



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

November 29, 2023

U.S. Department of Transportation
Docket Operations
M-30, Ground Floor
Room W12-140, West Building
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Docket Number: PHMSA-2019-0031
Hazardous Materials: Modernizing Regulations To Improve Safety and Efficiency

Dear Deputy Administrator Brown,

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) advance notice of proposed rulemaking (ANPRM) seeking stakeholder feedback on initiatives PHMSA is considering that may modernize the Hazardous Materials Regulations (HMR) and improve efficiencies while maintaining or improving a current high level of safety, Docket Number PHMSA-2019-0031.

CVSA is a nonprofit organization comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to prevent commercial motor vehicle crashes, injuries and fatalities and believes that collaboration between government and industry improves road safety and saves lives. Our mission is to improve commercial motor vehicle safety and enforcement by providing guidance, education and advocacy for enforcement and industry across North America.

Below, please find responses from CVSA to the questions posed in the ANPRM. Please note, CVSA has limited responses to those questions that are applicable to the Alliance's membership.

Comments Regarding Topics Under Consideration

A. Evaluation of Carrier Maintenance of Emergency Response Information

- 2. How does, if anything, the utility or value of ERI vary under § 172.602 in the different modes of transportation?*

The value of emergency response information (ERI) varies primarily by location of the incident, rather than the mode of transportation. In areas where there is a robust emergency response network, including

full-time fire departments and hazardous materials (hazmat) teams, trained emergency response personnel with more training and access to advanced emergency response information arrive on scene in a timely manner. In contrast, when a hazmat incident occurs in a rural area, which may rely on a volunteer fire department and, in some cases, response is handled by a sheriff's deputy or state trooper, the emergency response information carried in the truck and the training of the driver is more critical. This is primarily an issue with highway and rail transportation.

- a. *In highway and rail accidents, is emergency response generally conducted by emergency responders rather than carrier personnel? Explain.*

The nature of the emergency response varies based on the location of the incident. In an urban or suburban area, emergency response to an incident is usually conducted by emergency responders. In a rural area, however, it may be carrier personnel, especially in the initial stages of an incident. In many cases, in a rural area, the driver may have more training and expertise than the emergency responders and, as a result, the emergency responders may look to the driver and the emergency response information they carry to help mitigate the incident.

- b. *How much do emergency responders rely on the ERI provided by the highway or rail carrier, or do they rely on their own?*

The level to which an emergency responder relies on the ERI provided by the highway or rail carrier will depend on the level of training that emergency responder has received. This is often influenced by the location of the incident, with emergency responders in urban and suburban areas typically having more training and familiarity than those in rural areas.

3. *Provided an equivalent level of safety can be maintained, what are the potential cost savings involved in revising the ERI requirements under § 172.602?*

CVSA is not in a position to speak to the cost savings associated with revising the ERI requirements under § 172.602. That said, CVSA does support revising § 172.602, provided that an equivalent level of safety can be maintained. The Alliance also supports allowing emergency response information to be electronic. If PHMSA does allow emergency response information to be electronic, CVSA encourages the agency to develop an objective training standard to address the necessary training regarding when electronic emergency response information is used. Additional factors PHMSA should consider and address in a move to electronic ERI include:

- accessibility of the information on an electronic ERI when the driver is incapacitated
- access to the ERI when it is on a device the driver doesn't want to give emergency responders access to

- a. *Would revisions to § 172.602 in effect "shift" the costs of maintaining ERI to entities other than the carrier, such as emergency responders affiliated with tribes, states, counties, or localities?*

Emergency responders are required by 29 CFR § 1910.120 and 40 CFR § 311.1 to have appropriate

training. However, the depth of this training varies significantly. Often the initial training is completed but recurrent training is uncommon in many rural areas. These emergency responders normally receive training on the Emergency Response Guidebook and other awareness level training. Any cost shifting should be minimal, but it is important to remember that the training the driver receives and the emergency response information the driver carries is more critical in rural areas.

4. *Are there differences in the reliance on the carrier's copy of ERI between different types of emergency responders? Differences to consider include urban and rural organizations, professional and volunteer, and different response branches such as law enforcement officers and firefighters.*

There is more reliance on the emergency response information carried by the driver in many rural areas. Training also varies significantly between law enforcement, firefighters and EMS personnel depending on locale and emergency response duties.

