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Re: Combustible Liquids – PHMSA-2009-0241 (HM-242)

The American Trucking Associations, Inc.¹ (“ATA”) is writing to comment on the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) advance notice of proposed rulemaking (“ANPRM”) concerning the classification and transportation of combustible liquids under the hazardous materials regulations (“HMR”).² As the national representative of the trucking industry, ATA is interested in matters affecting the transportation of hazardous materials, including modifications to the regulations governing the transportation of flammable and combustible liquids.

The ANPRM announces PHMSA’s consideration of potential regulatory changes to harmonize the domestic regulations applicable to the transportation of combustible liquids with international standards. Pursuant to the UN Recommendations on the Transport of Dangerous Goods (“UN Recommendations”), liquids with a flashpoint below 140°F are classified as flammable liquids. The HMR also regulate these liquids as class 3 flammable liquids; however, the HMR depart from the UN Recommendations by regulating liquids with flashpoints between 140°F and 200°F as combustible liquids. Additionally, the HMR permit a flammable liquid with a flash point above 100°F to be reclassified as a combustible liquid for domestic ground transportation.³ The regulatory requirements applicable to combustible liquids are less stringent than those for flammable

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. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

² See 75 *Federal Register* 17111 (April 5, 2010).

³ See 49 CFR § 173.120.

liquids. For example, combustible liquids (*e.g.*, diesel fuel) may be transported in non-specification bulk packagings and non-bulk packages of combustible liquids are excepted from the HMR.

To harmonize the HMRs with the UN Recommendations, PHMSA is considering establishing a uniform definition for flammable liquids with flash points of not more than 140°F for both domestic and international transportation and eliminating the domestic exception that allows the reclassification of high flash point flammable liquids (*i.e.*, flash point above 100°F) as combustible liquids. ATA has significant concerns with the potential changes to the classification and regulation of combustible liquids. We address these concerns in our responses to the six questions set forth in the ANPRM.

- 1. Should the HMR continue to apply to materials with a flashpoint above 60°C (140°F) and below 93°C (200°F)? What benefits would result from de-regulation of combustible liquids? What are the safety implications of such de-regulation? How would such de-regulation affect emergency response?*

While ATA appreciates the benefits of a globally harmonized classification of flammable liquids, we believe that de-regulation of combustible liquids could create certain safety risks. For example, certain bulk tank trucks utilize compressed air to unload. These compressors generate air pressure and may reach a temperature of 170°F. As such, operators should not use these compressors to unload certain flammable and combustible liquids. In the absence of effective hazard communication requirements, a safety risk could be created, as operators may not know whether it is safe to use compressed air for unloading.

In addition, effective hazard communication is needed to ensure that tools used to repair valves and other appurtenances to containers used to transport combustible materials are “non-sparking” to reduce the risk of ignition.

With respect to the impact upon emergency response activities, we note that there remains a risk that hazardous materials with a flashpoint above of 140°F that could expose emergency responders to danger unless the risk is properly communicated.

- 2. Should the HMR continue to permit Class 3 materials with flashpoints between 38°C (100°F) and 60°C (140°F) to be reclassified and transported as combustible liquids? What are the benefits of eliminating this reclassification exception? Would there be costs associated with eliminating this reclassification exception? What are the safety implications of eliminating the reclassification exception? How would elimination of the reclassification exception affect emergency response?*

The HMR should continue to permit Class 3 materials with flashpoints between 38°C (100°F) and 60°C (140°F) to be reclassified and transported as combustible liquids. The

trucking industry has depended upon the ability to reclass flammable liquids as combustible and notes that in the absence of this option, there would be a significant shortage of equipment necessary to transport these materials. Elimination of the reclassification option would create a requirement to transport bulk combustible materials in specification tanks, which would in turn create certain operational problems and impose enormous equipment costs upon motor carriers that far exceed any safety benefit or benefit from global harmonization. Some of these costs would flow from the requirement to ship combustible materials in specification packaging (a new DOT406 tank trailer would cost between \$70,000 and \$80,000);⁴ while other costs relate to placarding requirements and the need to assign drivers with hazardous materials endorsements to their commercial drivers' licenses.

For example, motor carriers currently transport cut-back asphalt and roofing tars in non-specification tank trailers. If reclassification were prohibited, these types of combustible materials would have to be transported in DOT406 specification trailers. From a safety perspective, as asphalt sloshes onto the vent mechanisms mounted in the top of the tank and then cools, the pressure relief vents would become inoperable. As the product temperature changes during transportation, malfunctioning DOT406 style vents could result in over-pressurized tanks splitting or under-pressurized tanks collapsing with a potentially violent catastrophic release and an increase in the risk of personal injury and death from burns caused by the sudden discharge of hot asphalt from broken tanks.

