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Office of Hazardous Materials Standards
Pipeline & Hazardous Materials Safety Administration (PHMSA)
Attn: PHH-10
U.S. Department of Transportation, East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: Petition for Rulemaking – Incident Reporting Requirements

Pursuant to 49 C.F.R. § 106.95, the American Trucking Associations, Inc. (“ATA”) submits this petition for rulemaking to modify the hazardous materials incident reporting requirements. As discussed in more detail herein, the proposed modifications will reduce the administrative burden upon the Pipeline and Hazardous Materials Safety Administration (“PHMSA” or “Agency”) and the regulated industry, improve compliance with the incident reporting requirements, and improve PHMSA’s data collection and analysis efforts.

Pursuant to 49 C.F.R. §106.100, ATA affirms that it is a national trade association representing the interests of the trucking industry.¹ ATA supports programs that improve the safety and efficiency of motor carrier operations. The revisions to the Hazardous Materials Regulations (“HMR”) proposed herein will improve the trucking industry’s compliance with the regulatory requirements relating to incident reporting and provide PHMSA with more useful data on hazardous materials incidents.

¹ 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. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

A. Summary of Proposed Action and Explanation of Purpose

ATA is petitioning PHMSA to: (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. Each of these proposals is discussed in more detail, below.

ATA supports the hazardous materials incident reporting requirements (49 CFR §§ 171.15 and 171.16) as a necessary tool to facilitate PHMSA’s data collection efforts. PHMSA recognized the importance of obtaining hazardous materials incident data in the following quotation from its HM-229 rulemaking:

[PHMSA] uses the data and information reported by carriers to:

- Evaluate the effectiveness of the existing regulations;
- Determine the need for regulatory changes to cover changing transportation safety problems; and
- Identify major problem areas that should receive priority attention.

In addition, both government and industry use this information to chart trends, identify problems and training inadequacies, evaluate packagings, and assess ways to reduce releases.²

Pursuant to 49 C.F.R. § 106.100(a)(1), ATA states that the proposed modifications to the HMR would reduce the incident reporting burden upon the regulated industry and conserve PHMSA’s scarce analytical and information technology resources. The proposed modifications would ensure that PHMSA continues to receive data on hazardous materials transportation incidents that are necessary for the Agency to perform its primary mission of promulgating regulations to ensure the safe transportation of these vital materials.

² Research and Special Programs Administration, *Final Rule - Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form*, 68 *Federal Register* 67746 (December 3, 2003).

B. Changes to Regulatory Text

Pursuant to 49 C.F.R. § 106.100(a)(2), ATA petitions to amend the regulations that require carriers to provide hazardous materials incident reports. The proposed changes to the HMR involve a modification to the exceptions to the detailed incident reports set forth 49 CFR §§ 171.16(d) and the immediate notification requirements set forth at 171.15(b)(2). The proposed changes to the regulatory text are set forth in Appendix A.

C. Support for Proposed Action

Pursuant to 49 C.F.R. § 106.100(a)(4) and 106.100(a)(5), ATA provides the following support for the proposed regulatory changes.

The principal purposes of the incident reporting requirements are to enable PHMSA to identify unsafe hazardous materials transportation conditions and properly allocate its limited resources. Reporting requirements that result in voluminous amounts of data representing conditions that pose insignificant safety risks force PHMSA to allocate its scarce resources to analyzing conditions that are unlikely to result in a meaningful safety improvement. At the same time, the voluminous amounts of incident reports that carriers must file in connection with incidents that do not represent significant risks impose a large unnecessary burden on the regulated community.

1. Broaden the Exception for Class 3 Flammable Liquids

The HMRs except Class 3 flammable liquids in Packing Group III from the reporting requirements when they are transported in packages with a capacity less than 5.2 gallons and when the aggregate amount spilled is less than 5.2 gallons. ATA is asking PHMSA to expand the exceptions to the incident reporting requirements to Class 3 flammable materials in Packing Group II when transported in packages with a capacity less than 5.2 gallons and to increase the aggregate spill exception threshold for Class 3 materials in Packing Groups II and III to 30 gallons.³

PHMSA's use of the data derived from the reporting of certain Class 3 flammable liquids in Packing Group II is not apparent to the regulated community. For more than a decade, PHMSA has required the industry to report small spills of Class 3 flammable liquids in Packing Group II. These reports comprise a significant number of

³ The proposed regulatory language excepting these spills from the written incident reporting requirements is to be placed in section 171.16(d). As such, any incident that triggers the immediate notification required by section 171.15 would not be excepted from the requirement to file a written incident report.

the hazardous materials incident reports filed with the Agency.⁴ Yet, PHMSA has not proposed and has no plans to revise the packaging standards for these materials. As such, the burden associated with these reports far exceeds the regulatory benefit. Moreover, these aspects of the incident reporting requirements and data analyses are not targeted at significant risks, which create an unnecessary burden on PHMSA and the industry.

