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

Re: Incorporation of Certain Cargo Tank Special Permits  
Docket No. PHMSA-2010-0017 (HM-245)

The American Trucking Associations, Inc.<sup>1</sup> (“ATA”) is writing to comment on the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) notice of proposed rulemaking (“Proposed Rule”) concerning the incorporation of certain cargo tank Special Permits into the hazardous materials regulations (“HMR”).<sup>2</sup> 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 hazardous materials in cargo tanks.

The Proposed Rule announces PHMSA’s intent to incorporate six widely used Special Permits into the HMR. ATA is generally supportive of PHMSA’s efforts to incorporate Special Permits into the HMR on the grounds that such incorporation will improve the industry’s understanding of the regulatory requirements applicable to the transportation of these materials, simplify driver training, and have a positive impact on the industry’s compliance with the HMR.

Notwithstanding our appreciation of the need for Special Permits and our general support for efforts to incorporate Special Permits into the HMRs, we have several concerns with the Proposed Rule. We outline these concerns below in a discussion of each of the Special Permits that are the subject of this rulemaking:

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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 75 *Federal Register* 42364 (July 21, 2010).

**A. SP 11209 - Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes.**

ATA generally supports the incorporation of SP 11209 into the HMRs based on the stated safety record of the tank in question during the past 16 years. We have concerns, however, that several preexisting exceptions from the HMR may preclude PHMSA's ability to properly evaluate the safety record of hazardous materials transportation used to support agricultural operations.<sup>3</sup>

ATA does not believe that regulations authorizing the transport of this type of tank should be limited to private motor carriers. PHMSA has provided no evidence that for-hire motor carriers cannot transport these tanks in a safe manner. As a data driven, risk oriented regulatory agency, PHMSA should put forth evidence indicating that only private carriers are capable of transporting these non-specification tanks in a safe manner or must provide all qualified motor carriers with the same opportunity.

Similarly, we believe that PHMSA must explain and justify its decision to authorize the transport of these tanks *only* for agricultural purposes. If these tanks are safe to transport when being used to support agricultural operations, why are they unsafe to transport when their ultimate use is for non-agricultural purposes?

**B. SP 13113 - Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT Specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks, used exclusively for agricultural purposes.**

ATA generally supports the incorporation of SP 13113 into the HMRs, provided that the authorization to transport these materials applies to all motor carriers and is not artificially limited to private carriers. Our reason for requesting the inclusion of for-hire carriers is stated in our comments in Section A, *supra*.

**C. SP 12284 - Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks.**

Based on the safety performance of operations conducted under SP 12284, ATA supports the incorporation of these provisions into the HMR.

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<sup>3</sup> See e.g., 49 CFR § 173.5, providing that individuals engaged in certain agricultural operations are exempted from most of the HMR regulatory requirements, including the requirement to file incident reports under 49 CFR §§ 171.15 – 171.16. This exception severely constrains PHMSA's ability to collect data related to hazardous materials transportation in support of agricultural operations.

**D. SP 13341 - Authorization for private motor carriers to transport LPG in consumer storage containers with quantities greater than 5 percent of the container's water capacity.**

We offer no comment on the incorporation of SP 13341 into the HMRs. We have not considered whether the proposal should be expanded beyond private carriers, as the specialized loading requirements may not be appropriate for companies that do not handle these types of containers on a regular basis.

**E. SP 10950 - Authorization to transport nurse tanks securely mounted on field trucks.**

ATA conditionally supports the incorporation of SP 10950 into the HMRs subject to PHMSA ensuring that its users register with PHMSA under 49 CFR Part 107, subpart G.

Most agricultural operators that utilize this Special Permit are exempt from PHMSA's registration requirements.<sup>4</sup> If SP 10950 is incorporated into the HMRs, PHMSA would lose the ability to identify entities that are transporting anhydrous ammonia (and other hazardous materials). Currently, these entities may be known to PHMSA only by virtue of their being listed on the Special Permit application. If holders of this Special Permit are no longer identified to PHMSA, it will be difficult - if not impossible - for PHMSA to collect data, initiate investigations and pursue enforcement actions to ensure the safe transportation of this hazardous material. The future inability to identify these transporters of anhydrous ammonia was not discussed in the preamble to the Proposed Rule.

ATA also wishes to request an exemption from the security plan provisions similar to the exemption afforded to users of anhydrous ammonia nurse tanks. It makes no sense to require for-hire carriers to develop and implement written security plans for anhydrous ammonia, while mobile nurse tanks with these materials are left unsecured.<sup>5</sup>

For these reasons, ATA supports the incorporation of SP 10950 into the HMR, but requests that PHMSA require hazardous materials employers subject to proposed § 173.315(m) to register with PHMSA under 49 CFR Part 107. ATA also believes that private carriers and for-hire carriers should be treated equally with respect to the requirement to prepare and maintain written security plans covering the transportation of anhydrous ammonia.

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<sup>4</sup> See 49 CFR § 107.601(b).

<sup>5</sup> See 49 CFR § 172.800(c), exempting certain farmers from the requirements to maintain a written security plan.

**F. SP 13554 – Authorization for nurse tanks with missing or illegible ASME plates.**

ATA takes no position on the incorporation of SP 13554 into the HMR. ATA is concerned over PHMSA's incorporation of industry consensus standards into the HMR, where such standards are developed without the benefit of formal rulemaking and where such standards are not provided to the public free of charge. This pay-to-play system of developing regulatory standards raises questions under the Administrative Procedures Act (5 U.S.C. § 553), which requires agencies to provide interested persons with notice and an opportunity to participate in the rulemaking process. To cure this defect, PHMSA should first publish the industry standard in the Federal Register and solicit comments on it prior to its incorporation in the HMR. In addition, PHMSA should ensure that the specific industry standard incorporated into the HMR is available to the regulated community free of charge. Standard setting organizations may charge for the standards they establish, but when they seek to have those standards converted into federal regulations and given the force of law, they must provide the regulated community with instantaneous access to these newly established regulations, free of charge. This can be done by having PHMSA post a copy of the standard on its website.

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ATA supports the concept of incorporating the terms of Special Permits into the HMRs, especially where those Special Permits have a proven safety record. Incorporating Special Permits into the regulations will improve the communication of regulatory requirements, facilitate driver training, and improve compliance.

As stated above, we have significant concerns with the concept of allowing private carriers to engage in activities that for-hire carriers are prohibited from performing, especially in the absence of data demonstrating a safety difference between for-hire and private carriers.

We also have concerns over incorporating SP 10950 into the HMRs, *as proposed*, and believe that this would erode PHMSA's ability to identify these hazardous materials transporters and quantify their safety performance.

If you have any questions concerning these comments, please contact the undersigned at (703) 838-1910.

Respectfully submitted,



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