



## COMING DOWN THE PIPE

**NORTH AMERICA** • COSTHA'S 2022 ANNUAL FORUM PROVIDED THE IDEAL PLATFORM FOR DUTYHOLDERS TO LEARN ABOUT THE CHANGES TO THE REGULATIONS COMING FROM THE US AND CANADA

FOR THE PAST 50 years, the Council on Safe Transportation of Hazardous Articles (COSTHA) has provided a haven for the much put-upon members of the hazmat fraternity, primarily though not only in North America. Its annual forum and expo offers an ideal place to meet and hear from the most senior regulators from agencies in the US, Canada, Europe and elsewhere.

Like other event organisers, though, COSTHA has had to take its Annual Forum online for the past two years; it is unfortunate that regular delegates (including HCB) miss

the opportunity to talk dangerous goods late into the night around the bar (or pool or fire pit, as has been the case at some venues over the years), to discuss issues of common interest and to hang out with the regulators. It is to be fervently hoped that we will all be able to get back to that next year but, in the meantime, at least COSTHA has been able to keep its audience informed about recent and upcoming regulatory changes and to arm them with the knowledge and tools they need to do their jobs to the best of their ability.

One upside of the need to move to a virtual

platform is that the training sessions that accompany each year's Annual Forum do not have to be packed into the weekend before the event officially opens. As was the case this year, those sessions ran over the course of three weeks following the conference sessions, giving plenty of time for attendees to digest the information provided.

The Forum itself, under the title 'Navigating the Future of Compliance', opened on 4 April with a meeting of the International Vessel Operators Dangerous Goods Association (IVODGA) which, like COSTHA itself, is administered by Currie Associates. That session heard from a broad range of speakers on topics such as the new requirement to provide a safety data sheet (SDS) for high-hazard chemicals when in the Shanghai area, new provisions for data loggers, enforcement by the Container Inspection Training and Inspection Team (CITAT), work of the US Environmental Protection Agency (EPA) on hazardous waste under the Resource Conservation and Recovery Act (RCRA) and relevant activities of the Federal Railroad Administration (FRA).

That packed session was followed by concurrent meetings of the North American Automotive Hazmat Action Committee (NAAHAC), a voluntary group of hazardous materials professionals working in the automotive sector, and the Air Carrier Roundtable, which featured presentations from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Aviation Administration (FAA).

### RULES IN PROGRESS

Sam Moyers, associate vice-president and director of transportation safety at Arcadis and COSTHA president, opened proceedings on 5 April with an early morning (in North America, at least) annual membership meeting, before moving on to introduce the first conference session, a round-up of important developments in China, Australia and India.

Concentrating on North America, however, the second session offered the much anticipated annual review of regulatory rulemakings by PHMSA and its counterparts in Canada. This year, the US element of the session was given by Glenn Foster, chief of the

Regulatory Review and Reinvention Branch of PHMSA's Office of Hazardous Materials Safety, Standards and Rulemaking Division.

At the top of the list of priority items for the current year at PHMSA is to get the HM-224I rulemaking to final rule stage; this will introduce new regulations for the carriage of lithium batteries by air, bringing US domestic regulations into closer alignment with the international provisions. Glenn mentioned also that PHMSA is involved in a pro-active multi-agency group to look at the management of battery hazards as technology progresses.

During the years of the Trump administration, PHMSA – as well as other Department of Transportation (DOT) bodies – fell behind with its work to maintain overall harmonisation with international rules. However, Glenn said, work to bring the HM-215P rulemaking to final rule stage is progressing well; indeed, the final text is currently under review and it should be published in good time to enter into force on 1 January 2023. HM-215P is the latest in the regular biennial updates and will align the US

Hazardous Materials Regulations (HMR) with the 22nd revised edition of the UN Model Regulations and the other international regulations that derive therefrom. PHMSA always reserves the right to vary from the Model Regulations and there will be some variations included this time round; HCB will look more closely at HM-215P when the final rule is published. Meanwhile, Glenn said, work has already started on the next biennial update, HM-215Q.

