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Theodore L. Willke, PhD
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Dear Dr. Willke:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits a **petition for rulemaking pursuant to 49 CFR, Part 106, Subpart B, §106.95, and requesting amendment to 49 CFR, Parts 171 and 173.**

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

Several months ago, COSTHA members identified an issue that we felt posed a significant risk to transportation safety. Substances and articles regulated by Title 49 of the Code of Federal regulations (49 CFR) as hazardous materials are distributed from manufacturing facilities to various wholesale and retail outlets for sale to consumers.

Many of these products meet the classification criteria of ORM-D and are shipped under the proper shipping name Consumer Commodity. Some of these products exceed the quantities authorized as consumer commodities and are packaged, marked, labeled and transported in accordance with applicable regulations. Some products are distributed as authorized under the terms of a DOT Special Permit. Still others, such as equipment powered by internal combustion engines, are not regulated during distribution since they do not contain hazardous material fuels. The regulations provide adequate controls over transportation for the purpose of distribution to the consumer.

The Council on Safe Transportation of Hazardous Articles, Inc.

7803 Hill House Court Fairfax Station, VA 22039 Phone: 703/451-4031 Fax: 703/451-4207
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An undetermined quantity of these products are returned to the vendor through a retail sales agency or instrumentality or directly from a wholesale distribution center. Reasons for return may include, but are not limited to, product obsolescence, malfunction, or damage rendering the product unfit for use. The persons engaged in packaging the products for return or offering the shipments in reverse logistics may often be retail store clerks or others not readily identifiable within the definition of a "hazmat employee" as codified with 49 CFR, §171.8 and subject to the training requirements of Part 172, Subpart H. The packagings used for reverse logistics shipments are often not the original packagings as offered by the manufacturer and received by the distributor and may consist of any packaging materials convenient within that facility. Packagings may even include boxes, bags, etc. with advertising logos or markings to indicate contents that are no longer present within such package. Equipment powered by internal combustion engines may have been used by the purchaser and may contain residual hazardous material fuels. Reactive hazardous materials may not be properly segregated within the packaging or within over-packs and cargo transport units. These shipments may be offered as "non-declared" hazardous materials and may be transported by all modes of transportation, including aircraft.

DOT has identified undeclared hazardous material shipments as a risk to the public, transportation workers, and public safety personnel. COSTHA further identified an unquantifiable exposure to risk presented through undeclared hazmat, specifically from retail operations that unknowingly return articles containing hazmat to the product manufacturer or a distributor. A goal of both PHMSA and COSTHA is to foster compliance with the regulations. On November 30, 2006, COSTHA and PHMSA entered into a partnership agreement for the stated purpose of enhancing hazardous materials transportation safety in an activity currently regulated by DOT/PHMSA involving returns to a manufacturer or distributor and referred to therein as "reverse logistics". Through this agreement COSTHA and PHMSA intended to share information and to develop and disseminate outreach materials, training programs, and other resources to assist in raising hazmat awareness and reduce undeclared hazardous materials shipments.

Since November 30, 2006 COSTHA has held several meetings, conference calls, forums, and other written and oral communication and has extended an open invitation to others to participate in this partnership. A product of those efforts is now being presented to PHMSA as a petition for rulemaking which proposes to add specific sections to the HMR within 49 CFR to address hazardous materials in reverse logistics as a means to openly address the regulatory controls that will foster compliance.

Proposal

COSTHA hereby petitions PHMSA to amend 49 CFR Part 171, §171.8 to define the term "reverse logistics" and further, to amend Part 173 by adding a new section, §173.157 – General requirements and exceptions for reverse logistics.

§171.8 Definitions – *Reverse logistics* for the purposes of this subchapter, means offering for transportation or transporting hazardous materials by motor vehicle, rail car or vessel that are intended to be returned to or between a vendor, distributor, manufacturer or other person for the purpose of returning for credit, recalling product, replacement or similar reason for instance, from a retail or wholesale outlet.

