

Dangerous Goods Advisory Council

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Docket Operations
US Department of Transportation
West Building, Ground Floor
Room W12-140
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1200 New Jersey Ave, SE
Washington, DC 20590

Appeal of HM-218D Final Rule (Docket No. PHMSA – 2005-21812)

The Dangerous Goods Advisory Council (DGAC) appeals HM-218D Final Rule in accordance with 49 CFR Part 106.

DGAC is a non-profit educational organization that promotes hazmat transportation safety by providing classroom training, seminars and conferences, and participation in domestic and international regulatory activities in its promotion of not only safe, but also efficient transportation of hazardous materials/dangerous goods in commerce.

DGAC appeals the amendments to 49 CFR §171.4(c) and §172.203(l)(4).

Upon reading PHMSA's Regulatory Flexibility and Paperwork Reduction analyses, it is clear PHMSA failed to consider the cost of the changes to §171.4(c) and §172.203(l)(4), and current industry practices that address the concern that PHMSA attempted to address. Due to the changes to §171.4(c) and §172.203(l)(4), substances in nonbulk packagings that are marine pollutants under the IMDG Code that are not otherwise subject to the Hazardous Materials Regulations (HMR), will become fully regulated as hazardous materials when transported by rail or highway if a portion of their transportation involves transportation by vessel. As a consequence, shipping papers including emergency response telephone numbers and emergency response information will have to be prepared for the ground transportation of these materials, transport vehicles will be required to bear the marine pollutant mark and all transport workers engaged in their movement will be required to be trained on the requirements of the HMR. Furthermore, many shippers will be compelled to consign all of their shipments of marine pollutants in non-bulk packagings as hazardous materials due to uncertainty as to which shipments or portions thereof will ultimately be transported by vessel. Considering the number of substances and mixtures that qualify as marine pollutants, PHMSA's conclusions that "the rule will yield net economic benefits" and that the "rule does not impose any new information collection requirements" is inaccurate. Further, we note that the impact of the amendments to §171.4(c) and §172.203(l)(4) could have an even greater impact if PHMSA adopts "hazard to the aquatic environment criteria" contained in the Globally Harmonized System for Classification and Labelling.

It is not uncommon in current practice for a US shipper to ship marine pollutant substances in nonbulk packages to a third party warehouse for storage incidental to transportation without knowing the ultimate destination(s), including whether transport will require vessel transport. At the warehouse, when a portion or all of the original shipment is consigned to a foreign destination requiring vessel transport, packages are brought into compliance with the IMDG Code marine pollutant requirements (e.g., the marine pollutant mark is applied). At the same time, to ensure shipping papers are in compliance with the IMDG Code, the shipper will electronically convey needed information to the freight forwarder who in turn will offer the shipment and an IMDG Code compliant transport document to the vessel operator. This type of practice has been in use for many years and has been effective in ensuring compliance with IMDG Code requirements in the case of shipments not subject to the HMR for purposes of highway or rail transport, but subject to the IMDG Code (e.g., marine pollutants in nonbulk packagings and flammable liquids with a flashpoint greater than 38oC in nonbulk packagings). The rule change fails to acknowledge this practice. The changes unnecessarily introduce new inefficiencies and impose new costs on shippers and carriers.

DGAC notes that Shell Chemical LP in its letter of November 29, 2006 commenting on the HM-218D NPRM provided alternative language to what was adopted in the HM-218D final rule. The Shell proposal covers differences in documentation requirements between the HMR and the IMDG Code. It would permit documentation differences to be resolved through electronic data transmission or through documentation provided to the original carrier. PHMSA rejected the Shell proposal on seemingly minor points, namely because:

1. “The addition of the language proposed by Shell Chemical would require all vessel shipments to conform to the IMDG Code, which is authorized but not required for domestic shipments.” and
2. “because no provision of the HMR prohibits inclusion of additional information in a shipping paper, making express allowance for this in 172.203(i) would be redundant and unnecessary.”

If PHMSA is intent on addressing the issue prompting the subject regulatory changes, DGAC would support the Shell proposal in principle but would propose placement of a similar provision, which takes PHMSA’s two objections into account, in a new §172.203(i)(4) to read as follows:

“(4) For a marine pollutant in a nonbulk packaging, all necessary information for the shipment to conform to the requirements for transport by vessel. Alternatively, the information must be provided directly to the vessel operator or indirectly, such as through a forwarding agent.”

We believe this approach is consistent with PHMSA’s stated objective of increasing the use of technology in facilitating hazardous materials transportation as reflected in the introduction to the Administration’s 2008 PHMSA budget proposal and is consistent with the objective of PHMSA/VOHMA partnership agreement to remove impediments to transportation through the use of technology.

On the basis of the above discussion we urge PHMSA to withdraw the amendments to §171.4(c) and §172.203(l)(4).

We also take this opportunity to provide a comment on PHMSA's amendment of §173.22(b) in HM-218D. PHMSA has added a new condition on the offering of a hazardous material requiring a safety permit under 49 CFR §385.403. Unfortunately, offerors, including interlining carriers, do not have an efficient means of verifying whether a motor carrier is a holder of a valid safety permit. To facilitate fulfillment of this new obligation, DOT should provide such a means. We believe that an internet based system, identifying carriers with a safety permit and their permit's expiration date would satisfy this need. While not recommending any delay in the implementation of the new regulation, we urge DOT to provide such a system by the effective date of the rule.

Sincerely,

A handwritten signature in black ink that reads "Michael Morrisette". The signature is written in a cursive, slightly slanted style.

Mike Morrisette
President