Also on the priority list is HM-264A, which will suspend (temporarily, at least) the provisions that authorise the transport of LNG in rail tank cars, in response to an Executive Order. The notice of proposed rulemaking (NPRM) under HM-264A was published on 8 November 2021 and by the time the comment period closed on 23 December PHMSA had received around 7,000 comments. Those comments, along with the chance PHMSA took to consult with its colleagues at FRA and external technical experts on recent research, have provided valuable information that will help support any future rulemaking on the topic.

Also currently in progress are two smaller rulemakings, both heading towards the final rule stage: HM-241, which will incorporate the provisions of ASME Code Section XII; and HM-260B, which contains editorial corrections to HMR.



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Glenn highlighted another rulemaking that will be of interest and relevance to a lot of stakeholders – HM-265, which will aim to enhance modal safety. This is another initiative that cuts across various agencies and it will be very interesting to see what its NPRM contains.

#### AROUND THE MODES

There are several other rulemakings working their way towards NPRM stage. HM-250A on radioactive materials, which aims to align HMR with the International Atomic Energy Agency (IAEA) Transport Safety Standards, is already drafted and will be published soon. HM-263 will address real-time train consist information and HM-264B will look more broadly at the safety of LNG in transport. Some others aim to streamline and improve PHMSA's regulatory work: HM-253G is another rulemaking to convert long-standing Special Provisions into HMR; HM-219D will respond to petitions for rulemaking; and HM-257A will streamline the approvals process for energetic substances. PHMSA is also working on HM-265A, which will look at regulatory reform initiatives and will appear first as an advance notice of proposed rulemaking. "We're getting there, little by little," Glenn added.

Glenn was followed by Don Burger, chief of PHMSA's Special Permits and Approvals branch, who appealed for applicants to provide all the necessary (and correct) information and to use the online submissions portal. He noted that the branch has lost around one-third of its staff over the last two years, while the volume of applications is as big as ever.

Later in the day, COSTHA delegates enjoyed a suite of presentations from modal authorities, beginning with FAA's Michael Cameron, division manager for Policy, Standards and Stakeholder Engagement, and Victoria Lehman, branch manager. They described FAA's three-pronged strategy to improve safety in the transport of dangerous goods by air, covering packing, cargo awareness and operational safety.

But, as might be expected, FAA's focus over the past two years has been on the transport

of Covid-19 vaccines. The agency established a dedicated team in October 2020, which works in coordination with DOT, other federal agencies, the airline industry, pharmaceutical manufacturers and other stakeholders; the aim is to ensure that vaccines are not only transported safely but also in an efficient and timely manner. FAA actively engages with external stakeholders through the Vaccine Distribution Engagement Meeting (VDEM) to share ideas and learn about successes and challenges. More information on this work can be found at [www.faa.gov/coronavirus/vaccine\\_transport/](http://www.faa.gov/coronavirus/vaccine_transport/).

Work on that subject is ongoing – as is the Covid-19 pandemic. The Office of Management and Budget (OMB) granted FAA emergency approval to allow the voluntary collection of information from parties that have experience in the transport of Covid-19 vaccines, in order to support continued operational safety and efficiency. In early February this year, FAA published a notice regarding the information collection programme, which ran from 15 March to 29 April.

#### FAMILIAR FACES

Also on the programme was long-time COSTHA presenter James O Simmons, transportation specialist at the Federal Motor

Carrier Safety Administration (FMCSA), who described how the agency goes about its business of maintaining oversight of the nation's trucking industry. FMCSA has also responded to the Covid-19 crisis, issuing several waivers to provide relief for operators unable to meet the normal requirements for licensing, reporting and testing, and to enable the transport of emergency relief materials. Some of those waivers expire at the end of May 2022.

FMCSA is also attempting to ameliorate the current driver shortage, introducing a new Entry-Level Driver Training programme this past 7 February. This establishes new minimum training standards for new entrants to the profession as well as to those upgrading or seeking an endorsement (hazardous materials, passengers and school buses) for the first time. Those obtaining a Commercial Learner's Permit (CLP) after that date must complete the relevant training from a registered training provider, before taking a Commercial Driver's License (CDL) skills or knowledge test.

