

**Richard Moskowitz**  
Vice President and Regulatory Affairs Counsel

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

*Via:* <http://www.regulations.gov>

Re: Regulatory Review of Existing Regulations Docket: DOT-OST-2011-0025

Dear Mr. Eisner:

The American Trucking Associations, Inc.<sup>1</sup> (“ATA”) is writing to comment on the Department of Transportation’s (“DOT” or the “Department”) review of its existing regulations.<sup>2</sup> As the national representative of the trucking industry, ATA is interested in improving the regulations governing motor carrier operations and we appreciate this opportunity to help focus the Department’s attention on burdensome or outdated regulations that impact motor carriers.

The trucking industry is one of the most heavily regulated industries in the country. For the most part, ATA believes that DOT’s regulations improve public safety on our nation’s roadways; however, several regulations have become outdated or obsolete, are no longer cost effective, or have proven to be ineffective in achieving their stated purpose. In presenting these regulations to you for consideration, we have organized them around the DOT Administrations with primary responsibility over the particular regulation (*i.e.*, FMCSA, PHMSA, NHTSA).

**A. Specific Regulations that Merit Revision**

In presenting a list of regulations that merit revision, we have identified those regulations that no longer meet the goals of Executive Order 13563.<sup>3</sup> EO 13563 requires federal agencies to design cost-effective, evidence-based regulations that are compatible

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<sup>1</sup> ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

<sup>2</sup> See 76 *Federal Register* 8940 (February 16, 2011).

<sup>3</sup> See 76 *Federal Register* 3821 (January 21, 2011).

with economic growth, job creation and competitiveness and declares that these principles are to be applied to the agencies' reviews of their existing regulations. In implementing EO 13563, DOT has requested that affected parties provide a list of specific rules "that may be outmoded, ineffective, insufficient, or excessively burdensome."<sup>4</sup> We provide a partial list of these rulemakings below and will endeavor to supplement this list as warranted in the future:

**1. Pipeline and Hazardous Materials Safety Administration.**

- a. *PHMSA – ID Markings for Bulk Containers with Residue [49 CFR subparts D and F].*

The hazardous materials regulations establish an elaborate system of hazard communication to ensure that persons coming in contact with hazardous materials in transportation are apprised of the risks that may be present. In establishing the hazardous communications regulations, DOT distinguishes between bulk containers (containers with a capacity greater than 119 gallons) and non bulk containers on the grounds that bulk containers may present a greater risk of exposure since they contain greater quantities of hazardous materials. This logic, however, does not hold true for reusable bulk containers that contain a small amount of residue. While some level of hazard communication remains necessary for these residue-laden bulk containers, the risk they present in transportation is more akin to that posed by non-bulk containers.

Section 172.302 sets forth the package marking requirements for bulk containers, including containers that are transported with only residue of regulated hazardous materials. This section when read in conjunction with sections 172.332, 172.334, and 172 subpart F requires a motor carrier to include the appropriate UN identification number either on an orange panel, a white square on point configuration, or on placard on the outside of the truck transporting the *residue laden* bulk container. While this rule seems appropriate for tank trucks and rail cars, it applies equally to dry vans that transport intermediate bulk containers (IBCs) and in this context creates an unnecessary burden.<sup>5</sup> ATA believes that in the event that an IBC or other bulk container with a hazardous material residue is loaded on a trailer that some level of hazard communication is appropriate; however, identification of a small quantity of residue by a placard containing a UN number is not necessary. Accordingly, we ask PHMSA to revise these requirements to specify that where a bulk container has residue remaining, a placard depicting the appropriate hazard class is required; however, the UN identification number is not required to be displayed on the placard or otherwise appear on the outside of the truck. This change would provide emergency responders with the basic information they require, while relieving a significant burden on motor carriers that facilitate reverse logistics by transporting residue laden bulk packages.

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<sup>4</sup> *Id.*

<sup>5</sup> This burden is magnified by the fact that the entity returning the residue laden package (reverse logistics) often does not understand the hazardous materials regulations governing the ID markings and seldom has the required placards available for use by the motor carrier.

b. *PHMSA – Incident Reporting Requirements [49 CFR § 171.16]*

On July 2, 2010, ATA filed a petition for rulemaking requesting modifications to the hazardous materials incident reporting requirements.<sup>6</sup> While we will not repeat the details set forth in our petition, we do wish to emphasize our continuing support of PHMSA’s data collection efforts and our suggestions for reducing the burden associated with certain aspects of the hazardous materials incident reporting requirements.

ATA’s petition requests that PHMSA (1) expand the exceptions to the incident reporting requirements to Class 3 flammable materials in Packing Group II and increase the aggregate spill threshold exception for Class 3 materials in Packing Groups II and III to 30 gallons; (2) distinguish spills that occur on loading docks under conditions that are not normally incident to transportation from other spills that trigger the incident reporting requirements; (3) revise the immediate notification requirements to remove the references to “breakage,” which results in subjective enforcement and a requirement to report incidents that do not involve a release of hazardous materials; and (4) preempt states from requiring separate immediate notice of hazardous materials incidents. ATA’s petition was assigned petition number P-1562.

c. *PHMSA – Special Permit Program [49 CFR Part 107, subpart B]*

PHMSA recently published a final rule (HM-233B), substantially revising the procedures for applying for a special permit.<sup>7</sup> The amount of data PHMSA now requires in connection with the special permit application is very burdensome and goes beyond the amount of information PHMSA needs to determine whether the special permit would provide an equivalent level of safety.