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§173.157 – General requirements and exceptions for reverse logistics

General. When transported by motor vehicle, rail car or vessel in conformance with this section. A reverse logistics material (see § 171.8 of this subchapter) is not subject to any other requirements of this subchapter besides those set forth or referenced in this section.

(a) Hazardous materials authorized for transportation under this section are limited to the following materials within the quantity limitations specified.

(1) Division 1.4S and 1.4G fireworks (use TNT approval), flares and signals and ammunition

(2) A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1, 6.2, or ORM-D material contained in a packaging having a gross mass or capacity in each inner packaging not exceeding
(i) 0.5 kg or 0.5 L for a Packing Group I material;

(ii) 1.0 kg or 1 L for a Packing Group II;

(iii) 5kg or 5L for a Packing Group III, or ORM-D material;

(iv) 30 L for a diluted mixture, not to exceed 2 percent concentration, of a Class 3, 8 or 9 material or a Division 6.1 material;

(3) A Division 2.1 or 2.2 material in a cylinder or aerosol container with a gross weight not over 30 kg.

(4) A Division 4.3 material in Packing Group II or III contained in a packaging having a gross capacity not exceeding 1 L.

(5) A Division 6.2 material, or a material contained in a device other than a Category A infectious substance, contained in human or animal samples (including, but not limited to, secreta, excreta, blood and its components, tissue investigational activities, or disease treatment or prevention, or is a biological product or regulated medical waste. For liquids, the inner packaging must be leakproof, and the outer packaging must contain sufficient absorbent material to absorb the entire contents of the inner packaging.

(i) For other than a regulated medical waste, the quantity of Division 6.2 material in a combination packaging must conform to the following limitations:

(A) One or more inner packagings, each of which may not contain not more than 0.5 kg (1.1 lbs) or 0.5 L (17 ounces), and an outer packaging containing not more than 4 kg (8.8 lbs) or 4 L (1 gallon); or

(B) A single inner packaging containing not more than 16 kg (35.2 lbs) or 16 L (4.2 gallons) in a single outer packaging.

(ii) For a regulated medical waste, a combination packaging must consist of one or more inner packagings, each of which may not contain more than 4 kg (8.8 lbs) or 4 L (1 gallon), and an outer packaging containing not more than 16 kg (35.2 lbs) or 16 L (4.2 gallons).

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(5) The provisions of this section do not apply to a hazardous material that is a hazardous substance, self-reactive material (see §173.124) or material poisonous by inhalation (see §173.133).

(b) Packaging. (1) Packagings must be leak tight for liquids and gases, sift proof for solids, and be securely closed, secured against shifting, and protected against damage. Inner packagings must be secured against movement within the outer package and protected against damage under conditions normally incident to transportation

(2) Each material must be packaged in the manufacturer's original packaging if available, or a packaging of equal or greater strength and integrity.

(3) Outer packagings are not required for receptacles (e.g., cans and bottles) that are secured against shifting in cages, carts, bins, boxes or compartments.

(4) The fuel tank and fuel lines of equipment powered by an internal combustion engine must have the flammable liquid fuel drained to the greatest degree possible, shut-off valves if present shall be in the closed position and all fuel tank caps or closures must be securely in place. Packagings containing gasoline, must be made of metal or plastic and conform to the requirements of this subchapter or to the requirements of the Occupational Safety and Health Administration of the Department of Labor contained in 29 CFR 1910.106(d)(2) or 1926.152(a)(1). (173.220)

(5) Equipment powered by an internal combustion engine using flammable gas fuel, or other devices using flammable gas fuel (such as camping equipment, lighting devices, and torch kits) must have the flammable gas source disconnected and all shut-off devices in the closed position.

(6) Equipment powered by electric storage batteries must have the batteries properly installed within the equipment and protected against short circuit. The activation switch on the equipment must be protected to prevent inadvertent activation. If the equipment is damaged to the extent that the battery or switches may not be protected, the battery should be removed and packaged separately in a manner that will protect the terminals from short circuit.

