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Re: Research and Special Projects (RSPA) Docket No. 2006-26322 (HM-206F): Notice of Proposed Rulemaking

Dear Sirs:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) is a not-for-profit organization with more than 150 members representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others whose business and industry is dedicated to the safe and compliant transport of hazardous materials. COSTHA members represent a United States (U.S.) and international commercial interest which exceeds \$2 trillion annually. In addition to promoting regulatory compliance and safety in hazardous materials manufacture and transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules, and regulations for the safe transport, handling, storage, and distribution of hazardous materials.

COSTHA's primary mission is working with government, legislators, regulatory bodies, and the public to ensure that safety and compliance are first and foremost in the transportation of hazardous materials which includes having sound emergency response plans, response personnel or contractors, and a 24-hour emergency response contact phone number available to response agencies. Paramount to our members is the protection of people and our environment.

Our members manufacture and/or transport hazardous materials throughout the U.S. and internationally via road, rail, air, and marine modes. Hazardous materials manufactured, shipped, and transported by COSTHA members include those materials which are offered in quantities and modes that are required to provide emergency response information and an emergency response telephone number as required by HMR §172.604.

The Council on Safe Transportation of Hazardous Articles, Inc.

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COSTHA would like to first thank the Department of Transportation (DOT) for its continued work to improve the safe transport of hazardous materials and for providing regulatory guidance and rules to address a hazardous materials incident by requiring that shippers (offeror) provide emergency response information and an emergency response telephone number for each shipment of a hazardous material, unless excepted [ref: HMR §172.604 (c)]. The membership of COSTHA has reviewed RSPA Docket No. 206-26322 (HM-206F). This Notice of Proposed Rulemaking (NPRM) requests comments regarding a revision to 49 Code of Federal Regulations, Part 172 Subpart G – Emergency Response Information. COSTHA would offer the following comments for consideration regarding this NPRM (HM-206F).

This NPRM is proposing that the shipper (offeror) as defined in HMR §171.8 be identified on the shipping paper in association with the emergency response contact number. Alternatively, the shipper may provide a contract number as provided by the contracted emergency response service provider. Currently, a shipper is required to provide an emergency response contact number which is to be monitored and accessible at all times by a person who is knowledgeable of the material being transported and may provide incident mitigation or who has immediate contact with a person that maintains such knowledge. COSTHA agrees that the existing regulatory requirements contained in HMR §172.604 (a)(1-3) addresses the intent of having a reputable and knowledgeable source, as provided by the shipper or their contracted service provider, with whom emergency response personnel may consult regarding any hazardous material involved in a transportation incident. Further, the current requirement [HMR §172.604(a)(3)] to have an identified emergency response (ER) contact number on the shipping document provides responders a method to access response information from the shipper. What PHMSA is proposing in this NPRM is a method for others who might be involved in the transportation and delivery process, such as carriers, freight forwarders, consolidators, etc., to provide accurate and rapid information, as provided by the shipper (offeror), for any issues regarding a material for which they may be involved in handling or transporting. This further communication of emergency response contact information can be accomplished by providing a copy of the original shippers document containing an emergency contact phone number which properly displays the required ER contact number, by providing a revised shipping document that contains the ER contact information of the in transit service provider(s), or by providing the original shippers ER contact information on subsequent shipping documentation. While COSTHA agrees that having emergency response information readily available to response personnel there are additional issues that are not addressed in the NPRM or may need clarification.

Shippers currently have many methods available to them for creating shipping documents and the information contained therein, including the emergency response phone contact, as applicable. There are automated systems and manually generated documents, numerous forms and formats, as well as the utilization of various recognized and authorized regulatory bodies and their designated shipping document requirements (ref. HMR §171.11, 171.12, and 171.12a). In each instance of creating a shipping document DOT or other authorized transportation regulatory bodies (i.e. ICAO) have provided regulatory rules, guidance, and examples which direct how and when this information is to be provided.

