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Washington, DC 20590-0001

Hazardous Materials: Miscellaneous Amendments (RRR), Proposed Rule. Docket No. PHMSA-2009-0410 (HM-218H)¹

The Institute of Makers of Explosives (“IME”) appreciates the opportunity to provide comments on the above Notice of Proposed Rulemaking (“NPRM”).

Interest of IME

IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. IME represents U.S. manufacturers and distributors of commercial explosive materials and oxidizers as well as other companies that provide related services. The majority of IME members are “small businesses” as determined by the U.S. Small Business Administration.

Over 2.3 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the U.S. IME member companies produce ninety-nine percent of these commodities. These products are used in every state and are distributed worldwide.

Commercial explosives are the backbone of our industrial society. Metals, minerals, oil and natural gas, power, construction activities and supplies, and consumer products are available today because of commercial explosives. The ability to manufacture, use, transport and distribute commercial explosives safely and securely is critical to all industries.

IME member companies transport hazardous materials in accordance with the Hazardous Materials Regulations (HMR) administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA). Accordingly, we have a direct interest in certain of the regulatory changes being proposed.

¹ 80 FR 3787 (January 23, 2015).

Comments

Amendments to the HMR for Explosives (P-1590)

PHMSA is soliciting comment on a potential amendment to the HMR that would remove the packing group (PG) II designation in Column 5 of the Hazardous Materials Table (HMT) for certain materials including explosives.² The request for comment responds to a petition for rulemaking filed by the Dangerous Goods Advisory Council (DGAC) on May 24, 2012.

As noted in the proposed rule, neither the HMR or international regulations assign a PG to explosives, and a PHMSA regulation at 49 CFR 172.202(a)(4) specifically excepts explosives from the requirement to include a PG on shipping papers. Nevertheless, the proper shipping name listed in the HMT assigns PG II to explosives by default. According to the DGAC petition, the presence of the PG assignment conflicts with the exception and causes considerable confusion among carrier staff and enforcement personnel. DGAC has, therefore, requested the agency to remove the PG II designation from the HMT.

In a letter dated June 20, 2012, IME supported the petition submitted by DGAC, acknowledging that “IME has encountered enforcement officials’ confusion over not showing the packing group on Class 1 shipping papers, as is allowed by regulation . . . Shipping paper violations can lead to out-of-service orders and have serious consequences to IME members’ ability to operate as a motor carrier or hold special permits and approvals.”³

IME’s experience has not changed in the intervening time period, and we continue to support the position advocated by DGAC. We believe that the action being contemplated by PHMSA will eliminate the confusion that is engendered by the current default assignment. That said, PHMSA should also make clear in a final rule that explosives shippers who do elect to include a PG on shipping papers will not be penalized for doing so. Because of the confusion caused by the current HMT default designation, a number of IME member companies voluntarily list a PG on shipping papers despite the existence of the section 172.202(a)(4) exemption. Explosives shippers who may decide to continue this practice should be able to do so without risk of incurring a violation.

Lastly, there should be no concern that omitting PGII designation from the HMT would encourage persons to package Class 1 explosives in other than an approved package. This is ensured by the supporting regulation at 49 CFR 173.60(a), which states that “[u]nless otherwise provided in this subpart and in section 173.7(a), packaging used for Class 1 (explosives) materials must meet [PGII] requirements.”

² 49 CFR 172.101.

³ Letter to Dr. Magdy El-Sibaie (PHMSA) from Lon Santis (IME), June 20, 2012.

PHMSA should take final action to implement this proposed change.

Section 173.21 – Addition of Transport Vehicle

The current rule at section 173.21 of the HMR prohibits the transportation of materials in the same packaging, freight container, or overpack where the materials, if mixed, would likely produce a dangerous evolution of heat, flammable or poisonous gases or vapors, or generate corrosive materials. PHMSA is proposing to expand this prohibition to materials transported in the same “transport vehicle, (e.g., a truck with a single trailer).” IME has serious concerns regarding this proposed regulatory change.

Stakeholders have come to expect the HM-218 “miscellaneous” rulemaking series to include only minor and non-controversial proposals. As such, one would not expect extensive discussion in the preamble justifying the policy, cost and benefits, of proposed changes. However, this proposal begs for such an analysis. As proposed, there is no discussion regarding how the agency expects operators of transport vehicles, commercial carriers in particular, or shippers to implement the new requirement. Nor does it specify which party in the transportation chain would ultimately be responsible for ensuring compliance. We would expect such a rulemaking to be supported with incident data that clearly demonstrates that there is a real, not hypothetical, safety problem to be confronted.

In a practical and logistical context, the proposal is entirely unworkable. A commercial carrier cannot be expected to identify and evaluate each individual package consigned to it to determine whether the materials in those packages would be compatible with each other in the unlikely event they were to be unintentionally mixed. There could be dozens, or even hundreds of individual chemical materials in a single transport vehicle at any given time, all consigned by different shippers. Likewise, shippers cannot possibly know what other packaged materials will be transported in the vehicle carrying their products and cannot be expected to determine whether any of the materials, if inadvertently mixed, would create a hazard.

The existing standard at section 173.21 is a suitable approach for preventing the inadvertent mixing of incompatible materials. It makes perfect sense from a safety standpoint to forbid the inclusion of incompatible materials in the same packaging, overpack or freight container. Shippers using these containers to transport their goods should be responsible for and would have the knowledge to ensure that the contents of such packagings are appropriate and in compliance with the prohibition at 173.21. Similarly, reliance on PHMSA packaging and segregation standards provides the transportation community with necessary confidence that materials will not combine into some mysterious concoction that will baffle emergency responders in the event of a mishap.

In its proposal, PHMSA finds that “transport vehicles” are sufficiently similar to “freight containers” as to warrant extending the 173.21 prohibition to the former. While the two may

be physically similar, they are, as noted above, used in an entirely different manner. A shipper has complete control over the contents that will be placed in its freight container. On the other hand, neither the shipper, the commercial carrier, nor the driver can exercise the level of control over the contents of other containers in the transport vehicle contemplated by this proposal. If PHMSA chooses to pursue this avenue, we strongly recommend that the agency remove this proposal from HM-218H and open a docket expressly to address the issues and concerns provoked by this proposed regulatory change.

Conclusion

We appreciate the opportunity to support generally PHMSA's effort to refine its regulations and, specifically, to better harmonize requirements for PG notations on shipping papers with international standards. At the same time, we urge the agency to remove its proposal to amend section 173.21. Shippers and carriers are already obligated to ensure that materials contained within transport vehicles are properly packaged and segregated in accordance with DOT regulations. All parties involved in transporting potentially dangerous materials under the HMRs rely on these existing regulations to ensure that the containers themselves are sufficiently robust and appropriate to the materials being transported.

Respectfully submitted,



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