We estimate that the amount of hazardous materials incident reports filed for spills involving flammable liquids is slightly more than 50% of all reported hazardous materials transportation incidents.⁵ We are unable to determine how many of these reports represent Class 3 materials that correspond to Packing Groups II and III in small packagings (the subject of the proposed reporting exception); however, ATA members report that the vast majority of hazardous materials incident reports they file are for Class 3 flammable materials in Packing Groups II and III and involve breaches of packagings with a capacity less than 5.2 gallons and an aggregate spill of less than 30 gallons.

An aggregate release of less than 30 gallons of flammable materials (Packing Groups II or III) from small packagings is a low risk release that does not create a significant environmental or health and safety condition and in most cases is easily handled without the need for government intervention. Over the past several decades, PHMSA has amassed large amounts of data on these types of releases, which would be sufficient to support a decision on whether to revise packaging standards or handling requirements for these materials. The continued collection of this type of incident data imposes a large administrative burden on both the regulated industry and PHMSA staff and, in the absence of a need to obtain additional data to support a regulatory action, should be discontinued.

2. Distinguish Spills that Occur on Loading Docks

PHMSA should distinguish hazardous materials spills that occur on carrier loading docks from spills that occur under conditions normally incident to transportation that are not related to a failure of the packaging or violation of the HMR. These types of spills often result from conditions that are not addressed in the HMR (*i.e.*, piercing of a container by a forklift, dropped packages, an exposed nail on a pallet). Packaging failures under normal transportation conditions should continue to be reported, while releases caused by loading dock accidents unrelated to a violation of the HMRS should be

⁴ One large ATA member reports that in 2009, 70.4% of its reportable spills were Class 3 flammable materials and that 89% of its reportable spills in class 3 were less than 5 gallons.

⁵ See PHMSA, Incident Reporting webpage for 2009 by hazard class:
<http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/2009class.pdf> (May 6, 2010).

excepted from the reporting requirements.⁶ Moreover, spills that occur on a loading dock are easily handled by properly trained on-site personnel, do not pose a risk to the environment, and do not cause substantial damage to property. We also note that these types of loading dock spills are reportable when they occur at a carrier's loading dock, but are not reportable when they occur at a shipper or consignee's loading dock (unless the carrier is present).

3. Radioactive and Infectious Substances - Immediate Notice Triggers

Section 171.15 requires the person in physical possession of a Class 7 (radioactive) material package to immediately notify the National Response Center (NRC) by telephone as soon as practical when fire, *breakage*, spillage, or suspected radioactive contamination occurs involving a Class 7 (radioactive) material.⁷ "Breakage" is clearly differentiated in the HMR from the terms "spillage" and "suspected radioactive contamination" by the use of the word "or." Therefore, if a radioactive material package is broken, even if the inner packagings remain intact, an immediate notification of the NRC is required.

The requirement to report in instances where there is no release of radioactive (*i.e.*, crushed corners of fiberboard boxes) results in subjective differences in reporting and enforcement, and creates an unnecessary administrative burden. We note the same situation exists for packages containing infectious substances other than regulated medical waste. For this reason, we are petitioning PHMSA to delete the term "breakage" from section 171.15(b)(2) and 171.15(b)(3).

4. State Incident Reporting Requirements

PHMSA preempts states from requiring separate written reports of hazardous materials incidents on the grounds that the information already is being collected by PHMSA and that states can obtain access to the information that PHMSA collects. PHMSA, however, does not preempt states (or local jurisdictions) from requiring motor carriers to immediately report hazardous materials incidents.

The myriad of state and local hazardous materials incident reporting requirements confounds a motor carrier's ability to comply with all of the reporting

⁶ The proposed regulatory language excepting these spills from the written incident reporting requirements is to be placed in section 171.16(d). As such, any incident that triggers the immediate notification required by section 171.15 would not be excepted from the requirement to file a written incident report.