E. Residue IBC Exceptions

2. *Do you support adoption of RIPA's request to have the vehicle display no placards or ID number marks for a shipment of residue IBCs? Why or why not? Alternatively, please propose an alternative form of hazard communication for the vehicle.*

CVSA does not support making this change. It would be difficult to enforce during a roadside inspection. Roadside inspectors have no way to determine how empty an IBC is, and it would create a subjective standard. Referencing a standard in 40 CFR further complicates the issue. Adding additional exceptions to the regulations complicates enforcement and may hinder emergency response.

F. Requirements for Damaged, Defective, or Recalled Lithium Cells and Batteries

1. *PHMSA's concerns with DDR batteries include that damaged or defective batteries have a higher chance of thermal runaway and creating fire and explosion in transportation. PHMSA does not consider devices and batteries recalled for non-safety related purposes to be subject to the "damaged, defective, or recalled" packing instruction in § 173.185(f). How should PHMSA define "damaged, defective, or recalled" for lithium batteries to clearly communicate this distinction?*

CVSA supports changing the definition of a defective battery to distinguish between batteries that have a defect associated with the safety of the lithium battery versus other defects that have nothing to do with the battery or associated safety. The change should be clear, so shippers/offerors can clearly distinguish the type of defect and properly classify the lithium battery.

I. Standards Incorporated by Reference Update

2. *Should PHMSA engage IBR organizations through a semi-annual public meeting to discuss changes to the IBR standards, codes, or best practices?*

CVSA supports public meetings. This would be a good best practice to help keep the IBR standards up to date.

- a. *Should PHMSA consider individual, modal specific meetings to address individual transportation modes, IBR standards, codes, or best practices?*

CVSA supports public meetings. This would be a good best practice to help keep the IBR standards up to date. Further focusing the meetings by mode would be more effective, keep the meetings smaller and provide an opportunity for more effective feedback from participants.

J. EX–Number Display Requirements

1. *From an emergency response perspective, how does allowing the transportation of fireworks with FC numbers entered on a document other than a hazmat shipping paper, or on the explosive item rather than the outside packaging, impact the risks of hazardous materials in transportation?*

CVSA does not support making this change to the regulations. The display of the FC number has little effect on emergency response. The FC number verifies the fireworks were appropriately tested and are safe for transportation and use. When the FC number is on the package or the shipping papers, it provides an easy and effective way for roadside inspectors to verify the FC number(s). If the FC numbers are on the packing list or the device, they cannot be verified during a roadside inspection, because roadside inspectors do not open packages or remove packing slips.

L. Limited Quantity Training Exception

12. *Rather than a training exception for all LTD QTY, should PHMSA limit a training exception to only certain LTD QTY materials, e.g., Class 3, Division 4.1 and Class 9? Explain.*

CVSA does not support making any changes to the training requirements for LTD QTY shippers/offers. LTD QTY materials still pose a danger in transportation. There is already significant confusion regarding the regulatory requirements for LTD QTY materials. Removing training requirements will likely lead to more violations on roadside inspections, may frustrate the movement of these materials and reduce public safety.

O. Creation of Basic Description and Shipping Description Definitions

1. *Would the creation of definitions for “basic description” and “shipping description” in § 171.8 as described above increase the clarity of the HMR? Why or why not?*

CVSA supports adding these definitions to § 171.8. These concepts are already taught in training courses for roadside inspectors. CVSA also provides training to the regulated industry using a PHMSA Hazardous Materials Instructor Training (HMIT) grant. The Alliance teaches this concept to instructors who attend HMIT courses. Adding these definitions as described will help both enforcement and industry by formalizing definitions and standardizing terms already being used and taught. This would also aid in compliance of the shipping paper requirements during the preparation of shipping papers by the regulated industry.

P. Removal of the 60-Day Renewal Requirement for Approvals and Special Permits

1. *Do you support authorizing continued use of special permits and approvals until final administrative action is taken on the renewal application, provided the applicant requests renewal prior to the expiration date? Explain.*

CVSA supports this change. However, special permits or approvals that fall into this category must have a mechanism available to allow roadside inspectors to verify the status during a roadside inspection.

DD. Updating Requirements for Transporting Hazardous Materials on Passenger Carrying Motor Vehicles

5. *Do current hazard communication requirements (marking, labeling, placarding, etc.) meet the needs of emergency responders and carriers in scenarios where hazardous materials are transported on board passenger-carrying vehicles?*

The current language in § 177.870 is confusing and difficult to interpret. CVSA supports updating and simplifying the regulation. CVSA suggests using a table like the table in § 177.848 that applies to passenger-carrying vehicles transporting hazardous materials.

