



COUNCIL ON SAFE TRANSPORTATION  
OF HAZARDOUS ARTICLES, INC.

August 27, 2012

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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 (NPRM) published in Docket No. PHMSA-2011-0140 (HM-234) on May 29, 2012. PHMSA is considering incorporating a number of Special Permits into the HMR, which will result in changes to the Hazardous Materials Regulations (HMR) regarding requirements to manufacture, use, and requalify DOT specification cylinders. COSTHA members have identified several items for which we would like to provide comments.

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 our members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials. Amongst our members, COSTHA proudly represents air carriers, representing the majority of carriers involved in the domestic and international carriage of passengers and cargo by aircraft. In order to meet the specific needs of these members we sponsor an Air Carriers Roundtable (ACRT) comprised of seventeen (17) passenger and cargo carriers which serves as a forum for discussion of issues which relate specifically to the airline industry and their customers, many of whom are also COSTHA members.

**Incorporation of Special Permits – DOT-SP 11850**

COSTHA is supportive of the effort to incorporate long standing special permits into the HMR. The special permit process allows industry to be forward thinking in new technologies and testing criteria while providing PHMSA the ability to monitor performance. Given the strong safety record, we feel it is logical at this time to incorporate the special permits addressed in the Petitions being considered.

**The Council on Safe Transportation of Hazardous Articles, Inc.**

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However, COSTHA believes an additional special permit should be considered for incorporation. DOT-SP 11850 permits the use of thermal acoustic emission testing for certain cylinders used in aviation fire-suppression systems. Experience in using the alternate testing has proven valuable in discovering possible sub-standard cylinders which might not have been discovered by using established methods. Although the testing is currently not widely used, if the test conditions are incorporated into the HMR, the use of the testing may become more prevalent.

### **Petitions for Incorporation**

#### *P-1515*

PHMSA is proposing to adopt Petition P-1515 into the HMR. One of the conditions proposed in this petition is the allowance of cylinders which fail requalification to undergo repair and then attempt requalification a second time. COSTHA questions whether this provision would be allowed for cylinders covered by special permits as well. If the provision would be adopted directly into §180.205, then the provision would apply to all cylinders, even those covered by a special permit. Unless PHMSA indicates otherwise, to prevent repair and retesting of cylinders covered by special permits, all existing and future special permits would require language indicating that cylinders failing requalification are not permitted to be repaired and requalified.

If it is PHMSA's intention to allow cylinders covered by special permits which fail requalification to be repaired and retested, then we believe PHMSA should state clearly in any proposed language that this provision applies to all cylinders, including those covered under a special permit.

#### *P-1563*

In petition P-1563, 3M noted difficulties in communicating the marking requirements of outer packagings containing cylinders. Specifically, confusion over the use of the "OVERPACK" versus the marking "Inner packages comply with prescribed specifications" leads to frustrated or delayed shipments. The petition recommended allowing the use of the word "OVERPACK" *in lieu* of the "Inner packages comply..." marking.

PHMSA indicates instead permitting the "OVERPACK" marking, the Administration is considering eliminating the "Inner packages comply..." marking and requiring all outer packagings to bear the necessary and required marks and labels currently required on the contained cylinders. Such a change would eliminate the need to mark and label cylinders contained within outer packagings.

COSTHA is in favor of either the suggestion by 3M or the proposal by PHMSA. We do not believe the marking of the outer packaging stating "Inner packages comply..." provides any additional information or certification which promotes safety. Currently a shipper is required to provide a certification on the shipping paper that the hazardous material contained within the packaging complies with all pertinent requirements of the HMR. Therefore the additional certification marking is redundant. Either option reviewed in the ANPRM would reduce regulatory burden, reduce confusion, and improve overall safety.

We recognize this will cause additional marking and labeling requirements for outer packagings. However, the result will be improved hazard communication while removing redundant and possibly distracting markings.

*P-1593*

Since the publication of the ANPRM, COSTHA has submitted Petition P-1593 for rulemaking consideration. The petition addresses the incorporation of cylinders covered under special permits into life-saving appliances (rafts, aircraft door slides, etc.). Such cylinders are non-DOT specification fiber reinforced plastic, full composite, compressed gas cylinders and become integral to the life-saving appliance in which they are installed. To open the device and access the installed cylinder creates a safety hazard to the employee (i.e. inadvertent inflation or activation). Yet without accessing the cylinder, it is not feasible to determine the applicable SP marking.

A number of special permits (DOT-SP 8162, DOT-SP 10915, DOT-SP 10945, and DOT SP 11194) cover the manufacture and use of these cylinders. However, they require the special permit number to be marked on the package and associated shipping papers.

DOT-SP 12955 is a separate special permit but exempts the SP marking and inclusion of the SP on shipping papers for packages of UN2990, Life-saving appliances, self-inflating. The permit is in its seventh revision with no known safety or compliance issues.

COSTHA believes PHMSA should consider incorporation of DOT-SP 12955 into §173.219. In our petition number P-1593, we propose specific language which could be incorporated into the HMR to address the issue. As this addresses a specific cylinder issue, we believe our petition should be included in HM-234.

COSTHA supports the efforts by PHMSA to address changes to the cylinder requirement in the HMR. We appreciate your consideration of our comments, and look forward to providing additional comments once formal proposals are presented in a future Notice of Proposed Rulemaking.

Respectfully submitted,



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