



*Council on Safe Transportation of Hazardous Articles*

March 24, 2015

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Acting Associate Administrator, Hazardous Materials Safety  
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US Department of Transportation  
1200 New Jersey Ave., SE  
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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits comments to the Notice of Proposed Rulemaking (NPRM) published in Docket No. PHMSA-2013-0225 (HM-218H) on January 23, 2015.

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers by all modes, 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 its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

COSTHA appreciates the opportunity to comment on this important Rulemaking. We generally support the proposals in the NPRM. However, we strongly oppose the proposed changes to Title 49 CFR, Part 173, §173.21(e) that would broadly expand the concept of forbidden materials and would prevent the carriage of materials which could, if mixed, cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or produce corrosive materials in the same transport vehicle.

We fully appreciate the situation detailed in the preamble to the NPRM and understand the need to prevent dangerous conditions. However, as written, the practical implications are significant to parcel and less-than-truckload (LTL) carriage. In these situations, the carrier may know the UN numbers and emergency response information for the materials loaded aboard the vehicle, but they would not have access to all chemical reaction data for each chemical/commodity, nor would they be able to review such data in a timely manner should it be provided.

§177.848 provides the segregation table which has been used extensively for years for road transport in the United States. This table clearly indicates when certain hazard classes or divisions are known to dangerously react, and must be segregated. The table was developed on the basis that the current classification system is an adequate and appropriate manner to classify materials. If the language proposed for §173.21(e) is

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adopted, many carriers will be forced to modify their acceptance, loading, and transport procedures. Without clear guidance as to whether a material is 100% compatible with all goods (hazardous and non-hazardous) already loaded, consignments may be rejected or delayed until a separate transport vehicle is available. This language would result in delayed shipments, increased costs, and shipper frustration.

COSTHA strongly supports the comments submitted by the American Trucking Associations (ATA). In particular, we echo their concerns that, as written, the language puts an increased emphasis and burden on the carrier to ensure that all materials are compatible. The ATA provided several examples of how extremely common hazardous and non-hazardous materials *could* result in dangerous conditions today. As noted in the comments submitted by the ATA, costs associated with investigating all possible dangerous combinations of dangerous and non-dangerous materials and subsequently training employees to implement the resultant procedures is astronomical. This language would certainly lead to significant impediments to the movement of both hazardous and non-hazardous materials.

While the preamble contains a reference to similar requirements that currently apply to transport in freight containers intended for shipment by vessel, COSTHA would like to point out that PHMSA's proposal is unworkable in daily commerce. If PHMSA were to extend the requirements in §173.21(e) to highway transport in trucks and semi-trailers as proposed, it would result in a significant burden to motor carriers, especially in pick-up and delivery operations. There is no means to identify incompatible materials outside of the segregation table at §177.848. PHMSA should not implement a requirement for which carriers lack any means to assure compliance.

We strongly support PHMSA in improving the safety of the Hazardous Materials Regulations (HMR) and in improving the readability of the document. However, we cannot support the proposed change to §173.21(e) given significant implications to current segregation protocols and cost associated with training and implementation. Further, we are not aware of existing incident data that would create urgency in extending the applicability to vehicles until a satisfactory methodology is designed for concurrent adoption. If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Ferguson", with a long horizontal line extending to the right.

Tom Ferguson, PG, CHMM, DGSA  
Senior Technical Consultant