There is also a system of information management, which involves training providers registered on the Training Provider Registry (TPR) and self-certifying that they meet all FMCSA and State requirements. The



TPR system is free of charge to users. Once a driver successfully completes the required training, the training provider must then electronically submit the driver's certification to TPR.

James highlighted another issue of urgent concern to the trucking industry, resulting from the closure of 3G networks by telecommunications providers, as from February 2022; this is affecting those electronic logging devices (ELDs) that rely on 3G communication, which will no longer function properly. Motor carriers need to verify that their ELDs continue to meet FMCSA technical standards since, unless an extension is granted, they have only eight days to get a malfunction resolved. James explained the required details for obtaining an extension – which only relate to a malfunction caused by the '3G sunset' – but noted that those issued thus far were to expire by the end of April at the latest.

Moving to the water, Lt Joseph Kolb, staff engineer within the US Coast Guard's (USCG) Hazardous Materials Division, explained the

agency's organisation and its activities in the hazmat arena. He began by noting that there are changes at the top at USCG planned for this summer, with Admiral Karl Shultz taking over as Commandant. The Hazardous Materials Division's current priorities, Joe explained, are to improve education and compliance in relation to undeclared and mis-declared hazardous materials, to review compliance with HMR in ferry operations, to improve its outreach and education efforts, and to ensure US interests are well represented at the International Maritime Organisation (IMO).

As part of that remit, USCG works with its modal partners and with PHMSA in the development of rulemakings; it was involved in HM-215P and the HM-260B final rule, which made some editorial corrections and clarifications to HMR. USCG is also, perhaps surprisingly, involved in the development of the NPRM under HM-263, which derives from the Fixing America's Surface Transportation (FAST) Act and will require Class 1 railroads transporting hazardous materials to generate accurate electronic train consist information in real time.

Joe brought delegates up to speed with recent activity at the IMO, although as with other regulatory bodies it has moved towards virtual meetings and the USCG team have not



PHMSA AND OTHER MODAL BODIES WORK IN CONCERT WITH THEIR COUNTERPARTS IN CANADA TO HELP ENSURE SEAMLESS CROSS-BORDER TRANSPORT OF HAZARDOUS MATERIALS



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had the opportunity to visit London lately. The Editorial & Technical Group (E&T) on the International Maritime Solid Bulk Cargoes (IMSB) Code conducted its 36th session virtually on 7 to 11 March and is due to meet again – perhaps in person this time – for its 37th session in the last week of September. The COSTHA meeting came just as the Sub-committee on Pollution Prevention and Response (PPR) was holding its ninth session, and the Sub-committee on Carriage of Cargoes and Containers (CCC), which has responsibility for the International Maritime Dangerous Goods (IMDG) Code, is scheduled to hold its eighth session from 19 to 23 September, though this may be extended depending on the outcome of the upcoming sessions of the Marine Environment Protection Committee (MEPC) and Maritime Safety Committee (MSC).

#### NORTH OF THE BORDER

Over the past two or three years, Canada has upped the velocity of its rulemaking under its Transportation of Dangerous Goods Regulations (TDGR) and Christopher Blain, executive director at the TDG Directorate's Regulatory Frameworks and International Engagement division, gave a detailed presentation of the latest developments.

The overarching feature of current activity is the 'TDG Transformation' programme, which aims to implement a suite of 18 initiatives that will enable the TDG programme "to innovate alongside industry" and improve Transport Canada's ability to effectively and efficiently oversee the safe and secure transport of dangerous goods. Those initiatives cover regulatory, legislative and organisational changes and are being introduced after extensive consultation with stakeholders.

One important initiative is what Chris called 'TDG Core', which is designed to modernise IT systems within the TDG Directorate. As part of that, its inspectors are now using cloud-based systems to write and upload reports. It will all help the TDG Directorate to become a more data-centric and agile department and to produce evidence-based regulations.

