holds a bachelor's degree in Chemistry and Biology from the University of Wisconsin, Milwaukee, a master's degree in Environmental Engineering Science from Cal Tech, and a J.D. from the University of Wisconsin - Madison.

---

## I. Introduction

Railroads are common carriers. As common carriers, railroads have a duty to carry all commodities, even if they are dangerous, unless the federal government has relieved them of the duty to carry a particular commodity.

The government has relieved railroads of their duty to carry only a few commodities. To invoke the obligation on the part of the railroads to carry as common carriers, shippers must

tender commodities for transportation by railroad in conformance with all applicable governmental regulations. If they do, courts have consistently held that railroads may not absolutely refuse to carry them. Railroads may, however, establish reasonable terms for the carriage of a commodity, subject to the review of the Surface Transportation Board.

The U.S. Department of Transportation has authority to establish regulations for the safe transportation of goods by

railroad. Other agencies may also have authority in certain instances (such as the U.S. Nuclear Regulatory Commission in the case of radioactive materials). If a railroad or a shipper does not agree with those regulations and thinks that they should be changed or that new regulations should be adopted, it (or any other member of the public, for that matter) may file a petition for rulemaking with the applicable agency. In doing so, the petitioner may propose a particular rule or simply call an alleged problem to the agency's attention and ask it to propose and adopt rules to address the problem.

**M**any dangerous but important commodities are produced and used in this country every day. Chlorine, for example, is used to purify drinking water and perform other useful tasks, but it is highly toxic. Anhydrous ammonia is used for pollution control purposes in coal-fired power plants. Radioactive materials are produced and transported by railroad by the Department of Defense for use in submarines and in other national defense circumstances. Radioactive materials are also produced and used by private industry for medical and energy needs, among others. Fertilizer and fuel oil can be combined to make a powerful bomb, as happened at Oklahoma City in 1995, but they continue to be produced and transported in large quantities for use on farms and in other industries. Many of these and other dangerous, or

potentially dangerous, commodities move by railroad.

It is in the public interest that railroads be obliged to carry these dangerous but essential substances because the rail mode generally has been found to be the safest mode for that transportation.

Railroads are no longer required to maintain tariffs, let alone to file them with any governmental agency as most

---

*In 2001,  
railroads embargoed  
certain toxic  
chemicals  
due to  
concerns about  
terrorism.*

---

regulated entities are required to do. Railroads are required, however, to maintain rates and other service terms and to provide them promptly to shippers who request them. Generally speaking, rates and other service terms for the carriage of any commodity are subject to regulation by the Surface Transportation Board, but they are not generally regulated in fact unless the railroads have "market dominance" and the rates exceed a reasonable maximum. Increases in rates or other service terms may not be imposed until 20 days have elapsed if a shipper has requested such rates or service terms, or if

the shipper has made an arrangement for transportation that would be subject to those rates or service terms.

**S**ince the Staggers Rail Act of 1980, Congress has allowed railroads also to act as contract carriers. As contract carriers, railroads are subject only to the obligations and liabilities set forth in the contract. Contracts are not regulated, but instead are enforceable in state or federal court in accordance with the terms of the contract. Most dangerous commodities move in accordance with contracts in order to permit carriers and shippers to cooperate in the safe transportation of such commodities.

There are times, however, whether lawfully or not, when railroads refuse to carry certain commodities. In the past, for example, railroads refused to carry radioactive materials, but the Interstate Commerce Commission found that their refusal was unlawful and required them to publish rates for their transportation. The ICC also struck down an effort on the part of the railroads to impose wasteful and unnecessary "special train service" on shipments of radioactive materials. The courts upheld the ICC. These ICC and judicial determinations remain the law today.

In 2001, railroads embargoed certain toxic chemicals due to concerns about terrorism. It is unclear whether the DOT sanctioned that embargo. During emergencies such as washouts due to weather, railroads have on

Download English Version:

<https://daneshyari.com/en/article/707025>

Download Persian Version:

<https://daneshyari.com/article/707025>

[Daneshyari.com](https://daneshyari.com)