



COUNCIL ON SAFE TRANSPORTATION  
OF HAZARDOUS ARTICLES, INC.

October 15, 2012

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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits comments to the Notice of Proposed Rulemaking (NPRM) published in Docket No. PHMSA-2012-0027 (HM-215L) on August 15, 2012. The NPRM proposes amendments to Title 49 CFR, Parts 171, 172, 173, 175, 176 and 178 to harmonize with international standards including the UN Recommendations on the Transport of Dangerous Goods (UN Model Regulations), the ICAO Technical Instructions on the Safe Transport of Dangerous Goods By Air (ICAO TI), and the International Maritime Dangerous Goods Code (IMDG).

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

COSTHA members represent global organizations which ship, handle, transport, and deliver hazardous materials worldwide. Multi-modal harmonization, when possible, provides a safe and efficient mechanism in which businesses can operate. We are pleased to see PHMSA's continued efforts toward this goal. HM-215L is a significantly detailed proposal. After reviewing the particular details, COSTHA has identified a number of points we wish PHMSA to consider before issuance of a Final Rule. Primarily these points involve the classification of 1.4S (the new 6(d) test), modification of the limited quantity provisions to harmonize with international standards, and specific provisions proposed within Part 175 for transport by air.

**The Council on Safe Transportation of Hazardous Articles, Inc.**

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## **Adoption of UN Manual of Tests and Criteria – Amendment 1 to Revision 5**

PHMSA is considering incorporating by reference a number of international regulatory texts including the UN Model Regulations – 17th Revised Edition. However, during the 2009-2010 Biennium, the UN Subcommittee agreed to a number of changes to the UN Manual of Tests and Criteria 5<sup>th</sup> Revised Edition (UN Manual). These changes are included as Amendment 1 and include:

- Amendments to the procedure for assignment to a Division of Class 1;
- Amendments to test series 7 for the classification as extremely insensitive explosive article;
- A test method for the classification of gases and gas mixtures as chemically unstable (new section 35);
- Amendments to the procedures to be followed for the classification of lithium metal and lithium ion cells and batteries;
- Amendments to the variations permitted for MEGCs design without additional testing;
- A new appendix 8 detailing the response descriptors to be used for the purposes of Test series 7.

COSTHA members believe these amendments clarify requirements applicable to test conditions defined in the UN Manual and should be incorporated by reference into the Hazardous Materials Regulations (HMR).

## **Harmonization with International Standards**

PHMSA is proposing to harmonize the HMR with international standards in a number of areas including expanding packaging authorizations, adopting flexible bulk container requirements, adopting Chemicals Under Pressure provisions, and UN number marking size requirements. Generally, COSTHA supports harmonization efforts as it reduces the burden of industry to address multiple and often conflicting regulations when shipping by several modes or internationally. To this end, COSTHA supports the proposals made by PHMSA on these points.

Increasing the authorized types of packagings to be used for various hazardous materials allows industry to choose packaging which provides safety to transportation workers and the public while providing flexibility and enhancing efficiency for companies serving their clients. We are not aware of any incidents or failures related to the use of packagings included in the expanded packaging lists. Therefore we believe PHMSA is justified in providing greater options.

As demonstrated at the UN Subcommittee, the use of Flexible Bulk Containers (FBCs) can be safe and effective for a number of commodities. These packagings are reusable and therefore provide an economic and sensible packaging solution when authorized. COSTHA is aware of a number of commodities which can be shipped in FBCs, and we believe their use in the US is beneficial to industry. We support the provisions proposed by PHMSA in harmonizing the FBC requirements in the US with those adopted at the UN.

PHMSA proposes to adopt the new entries related to “Chemicals Under Pressure” into the HMR. COSTHA was involved in the discussions at the UN with regards to Chemicals Under Pressure, and we are again supportive of PHMSA’s adoption of these provisions into the HMR. While shippers may often be confused when choosing the correct proper shipping name for certain chemicals pressurized, the packing instructions for liquefied gases and aerosols do not adequately account for the safety conditions for chemicals under pressure. Packing limitations

and packaging requirements are overly restrictive or inappropriate. The UN adoption of the Chemicals Under Pressure entries provide appropriate requirements, authorized packaging, and quantity limits which ensure safety during transport. COSTHA therefore supports adoption of these provisions as well.