(7) Aerosols must be packed to prevent inadvertent discharge of the contents from the aerosol packaging during transport.

(8) Cylinders or other pressure vessels containing a Division 2.1 or 2.2 material must conform to the packaging, qualification, maintenance, and use requirements of this subchapter, except that outer packagings are not required. [Manifolding of cylinders is authorized provided all valves are tightly closed.]

(9) *Materials authorized for transport according to an exemption or special permit as defined in §171.8 of this subchapter*

(i) Each outer packaging that has not been opened and is in the original undamaged condition with the closure secure, shall be offered for transportation and transported in the original packaging as authorized by the special permit;

(ii) When the inner receptacles have been removed from the outer packaging of a combination packaging and remain undamaged with closure secure they shall be packed either in the original packaging authorized by the special permit if available

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or shall be packed in a suitably strong outer packaging with suitable cushioning material and securely closed.

- (iii) If the outer packaging authorized by the special permit has been damaged to the extent that it no longer meets the general packaging requirements as a strong outer packaging, the contents shall be repackaged in a suitably strong outer packaging as required at paragraph (ii) of this section.

(c) Hazard communication. (1) A non-bulk packaging other than a cylinder (including a receptacle transported without an outer packaging) must be marked with a common name or proper shipping name to identify the material it contains.

(2) A DOT specification cylinder (except DOT specification 39) must be marked and labeled as prescribed in this subchapter. Each DOT-39 cylinder must display the markings specified in § 178.65(i).

(d) Other exceptions. (1) A reverse logistics material may be transported on a motor vehicle, rail car or vessel under the provisions of this section with other hazardous materials without affecting its eligibility for exceptions provided by this section.

(2) Hazardous materials that may react dangerously with one another may not be transported in the same outer packaging.

(3) Different hazard classes of materials in reverse logistics may be transported in the same cargo transport unit provided that they adequately separated to prevent commingling of materials that may result in a dangerous reaction in the event of an accidental release during transport.

(e) *Training* Each person who offers or transports a reverse logistics material under the requirements of this section must know about the requirements of this section.

Employees preparing shipments of hazardous materials to be offered, or being offered, or being transported for the purpose of reverse logistics as defined in §171.8 of this subchapter and authorized by this section are not subject to the Subpart H- Training requirements of this subchapter provided:

(1) The employer has identified the hazardous materials subject to the provisions of this section, has verified compliance with the appropriate conditions and limitations, and has provided training and supervision to persons preparing or offering these shipments for transportation, or transporting shipments in reverse logistics to make the provisions of this section effective.

(2) The employee has received appropriate training applicable to the material to be offered in transport in accordance with the provisions of this section. The training must enable the employee to recognize the hazardous materials, identify the hazards associated with the applicable material(s) and prepare the shipment as provided by this section.

(3) The employee has received training to follow methods and procedures to avoid accidents and properly handle these shipments to protect themselves from injury in the workplace.

(4) The employer shall maintain a record of those employees receiving the training required by this section.

(5) The operator of a motor vehicle that contains a reverse logistics material must be informed of the presence of the hazardous material and must be informed of the requirements of this section.

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(d) Shipments prepared, offered for transportation, or transported according to this section are not subject to any other requirements of this subchapter.

COSTHA believes that the proposed amendments to the HMR would significantly increase the level of awareness of those persons engaged in the preparation and offering for transportation of hazardous materials in reverse logistics, reduce the quantity of undeclared hazmat in transportation, and enhance transportation safety. We would also request that, following adoption of the proposed amendments, that PHMSA and COSTHA and others engaged in the partnership jointly develop outreach materials for distribution throughout the retail distribution system that would emphasize the regulatory applicability of these controls to products in reverse logistics.

Please feel free to contact COSTHA if additional information or clarification is sought.

Sincerely,



John V. Currie
COSTHA Administrator

Cc: Robert Richard, PhD, Deputy Associate Administrator, US DOT PHMSA