E14180

U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

APR 1 8 2005

Mr. Homer L. Taber
Director Fleet Engineering
American Railcar Industries
100 Clark Street
St. Charles, Missouri 63301-2075

Dear Mr. Taber:

This is in response to your application letter of March 15, 2005, requesting an exemption from the requirements of 49 CFR 179.5a, 179.5b, 179.5d, 179.201-3(b) and 172.302(c).

The regulations are explicit in that a Certificate of Construction (AAR Form 4-2) shall be furnished to the Association of American Railroad's (AAR) Executive Director- Tank Car Safety, prior to the tank car being placed in service.

The Department of Transportation (DOT) is responsible for oversight of the AAR's Tank Car Committee (TCC). The DOT feels that the TCC has an effective methodology in place to ensure that tank cars are not placed in service without being certified by the manufacturer. From a regulatory standpoint, the DOT relies upon a manufacturer's certification stating that the tank car is built to the approved drawings and meets the appropriate DOT specifications.

On May 31, 2002, tank car NATX 210023 was found leaking Hydrochloric acid on the Springfield Terminal Railway mainline in Lowell, Massachusetts. During the investigation, the FRA determined that the tank car owner did not possess the signed Certificate of Construction for the tank car as required by the regulations. In essence, the tank car that released product had not officially been authenticated and; therefore, was not authorized to be in transportation.

The DOT believes a modification of the current TCC approval process offered in your application, which delays the owner's possession of a certified Certificate of Construction for 60 days may increase the likely hood of tank cars being placed in service with out the required certification.

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As a result, your request for an exemption is hereby rejected on the grounds that it fails to demonstrate an equivalent level of safety.

Sincerely,

Delmer F. Billings
Director, Office of Hazardous Materials
Exemptions and Approvals