Markings on packages provide communication to transportation workers and emergency responders as to the specific materials contained within a package. The UN number is recognized throughout the world as an indication of hazardous materials contained within, and the UN number can be used to determine effective emergency procedures to be followed in the event of an emergency. We are in support of the minimum UN marking size as proposed in the NPRM. COSTHA supports the tiered approach to size markings, allowing for smaller sizes to accommodate smaller packages. A few of our members have questioned whether the capacity of the outer or inner packaging would dictate the size of the marking. COSTHA believes PHMSA intends the capacity of the outer packaging (regardless of inner packaging sizes) would dictate the UN number marking size (for example, a package containing 2 inner packagings of 4 L each would require a 6 mm minimum UN number marking). We request PHMSA clarify this position when issuing the Final Rule.

### **Used Medical Devices**

PHMSA is proposing to modify subparagraph §173.134(b)(12) to adopt provisions for used medical equipment and devices potentially contaminated with prions or pathogens which can cause infection in humans and animals. These provisions were reviewed and adopted by the UN Subcommittee in December of 2010 and provide packaging and marking exceptions for these products which represent a very low risk in transport. However, since these provisions were adopted by the UN, the ICAO Dangerous Goods Panel has reviewed and has chosen not to adopt the provisions by air. Instead, the ICAO Panel noted a number of concerns are not addressed by the provisions adopted by the UN and proposed in the NPRM. COSTHA is continuing to work with the UN and ICAO to define conditions which address ICAO's concerns for air transport. Since §173.134 (b)(12) was the basis for the original COSTHA UN paper proposing changes at the UN, removal of this provision before ICAO adopts the changes would lead to confusion and added disharmony.

COSTHA has proposed additional changes to the UN provisions for Used Medical Devices and these changes are also being reviewed by the ICAO Dangerous Goods Panel. The current requirements are well known by the medical and associated industries in the US. Further, the existing requirements include markings necessary to meet related requirements by the Occupational safety and Health Administration (OSHA). Removal or significant modification of these provisions may have an adverse effect on these industries.

Until final decisions are made by both the UN and ICAO, COSTHA recommends PHMSA delay adoption of the changes to §173.134(b)(12) as proposed in the NPRM.

### **Non-Spillable Batteries**

PHMSA is proposing to add the requirement to the exception for non-spillable batteries in §173.159a(d) that such batteries may only be carried as cargo on aircraft. The term CARGO is not defined in §171.8 but is generally considered to be offered by a shipper to a carrier or operator for transport. It is separate from the term BAGGAGE for air operators as BAGGAGE is offered by a passenger for carriage to a destination and is tied to the passenger through a

reservation. BAGGAGE is not considered CARGO, although it may accompany cargo in the lower holds of an aircraft.

§175.10(a)(15) specifically refers to the allowance of a non-spillable battery as CHECKED BAGGAGE if it meets the conditions of §173.159a(d) and it is carried under additional conditions.

If the language proposed in the NPRM for §173.159a(d) is adopted, then practically it is impossible for an air operator to accept a non-spillable battery as both CHECKED BAGGAGE and CARGO at the same time. To remedy the proposed paradox, COSTHA proposes PHMSA modify the language of §175.10(a)(15) to remove the requirement that the shipment be offered as CARGO:

§175.10(a)(15)...

- (i) *The battery confirms to the requirements of §173.159a(d) (except subparagraph (iii)), of this subchapter when carried as checked baggage, provided -*

### Summary

In general, COSTHA supports PHMSA's efforts to harmonize with international standards and we are greatly encouraged at PHMSA's consideration of the expanded packaging authorizations, adopting flexible bulk container requirements, adopting Chemicals Under Pressure provisions, and UN number marking size requirements. We recommend PHMSA adopt the regulations in whole and provide a limited transition period for shippers and carriers to exhaust existing packagings/markings for the UN number marking size. COSTHA opposes the changes proposed for Used Medical Devices until these exceptions are fully adopted internationally. Finally, we believe additional modification needs to be adopted for non-spillable battery exceptions to prevent a regulatory paradox. We request PHMSA consider these comments when determining language for the Final Rule.

Sincerely,



Thomas W. Ferguson, DGSA  
Technical Consultant