

INTERESTED PARTIES FOR HAZARDOUS MATERIALS TRANSPORTATION

July 29, 2017

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE. Room W12-140
Washington, DC 20590-0001

Subject: Department of Transportation, Office of the Secretary of Transportation: Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation, Docket No. OST-2017-0057

The Interested Parties for Hazardous Materials Transportation (IP) offers the following comments on Office of the Secretary of Transportation: "Transportation Infrastructure: Notice of Review of Policy, Guidance, and Regulation," Docket No. OST-2017-0057. The IP is a volunteer-run coalition of organizations that share an interest in legislative and regulatory issues related to the safe and secure domestic and international transportation of hazardous materials. IP members include associations representing hazardous materials shippers, carriers, packaging manufacturers and other related groups.

The IPs¹ are pleased to offer comments on Department of Transportation (DOT) policies and regulations that we believe could be created or improved to better support industry efforts to ensure hazardous materials transportation safety.

Preemption. Express federal "preemption" authority is granted to DOT in Section 5125 of the Hazardous Materials Transportation Act (HMTA) over any state or local regulations that conflict with federal rules. Its purpose is to promote safety by ensuring that a patchwork of state and/or local regulations do not impede commerce or enable the export of transportation risks to other jurisdictions. The hazardous materials industry and the public relies upon uniform regulation, both domestic and international, to ensure the safe, secure and expedited transportation of hazardous materials. Uniform regulation has the added benefit of promoting effective hazmat employee training, which is crucial because the safe transportation of hazardous materials begins with well-trained employees. PHMSA has exercised its preemptive authority numerous times over the years to overturn various permit, inspection and local fee programs that delay hazardous materials movements and/or unnecessarily increase the cost of transportation. The IPs strongly support DOT in this effort.

Programmatic Authority. Several federal agencies, including the Occupational Safety and Health Administration (OSHA) and the Department of Homeland Security (DHS), have an interest in hazardous materials transportation issues, but in much the same way the IPs believe states and localities should be limited in their right to enact piecemeal requirements and fees related to the transportation of hazardous

¹ The following IP members have approved these comments: Agricultural Retailers Association; American Coatings Association; American Fuel & Petrochemical Manufacturers; American Pyrotechnics Association; American Short Line and Regional Railroad Association; Association of HazMat Shippers; The Chlorine Institute; Council on the Safe Transportation of Hazardous Articles; Dangerous Goods Advisory Council; Gases and Welding Distributors Association; Industrial Packaging Alliance of North America; Industrial Steel Drum Institute; Institute of Makers of Explosives; International Liquid Terminals Association; International Vessel Operators Dangerous Goods Association; National Association of Chemical Distributors; The National Industrial Transportation League; National Private Truck Council; National Propane Gas Association; National Tank Truck Carriers; Plastics Industry Association; Petroleum Marketers Association of America; Radiopharmaceutical Shippers & Carriers Conference; Reusable Industrial Packaging Association; Sporting Arms Ammunition Manufacturers Institute; Utility Solid Waste Activities Group.

materials, we believe these agencies are limited in their authority to regulate hazardous materials transportation. OSHA, for example, recently tried to exercise authority over container marking (labeling) but, after consultation with PHMSA, agreed through a Memorandum of Understanding, to recognize PHMSA's unique expertise and preeminent authority in this area. Similarly, DHS oversees a wide range of security issues related to the on-site handling of hazardous materials, but works very closely with PHMSA on all hazmat transportation matters.

The IPs strongly support PHMSA as the preeminent agency in domestic and international regulation of hazardous materials and are pleased that this fact is increasingly being recognized by other federal agencies.

International Affairs. The Secretary of DOT is authorized under Section 5120 of the HMTA to represent the United States at the various international forums that harmonize global standards for the safe and secure transport of hazardous materials, including the United Nations Sub-committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). The Secretary has delegated this authority to PHMSA.

Presently, the United States enjoys the privilege of having a PHMSA employee serve as Chair of UNSCOE TDG. The Interested Parties both strongly support and encourage this level of commitment by DOT to representation at the UN and other international regulatory forums. It is difficult to overstate the value of U.S. leadership in these settings. International trade in hazardous materials, such as chemicals, is significant and historically represents a positive net trade balance for the United States.

The IPs believe that in addition to maintaining a leadership role at the U.N it is crucial that a PHMSA representative serve as U.S. Panel member of the ICAO Dangerous Goods Panel. This properly reflects the fact that PHMSA is designated the "Competent Authority" (lead agency) for the U.S. on hazardous materials transportation issues and is globally recognized as the U.S. expert on these issues. Hazardous materials transportation regulations are generally multi-modal in nature (e.g. trucks deliver hazmat packages to airline terminals, etc.) and, PHMSA is the only federal agency with multi-modal expertise in this field.