One external but fundamental part of the transformation programme is the

development of the Client Identification Database (CID), which is designed to create an accurate and reliable inventory of those companies and the sites where dangerous goods are handled, offered for transport, transported or imported into Canada. The policy phase has been completed and a digital solution is under development; Chris said he expected publication of proposals in Canada Gazette Part I (CG I) for comments this spring, with the final rule likely to appear in Part II (CG II) in spring 2023.

Of more immediate import to dutyholders, perhaps, is the planned publication in CG I this spring of Canada's major international harmonisation rulemaking. This has been an extensive undertaking, with consultation going back as far as 2016 and the final rule unlikely to appear until the third quarter of 2023. The TDG Directorate has had to coordinate with several other national agencies as well as industry and its US counterparts.

The rulemaking will modernise some outdated requirements for the transport of dangerous goods by air as well as taking updates from the IMDG Code, the International Civil Aviation Organisation (ICAO) Technical Instructions and the UN Model Regulations into TDGR. Canada also plans to harmonise certain parts of TDGR more closely with HMR, in order to improve cross-border

transport, in areas such as the recognition of PHMSA Special Permits, placarding requirements and toxic inhalation hazard (TIH) substances.

#### MORE TO COME FROM CANADA

Already published in CG I this past December, following the publication of the Canadian General Standards Board (CGSB) Standard 192.3 in November 2020, is an update and expansion of the training requirements in Part 6 of TDGR, which will introduce a competency-based training and assessment approach, similar to that being introduced by ICAO in the air transport sector but here applied to all modes. The consultation period is now closed and comments are being analysed, with the aim of getting the final rule into CG II in spring 2023, at which point CGSB 192.3 will enter into force (though there will be a 12-month transitional period). Transport Canada will prepare and publish guidance documents on its website to help dutyholders assimilate the new provisions.

The TDG Directorate is also working on what it calls a 'fee modernisation' plan, which will introduce new fees and service standards for its means of containment (MOC) Facilities Registration Program. This aims to cover some of the costs of administering the programme, rather than leaving it all to the



Canadian taxpayer, and has been subject to extensive consultation with stakeholders. Regulatory development is now complete, Chris reported, with publication in CG I planned for spring this year. The proposals also include development of a digital system by which stakeholders can make applications online, while Transport Canada is also preparing guidance materials and outreach efforts.

A more general update of TDGR is planned, following consultation going back to 2015; more detailed consultation was held at the end of 2021. The TDG Directorate is seeking to update and clarify TDGR to more closely align with new industry practices and to address comments that have been received in recent years. Chris acknowledged that the rulemaking has been a long time in development and that some aspects contained in earlier drafts have been overtaken by later events. He now expects publication in CG I in spring of 2023 and noted that it may include



IT WAS CLEAR FROM THE PRESENTATIONS AT THE COSTHA ANNUAL FORUM THAT THOSE INVOLVED IN HAZMAT TRANSPORT WILL SOON FACE A LOT OF REGULATORY CHANGES

specific provisions for the transport and delivery of dangerous goods by drones, which is currently not allowed under civil aviation rules in Canada.

Finally, Chris came to the 'regulatory sandbox' that Transport Canada has been running to assess the feasibility of the use of electronic shipping documents. The project came to an end on 31 March 2022 after the participation of seven carriers in four studies, two live simulations and one table-top simulation exercise. A simulation using drones is planned for the third quarter of this year. Transport Canada is continuing to work with PHMSA on the subject and is aiming to publish its report later this year.

At this point, it appears that there will need to be changes in Part 3 of TDGR and that they will focus on rail transport. This will require outreach to raise awareness among first responders and wider use of the expertise provided by Canutec. Transport Canada has taken onboard the message that a 'single window' approach is crucial and is continuing to work with the UN Sub-committee of Experts on TDG and PHMSA to identify a harmonised solution.

HCB will report further on discussions during this year's COSTHA Annual Forum in a forthcoming issue.



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