

March 24, 2015

VIA ELECTRONIC SUBMISSION AND U.S. MAIL

Docket PHMSA 2013-0225 (HM-218H)
Dockets Management System
U.S. Department of Transportation, Dockets Operations
M-30, Ground Floor, Room W12-140
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Re: Hazardous Materials: Miscellaneous Amendments (RRR); Notice of Proposed Rulemaking (HM-218H); 80 Fed. Reg. 3788 (Jan. 23, 2015)

To whom it may concern:

The Utility Solid Waste Activities Group (“USWAG”)¹ submits these comments in response to the Department of Transportation (“DOT”) Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) notice of proposed rulemaking to amend the Hazardous Materials Regulations (“HMR”). 80 Fed. Reg. 3788 (Jan. 23, 2015). Although USWAG members support most of the proposed revisions contained in PHMSA’s rulemaking, we have some particular concerns about the proposed expansion of 49 C.F.R. § 173.21(e).

Among the proposed revisions, PHMSA proposes to amend § 173.21(e) to expand the prohibition on transporting or offering for transport materials in the same transport vehicle (e.g., trailer, rail car) with other materials that are likely to cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or produce corrosive materials if mixed. The current standard is applicable only to freight containers, packagings and overpacks. However, PHMSA’s proposal would expand this standard to cover all “transport vehicles”—as that term is defined in § 171.8. The

¹ USWAG was formed in 1978, and is a trade association of power generation, transmission, and distribution companies. USWAG’s members include over one hundred and ten individual electric companies and three trade associations: the Edison Electric Institute (“EEI”), the National Rural Electric Cooperative Association (“NRECA”), and the American Public Power Association (“APPA”). EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly-owned utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation’s consumers of electricity.

expansion of coverage to trucks and rail cars is particularly concerning to USWAG members.

We are concerned that shippers and carriers will find this a very difficult standard to meet without significantly more information than is currently available, and without a detailed understanding of chemical risks of the materials involved. Moreover, we do not believe that the potential benefits from such an expansion would outweigh the significant costs associated with implementing it that will be borne across all industry sectors. We also note that transporters already address chemical compatibility for multiple stop shipments during the route planning for the trip and if the driver follows the route planned by the transporter, chemical compatibility has already been assured.

Drivers, offerors and other hazardous materials employees typically do not have sufficient information available to make the assessments contemplated in the proposed revision. For example, when a carrier arrives at a site, the offeror at the site and the carrier normally has insufficient knowledge of what is on the vehicle. Shipping is a fluid practice; when packages on vehicles are continuously loaded and offloaded at various stops and from multiple sources, it is impossible to expect a driver (or offeror) to know, at all times, exactly what shipments are on the vehicle. Moreover, when drivers transport limited quantity packages—those packages that have reduced labeling requirements—there will be no way for the driver to know the chemical properties of the relevant materials. If the driver or other employee does not know and/or has no way to know what the chemical properties of the material are, he will have no way to determine what that material's reaction capabilities are, or whether there would be a reaction if it might be mixed with another material in the shipment. Without information about what is on the vehicle, it will be extremely difficult for the driver to identify the chemical properties of those materials.

Even if a driver or other hazardous materials employee knew what materials were on the vehicle, it will be difficult or impossible for that individual to identify the chemical properties of the relevant materials and determine their potential hazard because that would require a level of expertise and knowledge not typically required of drivers, offerors and/or hazmat employees in most industries. The employee would need to know the chemical makeup of the materials, in addition to whether another material being transported could, when mixed, cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or produce corrosive materials. It is unreasonable to expect a driver to know whether a material would react or not. It would also be extremely burdensome to mandate that drivers and other employees should be required to acquire such thorough chemical knowledge and expertise.

We believe the proposed amendments to the HMR are unreasonable and will not provide benefits that will justify or outweigh the extraordinary cost and effort of implementation. Moreover, many of the determinations that drivers, offerors and other hazardous materials employees would need to make are impossible based on the limitations of their knowledge on the contents of a shipment, as well as of the chemical properties of such shipments. Instead, use of the segregation table—an existing safeguard that determines what is permitted or prohibited on the vehicle based on the

hazard class and packing group of the material— allows drivers to make informed decisions about the cargo being transported without requiring them to possess extensive chemistry and technical knowledge.

USWAG also fully supports PHMSA proposal to amend the requirements allowing for the transportation of damaged wet electric storage batteries and the classification of aerosols as limited quantities.

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We appreciate the opportunity to submit these comments on this very important rulemaking. If you have questions about these comments or if we can be of further assistance, please contact USWAG counsel Aaron Wallisch (202-344-4474); ajwallisch@venable.com) at Venable LLP.

Sincerely,

James R. Roewer
Executive Director
Utility Solid Waste Activities Group