Because PHMSA plays such an integral role in the development of international regulations, it is crucial that the agency hold regular public meeting in advance of scheduled meetings of UNSCOE TDG and other international regulatory bodies, including ICAO. Such meetings have been held in the past and have proven to be highly valuable not only for agency representatives, but also for industry and the public at-large. Numerous IP representatives take part in these meeting and often attend the international meetings as part of sanctioned observer groups. The public give and take that occurs during these pre-meetings ensures that DOT officials are aware of and can consider industry positions on issues scheduled for discussion at the international meetings. Therefore, we urge the Secretary to require PHMSA to hold a public meeting prior to each UNSCOE TDG meeting and, to the extent practicable, meetings of other international regulatory bodies.

Special Permits and Approvals. Hazardous materials may only be transported if appropriately authorized. Regulatory flexibility is needed for such activities as authorizing one-time movements of hazardous materials and facilitating the emergence of new and innovative technologies or packagings. Special Permits and Approvals are the regulatory mechanisms that PHMSA uses for these purposes. PHMSA is authorized to grant Special Permits when no clear regulatory authority exists, and Approvals, when required by regulation, to companies as well as federal agencies to transport certain hazardous materials (or articles). PHMSA processes thousands of Special Permits and Approvals requests annually.

Although PHMSA has significantly streamlined and improved the Special Permit and Approval process since the passage of MAP-21, more can and should be done to improve this program. The IPs recommend that Special Permits of general applicability which have been in force for 6 years (2 years for the initial approval and 4 years for a renewal period) be evaluated in advance of their expiration dates for incorporation into the Hazardous Materials Regulations. PHMSA should publish a Special Permit rulemaking annually that provides a list of Special Permits that have been evaluated and provides justification for either proposing to incorporate each Special Permit into the HMR or reasons such a Special Permit is not suitable for incorporation.

Additionally, we believe the explosives and fireworks classification system should be further evaluated to identify programmatic efficiencies to eliminate redundant testing and review and enhance reciprocity of approvals with other countries, where applicable.

Enforcement. The IPs supported a provision in MAP-21 that directed PHMSA to develop uniform performance standards for training hazardous materials inspectors and investigators. We believe more needs to be done by the Agency to train field enforcement officers and, thereby, ensure greater uniformity in the inspection and enforcement processes.

The IPs also encourage the creation of an “On-site Consultation Program” patterned on other similar programs offered or overseen by, among other agencies, the Occupational Safety and Health Administration. We envision such a program being offered to small and mid-sized businesses throughout the United States. This program would improve compliance by providing these businesses with the opportunity to learn the “proper way” to transport hazardous materials. Consultation services would not be provided by PHMSA enforcement personnel and would not result in penalty or enforcement actions. Rather, the program would utilize state agency consultants or approved experts in the field.

Incident Reporting. PHMSA’s hazardous materials transportation safety program relies upon DOT Form F 5800.1, *Hazardous Materials Incident Report*, to gather basic information on incidents that occur during transportation, which meet specified criteria in Section 171.16 of the Hazardous Materials Regulations. This data is used by both the government and industry to chart trends, identify acute transportation safety problems and training inadequacies, evaluate packaging performance and assess ways to reduce releases. Therefore, the integrity and the quality of the data and related information is extremely important.

The IPs believe that the incident data now being collected on Form 5800.1 is not as comprehensive, consistent or robust as it could and should be to meet the laudable goals of the program. To this end, the IPs urge PHMSA to revise the data collection form to eliminate inconsistencies, limit the opportunity for subjective and non-specific responses, and revise the descriptive portions of the Form to require a purely factual account of the incident.

General Regulatory Reform. The IPs support adoption of administrative reforms for PHMSA like those enacted in the FAST Act for the Federal Motor Carrier Safety Administration. Like FMCSA, we believe PHMSA should publish a regulatory impact analysis for each proposed and final rule that contemplates the effect of the rule on different segments of industry, uses the best available science and/or methodology to formulate estimates and findings, uses data representative of various types of shippers or carriers, and considers the effects on carriers of various sizes and types.

In addition, we believe all significant rules must begin with an advance notice of proposed rulemaking or a negotiated rulemaking. All guidance documents (including regulatory interpretations and statements of enforcement policy) issued by PHMSA should be dated and include the name and contact information of a person who can respond to questions on the guidance; the guidance must be posted on the PHMSA website

for public availability. Within five years, PHMSA must incorporate the guidance into Title 49 CFR or reissue an updated version of the guidance. All current PHMSA guidance documents must be reviewed within one year to ensure they remain current and are publicly available.

PHMSA should also post annually a summary of all petitions for rulemaking, regulatory interpretations or clarifications, on the agency's website. PHMSA must decide within 180 days of receipt of a petition whether to accept, deny or further review the petition, and must prioritize petitions based on their potential to reduce incidents and reduce unnecessary burdens.

Conclusion. The Interested Parties appreciate this opportunity to comment on Docket No. OST-2017-0057 and would be pleased to respond to questions.

Sincerely,

A handwritten signature in black ink that reads "Paul Rankin". The signature is written in a cursive style with a large initial "P" and "R".

Paul W. Rankin, Chair