6. *What locations on the vehicles should the hazardous material be stowed?*

All passenger-carrying vehicles should have a specific, dedicated location where any hazardous materials shipped must be kept. This will make it easier for drivers and roadside inspectors to identify hazardous materials being transported. The specific configuration of the passenger-carrying vehicle would determine stowage. In the case of a motorcoach, the undercarriage should have one section or segmented area underneath that is specifically used for hazardous materials storage and a marking could be placed externally for quick identification by emergency responders. Also, the stowage area could be equipped with flame retardant materials to prevent fire from spreading to mitigate damage in an incident.

8. *What are appropriate training requirements for drivers of passenger carrying vehicles that transport hazardous materials? What would this training cost to implement? How many drivers are likely to be affected and need training? In what manner are drivers already being trained on awareness and handling of hazardous materials carried by passengers or offered as cargo?*

Drivers of passenger-carrying vehicles transporting hazardous materials should be subject to the training requirements in Subpart H to Part 172. In addition, the drivers should have additional training in recognizing hazardous materials being transported by passengers.

11. *Do you support adoption of provisions similar to the air transportation requirements in § 175.10 to address hazardous materials carried on board by passengers for their personal use separate from those carried as cargo on board passenger-carrying vehicles?*

CVSA supports the adoption of provisions like those used for passenger-carrying aircraft. This would provide an enhanced level of safety and emphasize the hazardous materials passengers may be carrying. This would also assist in providing an additional level of awareness for the passengers and any hazardous materials they may be carrying.

13. *Are passenger-carrying motor vehicle drivers and/or other employees trained to recognize hazardous materials that may be transported by passengers?*

No, currently drivers do not receive adequate training in this area because no objective training standard exists. A standard should be developed, and completion of the training should be required of all passenger-carrying vehicle drivers.

EE. EPA 27 Test Method for Cargo Tanks

6. *Should the U.S. Department of Transportation formally define “petroleum distillate fuels” for the purpose of determining the applicability of the exception in § 180.407(h)? If so, what definition should be used?*

CVSA supports PHMSA creating a new definition for “petroleum distillate fuels.” This would assist inspectors who conduct compliance investigations to determine the applicability of the EPA Test Method 27. The definition used by EPA could be used to develop a definition in the HMR, but it needs to be specific and should include a list of hazardous materials that meet the definition.

KK. Cargo Tank Reflectivity

1. *Do you support the creation of a reflectivity performance standard for wrapped or painted MC-331 cargo tank motor vehicles to replace or in addition to the current requirement for the tank to be a “white, aluminum, or similar reflecting color?” Explain.*

The current regulation, as written, is straightforward and can be enforced roadside. However, several subsequent interpretations regarding the “similar reflecting color” provision have made this standard impossible to enforce during a roadside inspection. CVSA supports updating this regulation if the new regulation requires the cargo tank owner to complete any testing and carry documentation in the vehicle so it can be verified during a roadside inspection. Otherwise, any new regulation and the current regulation cannot be verified during a roadside inspection.

SS. Placard Display on Intermediate Bulk Containers

1. *In your opinion, should PHMSA revise § 172.516 to clearly authorize motor vehicle placard display on IBCs, shrink-wrapped pallets containing non bulk packages, or other arrangements that permit adequate visibility of placards for each direction they face? Why or why not?*

CVSA supports making this change, providing the language is broad enough to cover more scenarios where this could occur other than just IBCs and shrink-wrapped pallets. For example, portable tanks or flexible bulk containers that are transported in the same manner.

2. *Would placards displayed on IBCs or shrink-wrapped pallets containing non-bulk packages be as visible and recognizable in normal transportation scenarios and accident scenarios compared to placards displayed on a freight container or portable tank?*

If the placards are displayed in a manner that meets the visibility and display requirements in § 172.516(a), the placards should be visible in normal transportation and accident scenarios. When a commercial motor vehicle transporting a hazardous material is involved in a rollover crash, the placards may be damaged or

destroyed in the crash. In this case, the location of the placards will have a negligible effect on whether they are visible after the crash.

TT. Emerging Technologies

1. *Please identify any revisions in the HMR required to facilitate the adoption of new and emerging technologies.*

CVSA supports the use of any new technologies that enhance safety. Two areas where emerging technologies could enhance safety are the application of emergency response information and shipping papers accessibility. CVSA encourages PHMSA to look at new technologies as they make changes to emergency response information regulations and consider other changes to the regulations that apply to shipping paper accessibility and the use of electronic shipping papers.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 202-998-1008 or by email at collin.mooney@cvsa.org.

Respectfully,



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