There are two very specific examples which illustrate the potential difficulties in complying with this NPRM as written. First, many shippers either contract with a service provider and list the contracted

service providers emergency response phone number or have elected to provide company resources to address a hazardous materials incident and will then utilize a company provided ER contact phone number. To ensure that the information is properly entered on the shipping document many methods of compliance are available. The ER contact phone number may be preprinted on a shipping document, provided by a software or ERP system, or handwritten. The format of the forms, unless specifically detailed by regulatory reference (i.e. ICAO Chapter 1, A3, US 12), allows this information to be placed immediately following the hazardous material description or in a clearly visible place on the shipping document. The ER contact information provided by shippers should be first considered as they are the most knowledgeable about the products they ship. To require that interconnecting carriers, freight forwarders, or distributors review a shipping document containing ER contact information and then be responsible for carrying this information forward on subsequent shipping documents by showing the original shippers company information or contract number with a service provider is asking these intermediate handling groups to verify that the information provided is accurate, thereby holding them accountable. Unless PHMSA provides clear details as to how the information, by example (format), is to be provided (ref: contract numbers, in association with the ER contact number – NPRM (HM-206F), may be confusing. By example, EMERGENCY CONTACT +1 800-123-4567, Contract number ER5432183. COSTHA is requesting clarification on how and in what specific location on the original shipping document any additional information is to be provided.

Many shippers, carriers, freight forwarders, and others involved in the distribution process may need to revise computer systems or software to accommodate the changes suggested in HM-206F by PHMSA. As such, these changes can result in costly programming and training expenses. Further, where preprinted documents or the use of electronic data interchange (EDI) are used, the replacement of existing documents with reformatted shipping documents or reprogramming databases will be costly. COSTHA is requesting a review of the expense associated with company formatted, purchased documents, or data transfer systems and the associated costs of modification to these documents or databases and ERP systems. Additionally, COSTHA is requesting an extended compliance (transition) period should this NPRM become a final rule.

When shippers offer a hazardous materials package and create a shipping document, often the shipment is received by an employee of a carrier. As stated by PHMSA, it would become a responsibility of the carrier to verify that the shipper information, name or contract number, associated with the ER contact information is correct. Many times there is no one available to request verification of shipping document information and there may be instances where the available person would need to request verification from another source. These scenarios present opportunities for the shipment to be delayed or frustrated thereby increasing costs. COSTHA would request clarification of the specific responsibilities of all those involved in the movement of hazardous materials – shippers, carriers, freight forwarders, and handlers – with regard to this NPRM.

Interlining or intermediate carriers who move hazardous materials by road and air will find it difficult to comply with the NPRM as written. The requirement for placing an emergency response contact number on an air Shipper's Declaration is clear as to its format and content. ICAO/IATA each reference State Variations which require ER contact information. Among them is USG-12 which states the documentation requirements for entering an emergency contact number on Shipper's Declaration. As no changes or additions may be made to Shipper's Declaration by intermediate handlers of the shipment with regard to ER contact information, the potential for non-compliance by

international inbound shipments is greatly increased due to missing or incorrectly formatted information. The impact to inbound traffic with this change would be significant, both from a cost and training standpoint. COSTHA would like clarification on what impact this NPRM would have on air movement of hazardous materials, specifically on the Shipper's Declaration.

There may be instances where shipments will be consolidated on one freight container. This consolidation may include materials from various shippers each of which has provided a separate ER contact number. Many less-than-truckload (LTL) carriers address this issue by creating manifests or delivery receipt documents which provide the original shipper's name and ER contact information and may carry on-board the original or copies of the shipper's documents. In other instances, the carrier may accept responsibility for the consolidation and provide their company ER contact number information. Given the first scenario, to create a delivery receipt or other delivery document which would include the shippers name or contract number and ER contact number for each hazardous article on board a freight container would further provide opportunities to confuse response personnel or provide additional opportunities to create documents containing errors. COSTHA would suggest that the existing rules fully meet the needs of response personnel by providing a contact number to call for information regarding a hazardous materials incident and any additional information is not necessary.

COSTHA believes that any revision to the current emergency response contact requirements set forth in §172.604(a)(3) should only include a clarification that all hazardous materials shipping documentation, original or otherwise reproduced documents such as manifests, delivery receipts, consists, etc., must include an emergency response contact number which represents the number supplied by the "person who offers or offereor" as defined in HMR §171.8. Given the intent of the regulation requiring emergency response phone contact information – an ER phone number response personnel can call to receive information about a specific product - there should be no further requirement to provide additional information regarding the company name or emergency response service provider contract number.

The members of COSTHA would like to thank PHMSA for its long established history, leadership and continued efforts towards improving transportation safety. This regulatory oversight is greatly appreciated by all, employers and employees alike. We greatly appreciate this opportunity to submit for your consideration these comments and would respectfully request that you consider our comments to this proposed rule and the suggested areas of concern expressed herein.

Sincerely,

Timothy L. Kelley

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Technical Consultant