



COUNCIL ON SAFE TRANSPORTATION
OF HAZARDOUS ARTICLES, INC.

July 2, 2010

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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits comments to the Advanced Notice of Proposed Rulemaking (ANPRM) published in Docket No. PHMSA-2009-0241 (HM-242) on April 5, 2010.

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.

COSTHA appreciates the opportunity to provide comments on HM-242, and applauds PHMSA's efforts to address the issues created by international shipments of combustible liquids. Many of our members utilize the exceptions provided in 49 CFR 173.150(f) for domestic shipments of their products or materials. Thus any changes to these exceptions will impact their operations. PHMSA has not specifically detailed any specific proposals in the ANPRM so COSTHA will address the issues in a more general manner. However, we do note several possible solutions which PHMSA is considering, including eliminating the exception for "high flash point" flammable liquids, expanding the current limits to include operational considerations, and modifying references that currently create confusion for classification of combustible liquids which also meet the requirements of a hazardous waste or marine pollutant.

The Council on Safe Transportation of Hazardous Articles, Inc.

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COSTHA believes industry has proven the current exceptions provided for materials meeting the current definition of a Combustible Liquid but packaged in non-bulk packaging can be transported safely as demonstrated by performance over the past 20 years. Therefore, we would not be in favor of eliminating the exception as a whole. Modifications to the requirements to address problems which arise when such materials are subsequently offered in international transport would not be opposed as long as current exceptions are continued in a similar manner.

Questions

In the ANPRM, PHMSA specifically identified six (6) questions. To support PHMSA's information collection efforts, COSTHA is hereby submitting comments to many of these questions.

Question 1 – Should the HMR Continue to apply to materials with a flashpoint above 60° C (140° F) and below 93° C (200° F)? What benefits would result from de-regulation of combustible liquids? What are the safety implications of such de-regulation? How would such de-regulation affect emergency response?

COSTHA members believe PHMSA should take a close look at the number of incidents involving these materials. In reviewing the 5800.1 reports posted on PHMSA's website, approximately 100,000 incidents involving Class 3 materials have been reported since 1998. Of those, only 8% involved materials classified as combustible liquids (3.8% of the total were packed in non-bulk packaging). Further, 0.02% of the nearly 8,300 incidents resulted in 21 fatalities. None of the reported fatal incidents involved non-bulk packaged combustible liquids but instead were in bulk packaging. In total, 0.06% of the total number of combustible liquid incidents involved fatalities or injuries. This equates to less than 0.006% of all flammable liquid incidents.

COSTHA is unsure how many combustible liquid shipments occur each day, but industry has estimated the number may be as many as 10,000-20,000 per day. Over 12 years of reporting, assuming the lower estimate, that would equate to nearly 44 million shipments of combustible liquids. Based on the fact that any fatalities were reported, it is clear bulk shipments present a risk, however based on the lack of fatal incidents involving non-bulk shipments, as well as the significant safety record of such shipments (estimated 1 non-bulk incident per 11,500 shipments), COSTHA believes combustible liquids in non-bulk packaging do not pose a significant risk in transport.

Additionally, COSTHA has long advocated harmonization with international standards. Where possible, harmonization with international standards improves safety by removing confusion, aligning marking, labeling, placarding, and documentation requirements, all of which improve communication of hazards present, of the lack thereof.

Question 2 - Should the HMR continue to permit Class 3 materials with flashpoints between 38° C (100° F) and 60° C (140° F) to be reclassified and transported as combustible liquids? What are the benefits of eliminating this reclassification exception? Would there be costs associated with eliminating this reclassification exception? What are the safety implications of eliminating the reclassification exception? How would elimination of the reclassification exception affect emergency response?

Many consumer products, including paints, household goods, toiletry articles, automotive service products, and other consumer commodities are re-classed and transported as combustible liquids in non-bulk packaging. If these materials were not eligible for re-classification, they would have to be shipped as ORM-D or Class 3 materials. In both cases, significant costs would be associated with increasing package quality and marking/labeling. For certain modes, these materials would also require documentation. Additionally, many carriers chose not to transport hazardous materials due to increased costs associated with insurance premiums. Therefore, either the cost of transportation would increase as carriers were forced to obtain hazardous materials insurance coverage, or the availability of transportation would decrease which would lead to increased transportation fees from the carriers that do transport hazardous materials.

In either case, any resulting costs would eventually be passed to the consumer.

Question 5 - Should the HMR continue to permit combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials? Should PHMSA adopt a requirement for all combustible liquids to be described as "Combustible liquid, n.o.s."? For example, for hazardous material shipping names currently in the Sec. 172.101 HMT, such as Paint, Diesel fuel, Fuel oil, Kerosene, Turpentine, Methallyl alcohol, etc. What safety benefits would result from the use of shipping descriptions unique to combustible liquid materials? How would such a change affect emergency response?

This suggestion has merit as today, emergency responders are not positive of the hazard they are facing with a paint shipped as a combustible liquid in bulk. Does it have a low flashpoint? Would it take precedence in response to other hazards at the scene? Calling the material a Combustible Liquid, n.o.s. would at least clearly define the materials as having a high flashpoint, allowing appropriate emergency response. However, additional data would be needed. COSTHA's review of the PHMSA incident data did not reveal any incident trends that would support or refute the argument. COSTHA strongly suggests emergency responders be queried as to their risk assessment procedures and determine if a single proper shipping name would be beneficial.

Summary

In general, COSTHA supports PHMSA's efforts to harmonize with international standards and reduce the number of incidents of non-compliance with regards to combustible liquids being offered. COSTHA members strongly believe the safety record of current exceptions supports their continuation. Costs associated with eliminating the exception would be tremendous to both industry and the consumer public at minimal safety gain. Our members believe describing all combustible liquids by the proper shipping name "Combustible Liquids, n.o.s." may be a solution but would suggest data and input from emergency responders could enlighten the proposal. We request PHMSA consider these comments when preparing the NPRM and look forward to providing additional comments when the NPRM is issued.

Sincerely,



Tom Ferguson, PG, CHMM, DGSA
Technical Consultant