⁷ A similar requirement exists for infectious substances. *See* 49 CFR § 171.16(b)(2) and 171.16(b)(3).

requirements. Since many motor carriers operate irregular routes and do not know which jurisdictions they will be traveling through on a given day, it is impracticable for them to be fully knowledgeable of the local incident reporting requirements for the particular jurisdiction in which the hazardous materials release occurs.⁸

In 2003, PHMSA embraced one-call reporting and eliminated the separate telephonic notification requirement to Federal Aviation Administration (FAA) for air shipments and required air carriers to report incidents to the national NRC.⁹ In removing the separate FAA call requirement, PHMSA articulated the following rationale:

NRC personnel are specifically trained on which notification requirements pertain to which entities, thus, this change should result in more accurate notification to parties with a need to know.¹⁰

Based upon this rationale, one-call reporting should be expanded further. By creating a computer database of local reporting requirements, NRC could receive incident information and push it out to the appropriate local jurisdiction. This would improve the information local jurisdictions receive by overcoming the problem that motor carriers may not know whether a local reporting requirement exists for the type and quantity of the hazardous materials spilled or who to notify in each jurisdiction they travel through. It also would reduce the administrative burden associated with reporting to multiple agencies.

In connection with the 2003 final rule, the California Highway Patrol emphasized the need to notify state officials via 911 to inform emergency response officials. However, a hazardous materials incident may not rise to the level of an emergency and motor carriers may not think to call 911 for non-life-threatening situations. Moreover, some jurisdictions require notification to be made to entities other than the 911-operator and have cited carriers for failure to do so.

While several years ago there was an argument to be made for retaining separate state and local emergency response notifications, computer technology and electronic communication have rendered that argument outdated. Today, it is far more efficient to have the NRC push incident information out to state and local jurisdictions. This will overcome the non-compliance issue where a carrier is unaware of a local reporting requirement, improve the accuracy and timeliness of the information local jurisdictions receive, and reduce the administrative burden associated with duplicative reporting requirements.

⁸ An example of this problem is provided from an ATA member and is described in Appendix C.

⁹ See 68 *Federal Register* 67746, 67749-50 (December 3, 2003).

¹⁰ *Id.* at 67750/1.

CONCLUSION

In order to improve compliance with the reporting requirements and ensure that PHMSA is not inundated with data representing insignificant risks, ATA petitions the Agency to revise the incident reporting requirements, as follows:

1. PHMSA should revise the reporting thresholds for Class 3 flammable liquids to except Packing Group II materials in small packages (*i.e.*, less than 5.2 gallons) and aggregate releases of less than 30 gallons. PHMSA already has adequate data on these types of incidents and incidents involving these materials in these quantities do not present significant safety risks.
2. PHMSA should except from the reporting requirements hazardous materials spills that occur on a motor carrier's loading dock involving conditions not normally incident to transportation. These types of incidents are beyond the scope of the packaging and handling standards.
3. PHMSA should remove the package "breakage" trigger from the immediate notice regulation where there is no release of hazardous materials.
4. PHMSA should preempt state immediate notice requirements and embrace a one-call solution where the NRC pushes incident information to state and local authorities.

ATA has met with PHMSA staff to discuss the issues raised in this petition and has also suggested several changes to the Form 5800.1 hazardous materials incident report that will improve the quality of the information PHMSA collects. Specific revisions to the Form 5800.1 are incorporated by reference into this Petition and are described in Appendix B.

If you have any questions concerning the matters raised in this Petition or the suggested revisions to the Form 5800.1, please contact the undersigned at (703) 838-1910.

Respectfully submitted,



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cc: Cynthia Quarterman
Magdy El-Sabaie
Bizunesh Scott

APPENDIX A

Pursuant to 49 C.F.R. § 106.100(a)(2), ATA petitions to amend the regulations that govern hazardous materials incident reports. The specific changes to the regulatory text are shown below:¹¹

171.16 Detailed hazardous materials incident reports.

* * * *

(d) *Exceptions.* Unless a telephone report is required under the provisions of § 171.15 of this part, the requirements of paragraphs (a), (b), and (c) of this section do not apply to the following incidents:

- (1) A release of a minimal amount of material from—
 - (i) A vent, for materials for which venting is authorized;
 - (ii) The routine operation of a seal, pump, compressor, or valve; or
 - (iii) Connection or disconnection of loading or unloading lines, provided that the release does not result in property damage.
- (2) An unintentional release of hazardous material when:
 - (i) The material is properly classed as—
 - (A) ORM-D; ~~or~~
 - (B) a Packing Group III material in Class or Division ~~3~~, 4, 5, 6.1, 8, or 9; or
 - (C) a Packing Group II or Packing Group III material in Class 3;
 - (ii) Each package has a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;
 - (iii) The total aggregate release is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids or less than 114 liters (30 gallons) for Class 3 materials; and
 - (iv) The material is not—
 - (A) Offered for transportation or transported by aircraft,
 - (B) A hazardous waste, or
 - (C) An undeclared hazardous material.
- (3) An undeclared hazardous material discovered in an air passenger's checked or carry-on baggage during the airport screening process. (For discrepancy reporting by carriers, see § 175.31 of this subchapter.)
- (4) A spill that occurs on a loading dock as a result of a condition not normally incident to transportation (e.g., piercing of a container by a forklift, nail or dunnage) where such spill is not attributable to a packaging failure.

¹¹ 49 C.F.R. §§ 171.16 and 171.15 (strikethrough added to show proposed deletions and underline added to show proposed new regulatory text).

171.15 Immediate notice of certain hazardous materials incidents.

* * * *

(b) Reportable incident. A telephone report is required whenever any of the following occurs during the course of transportation in commerce (including loading, unloading, and temporary storage):

* * * *

(2) Fire, ~~breakage~~, spillage, or suspected radioactive contamination occurs involving a radioactive material (see also §176.48 of this subchapter);

(3) Fire, ~~breakage~~, spillage, or suspected contamination occurs involving an infectious substance other than a regulated medical waste;

APPENDIX B

Suggested Modifications to Form 5800.1

Electronic Filing: Add a save button. Reports time out and data is lost.

Battery Incidents:

- Part III – Packaging Information - Item 25 - Failure codes
 - What Failed: Add entry – *Short Circuit Protection*
 - How Failed: Add entry – *Short Circuit Protection Inadequate or Missing*
- Part IV – Consequences - Item 30 – Result of Incident (check all that apply)
 - Need at least two additional entries:
 - *Sparking*
 - *Excessive Heat*

Aerosol Events:

- Part III – Packaging Information - Item 25 - Failure codes
 - Failure Codes: Need an entry such as – *Protective Cover Inadequate or Missing*

Miscellaneous Issues:

- Item 15 – Does PHMSA need trade names (need more room for technical names)
- Item 27 – need new codes for loading/unloading conveyances
- Why is destination information required/relevant?
- What Failed field needs new code customer tank or equipment failures
- Change “exemption” to “special permit”
- Concerns about hospitalization question.
 - Obtaining the information if person injured is not your own employee
 - HIPPA restrictions
- Difficulty obtaining product value
 - Shipper doesn’t want to disclose product value
 - PHMSA should obtain this information from the shipper
 - Hazardous waste has a zero or negative value
- It is possible for more than one material to be involved in an incident. Neither the current form nor the instructions indicate how to represent more than one proper shipping name on a single report form (e.g., multiple packages LTL; epoxy kits). Potential to overstate the number of incidents.

APPENDIX C

STATE IMMEDIATE NOTIFICATION REQUIREMENTS

Many states and localities require motor carriers to notify them upon a release of hazardous materials in transportation. Louisiana is a prime example of a state that has enacted its own immediate reporting requirements. Louisiana requires motor carriers to call the state patrol hazmat reporting hotline at 877-925-6595 within one hour of a hazardous materials release – note, this requirement is not fulfilled by calling 911 and is not fulfilled even if the state officials are at the scene.

In February 2010, one motor carrier received a citation in the amount of \$3750 for late notification of a hazardous material leak. This carrier also received a \$1,500 citation for a leaking hazmat package in connection with the same incident. The Louisiana State Police report indicated that the incident occurred at approximately 5:20, yet the carrier did not receive notice from their driver until 6:30. The driver reported that the fire department would not let him near the truck or his phone in the truck. He said he had to answer questions from 5 or 6 different firemen and then 2-3 hazmat people. He then had to wait to use the phone of one of the firemen to call in to the dispatcher to report the incident. These are typical actions that occur in the first hour of an incident, which make immediate notification impracticable.

Not only was the driver not aware of Louisiana's one hour reporting time requirement, but in this instance other government employees prevented the motor carrier from making the call.