



NATIONAL TRANSPORTATION SAFETY BOARD  
**Investigative Hearing**

Norfolk Southern Railway general merchandise freight train 32N derailment with subsequent hazardous material release and fires, in East Palestine, Ohio, on February 3, 2023

<b>GROUP</b>	<b>H</b>
<b>EXHIBIT</b>	
36	

Agency / Organization

Norfolk Southern

Title

Association of American Railroads  
Common Carrierir Obligation Why Freight  
Railroads Must Transport Hazmat  
(May 2023)

# Common Carrier Obligation: Why Freight Railroads Must Transport Hazmat

Under their common carrier obligation, railroads move large quantities of hazmat, including [fertilizer](#), ethanol, [crude oil](#), refined petroleum and chlorine. The rail industry has invested enormous resources to ensure that the overall [movement of hazmat is safe](#) — with the aspiration of eliminating accidents and incidents altogether. Thanks to ongoing private investments, technological innovation, rigorous employee training, and community safety efforts, the hazmat accident rate is down 78% since 2000 to an all-time low.

Rail is still the safest way to move hazmat, with more than 99.9% of all hazmat reaching its destination safely. The rail industry has not asked — and is not now asking — to be relieved from its obligation to carry these materials.

## KEY TAKEAWAY

Freight railroads are legally required to transport hazardous materials (hazmat) under a common carrier obligation. This obligation benefits shippers and the public because rail is the safest way to transport hazmat over land.

However, the costs and risks of carrying these materials are borne by the railroads and not necessarily fully accounted for by the shippers who produce or use hazmat. The result is that railroads — as well as the public — are left bearing many of the costs and inherent risks of moving hazmat.

## Railroads have limited control over decisions about transporting hazmat.

Railroads are just one step in the production, distribution, and consumption chain for hazmat. Even though the transportation of hazmat involves actions and decisions by many parties, railroads bear most of the risks of an accident or incident during transportation. Ultimately, the railroad is responsible for moving trains and maintaining lines — no matter that the railroad would have declined a particular shipper's request if it had the discretion to do so.

- Railroads typically do not own the tank cars used to transport hazmat; rail shippers and leasing companies own the cars. In the past, the rail industry has advocated for tougher safety standards for tank cars to reduce the risks of accidents and incidents.
- Shippers — not railroads — choose the origin and destination points on the railroad's network between which hazmat moves. A railroad's discretion in such circumstances is limited to choosing the routing between the origin and destination. To do so, Class I railroads use the Rail Corridor Risk Management System (RCRMS), a joint initiative between railroads and the government, to analyze and identify the safest and most secure routes.

## The true costs of transporting hazmat are poorly reflected in rates.

Railroads do not necessarily have the option to charge rates to recover all the associated costs of moving hazmat. The law governing common carrier rates limits the extent to which the costs involved in transporting hazmat are assigned to those movements. Railroads incur significant costs from their obligation to transport hazmat. For example, the risks of transporting hazmat require railroads to pay higher insurance premiums — and there is no market for insurance that would fully protect railroads, leaving them to bear uncompensated risks. Railroads must also make capital expenditures and pay for special operating procedures to implement federal safety laws and regulations.

In the past five years, the rail industry has made over [\\$23 billion in annual investments](#) for infrastructure and technological innovation, rigorous employee training, and community safety efforts — a meaningful share of which responds to the need to properly handle hazmat shipments. Rates for common carrier service must be "reasonable." Although there are several methods the STB can use to assess whether a rate is reasonable, they do not adequately account for the full costs of transporting hazmat.



## **The current regulatory scheme disserves the public.**

If the costs and risks of transporting hazmat were better incorporated into rates, then shippers would "make economically rational decisions concerning production, use, and shipping of hazardous materials," according to one [Harvard report](#).

For example, faced with increased rates for transporting hazmat that reflect the full costs and risks incurred, shippers might reduce their usage of such materials in favor of substitutes that pose fewer public safety risks. Moreover, the potential for a catastrophic event to bankrupt the railroad involved means that the public could wind up without adequate recovery or the harm caused by such an event.

Over the years, the rail industry has advocated for [common-sense regulatory solutions](#) to these problems.