On January 31, 2011, the Coalition on the Safe Transportation of Hazardous Articles appealed HM-233B.<sup>8</sup> For the reasons set forth in that appeal, DOT should consider revisions to this regulation that remove the list of facilities where the special permit will be utilized, information on the chief executive officer of the applicant, and an estimate of the number of shipments to be transported pursuant to the special permit. This information is unnecessary for PHMSA’s evaluation of whether an application provides an equivalent level of safety as required by federal hazardous materials law.<sup>9</sup>

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<sup>6</sup> A copy of ATA’s petition to modify the incident reporting requirements may be viewed through the following link: <http://www.phmsa.dot.gov/hazmat/regs/rulemaking/petitions> under P-1562.

<sup>7</sup> See 76 *Federal Register* 454 (January 5, 2011).

<sup>8</sup> COSTHA’s HM-233B Appeal may be viewed through the following link: <http://www.costha.com/docs/HM233BAppealFeb12011.pdf>.

<sup>9</sup> See 49 U.S.C. § 5117(a)(1).

## 2. Federal Motor Carrier Safety Administration

### a. FMCSA – *Blind Specimen Submissions* [49 CFR § 40.103]

This requirement targets a tiny percentage of the motor carrier industry – those employers of 2000 or more drug-policy covered employees. The regulation transfers the government’s responsibility of ensuring the validity of laboratory testing to motor carriers. While ensuring laboratory accuracy is an important aspect of the drug and alcohol testing program, this responsibility should rest with the laboratory or a standards monitoring body, not the motor carrier customer.

### b. FMCSA – *Notification of Driver Convictions* [49 CFR § 383.31]

This regulation requires a driver that is convicted of violating non-parking related traffic laws to notify his/her CDL-issuing state in writing of the violation. At one point in time, such a regulation made sense to ensure that State licensing and enforcement agencies were properly apprised of the safety records of their CDL-holders; however, the advent of interstate computer databases and information sharing systems, such as CDLIS, have rendered this requirement obsolete. We also note that law enforcement receives a bevy of information that, if released to motor carriers, could help redirect training to further increase safety on the road.

### c. FMCSA – *Equipment inspection and use* [49 CFR § 392.7]

The requirements in this section are duplicative of those in 49 CFR 396.13, Driver Inspection. FMCSA should remove the redundancies and place a single pre-trip inspection requirement within 49 CFR 396.13.

### d. FMCSA – *NY Grape Transporters* [49 CFR § 395.1(q)]

This regulation exempts from the hours of service requirements transporters of grapes during the harvest period in the State of New York and expired on September 30, 2009. This expired regulation should be removed.

### e. FMCSA – *Lubrication* [49 CFR § 396.5(b)]

This regulation directs motor carriers to ensure that all vehicles in their fleet (owned and leased) are free of oil and gas leaks. Although requirements for regular maintenance help ensure that this rule is broadly followed, true compliance with this regulation is virtually impossible. There are already broad vehicle-maintenance requirements elsewhere in Part 396 and this particular requirement should be removed.

### f. FMCSA – *Liquid Fuel Tanks* [49 CFR § 393.67]

In the late 1990s, FMCSA’s predecessor organization (Federal Highway Administration’s Office of Motor Carriers (OMC)) conducted a “zero-based” regulatory review of the Federal Motor Carrier Safety Regulations (FMCSRs). OMC was interested in eliminating or clarifying redundant or ill-defined regulations regarding fleet operations. The intent was to remove unnecessary rules and to make the rules easier to comply with and understand. Many unnecessary rules existed because they were written before the National Highway Transportation Safety Administration (NHTSA) was created. NHTSA is the DOT agency responsible for issuing new vehicle manufacturing

standards. Consequently, when the FMCSRs were originally written, they addressed both operational and manufacturing issues; however, the regulations having to do with truck manufacturing remain and fleets are still bound to meet them.

The liquid fuel tank testing requirements fall within the category of outdated regulations, as these tests should be performed by fuel tank and vehicle manufacturers. As written, these tests actually would require a motor carrier to remove the fuel tank from the truck, compute water weight compared to diesel fuel weight and then perform each of the following tests:

*i. Drop Test [49 CFR § 393.67(e)(1)]* requires the motor carrier to a “fill the fuel tank with a quantity of water having a weight equal to the weight of the maximum fuel load and drop the tank 30 feet onto an unyielding surface so that it lands squarely on one corner.”

*ii. Fill-pipe test [49 CFR § 393.67(e)(2)]* instructs the motor carrier to “fill the fuel tank with a quantity of water having a weight equal to the maximum fuel load and drop the tank 10 feet onto an unyielding surface so that it lands squarely on its fill pipe.” This would require fleets to remove fuel tanks, compute water weight vis-a-vis diesel fuel weight and then perform the tests.

*iii. Liquid Fuel Tanks, Safety Venting System Test [49 CFR § 393.67(e)(2)]* requires motor carriers to test fuel tank integrity in the following manner: “Fill the tank three fourths full with fuel, seal the fuel feed outlet and invert the tank. When the fuel temperature is between 50 and 80 degrees F, apply an enveloping flame to the tank so that the temperature of the fuel rises at a rate of not less than 6 degrees and not more than 8 degrees per minute.” This requirement is neither practical nor safe. Motor carriers should not be instructed to light flames under fuel tanks.

## CONCLUSION

We appreciate the opportunity to bring these burdensome and in some cases obsolete regulations to the Department’s attention and look forward to working with you to revise the Department’s regulations to comport with EO 13563.

If you have any questions concerning the comments directed to PHMSA, please contact the undersigned at (703) 838-1910. Questions concerning the FMCSA comments should be directed to Boyd Stephenson at (703) 838-7982.

Respectfully submitted,



Richard Moskowitz  
Vice President & Regulatory Affairs Counsel