In addition, there are not enough specification trailers in the country to handle the transportation of heating oil and diesel fuel, which are currently shipped as combustible materials in non-specification tank trailers. Many of the non-specification tanks currently used would not be capable of being recertified and would be rendered worthless. Motor carriers could not afford to replace their existing fleets of non-specification tanks to handle the nation's supply of diesel fuel and heating oil.

- 3. Should the HMR provide expanded exceptions for the transportation of combustible liquids? For example, should the HMR except combustible liquids below a certain threshold (e.g., not more than 1,893 L (500 gallons), 3000 L (793 gallons), 3,785 L (1,000 gallons), or 13,249 L (3,500 gallons) from packaging, hazard communication, or other requirements? What are the potential impacts on hazard communication and emergency response notification of such changes?*

We note that the exception for the transportation of combustible liquids in packaging below a certain capacity would not solve the problem created for bulk tank trucks as described in our response to Question 2. We also note that packaging exceptions applied to materials with a flashpoint between 100°F and 140°F would reduce the costs of

⁴ These cost estimates are derived from several ATA member companies. Note, if the 406 is outfitted with multiple compartments the cost could run close to \$100,000 per tank.

domestic transportation but create regulatory differences between the HMRs and the UN Recommendations. Finally, we are concerned that the inclusion of additional exceptions would increase the complexity of the HMRs, cause confusion among shippers, and result in instances of non-compliance.

4. *Should the HMR include expanded exceptions for farm operations or agribusinesses? Should the HMR include expanded materials of trade exceptions for persons who transport combustible liquids? What are the potential impacts on hazard communication and emergency response notification of such changes? Are there additional exceptions that should be considered?*

ATA does not oppose the expansion of the materials of trade exceptions, provided that PHMSA is able to show that such expansion will not compromise safety and that the benefits of such expansion exceed its costs. As a risk-based, data driven organization, PHMSA must ensure that it reviews the incident data and other available data before granting expanded exceptions, including exceptions for farm operations or agribusinesses. Before approving expanded exceptions, PHMSA must quantify the impact of removing hazard communications requirements from larger shipments of flammable/combustible materials.

5. *Should the HMR continue to permit combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials? Should PHMSA adopt a requirement for all combustible liquids to be described as "Combustible liquid, n.o.s."? For example, for hazardous material shipping names, such as Paint, Diesel fuel, Fuel oil, Kerosene, Turpentine, Methallyl alcohol, etc. What safety benefits would result from the use of shipping descriptions unique to combustible liquid materials? How would such a change affect emergency response?*

ATA believes that the requirement to transport all combustible liquids as "Combustible liquid, n.o.s." merits further consideration. This proposal would help distinguish combustible liquids with relatively high flashpoints from other flammable materials, especially in the case of a hazardous material such as paint, which may have a flashpoint that falls within the flammable range or a flashpoint that corresponds to a combustible classification.

Emergency response could be enhanced by such a classification, especially if the placards were more distinguishable as discussed in response to Question 6.

6. *Should the HMR provide for use of a unique combustible liquid marking (e.g., the words "COMBUSTIBLE" or "COMBUSTIBLE LIQUID" in red letters on a white background) in place of COMBUSTIBLE placards and other hazard*

communication for bulk shipments of combustible liquids? Should the HMR provide for use of the domestic identification number, NA1993, on bulk packages utilizing a combustible liquid marking? What are the potential impacts on hazard communication and emergency response notification of such a change? Are there other practical alternatives to use of COMBUSTIBLE placards for bulk shipments?

ATA believes that the creation of a unique placard for combustible liquids merits further consideration. Currently, the combustible and flammable placards are similar. The use of red numbers on a white background would better highlight the difference between combustible and flammable materials, thus enhancing hazard communication and emergency response. The use of the NA1993 identification number could be an acceptable means of further identifying a combustible liquid for domestic transport, providing those combustible liquids present the same hazards in transportation.

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As PHMSA investigates alternatives for classifying and regulating combustible liquids in an effort to align the HMRs with the UN Recommendations, we believe that the agency must present additional data on incidents involving the transportation of combustible liquids, quantify the costs and benefits of any changes to the HMRs, preserve the ability to continue transporting bulk combustible liquids in non-specification tanks, and determine the impact upon emergency responders. In approaching this issue, PHMSA should seek to simplify the HMRs to enhance compliance and work not only on changes to the domestic regulations, but also utilize its influence at the United Nations to potentially align the UN Recommendations with the HMRs.

We look forward to working with PHMSA on each of the issues raised in these comments. If you have any questions concerning these comments, please contact the undersigned at (703) 838-1910.

Respectfully submitted,



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