DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS
SAFETY ADMINISTRATION

DOCKET NO. PHMSA-2025-0032 (HM-265B)
HAZARDOUS MATERIALS: MANDATORY REGULATORY REVIEWS TO UNLEASH AMERICAN ENERGY AND IMPROVE GOVERNMENT EFFICIENCY
ADVANCE NOTICE OF PROPOSED RULEMAKING

COMMENT SUBMITTED BY THE
ASSOCIATION OF AMERICAN RAILROADS AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly, the Associations), on behalf of themselves and their member railroads, submit the following comments in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) June 4, 2024, Advance Notice of Proposed Rulemaking (ANPRM) soliciting stakeholder feedback on whether to repeal or amend any requirements in the Hazardous Materials Rulemaking Procedures and Program Procedures, or the Hazardous Materials Regulations (HMR).[1]

Statement of Interest

AAR is a non-profit trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a national trade association representing the interests of about 600 short line and regional railroad

[1] 90 Fed. Reg. 23656.

members in legislative and regulatory matters. Short lines operate 47,500 miles of track in the United States, or approximately 29% of the national freight network. The members of the Associations will be directly affected by the rulemaking because many of the proposed changes will affect the transportation of hazardous materials by rail. Therefore, the Associations comment on the following questions raised by PHMSA that potentially impact the transportation of hazardous materials by rail:

A. Procedural Regulations and Actions

1. Should PHMSA consider incorporating within its HMR an explicit requirement to conduct retrospective regulatory reviews at specified intervals to identify undue burdens and improve government efficiency? Please identify any specific regulatory language that would be appropriate for that purpose. What interval would be appropriate? How should PHMSA provide opportunities for stakeholder engagement in those reviews?

> Yes. A formalized process for assessing the continued effectiveness of existing regulations makes practical sense from a government efficiency perspective and will help to ensure that American energy products are transported safely and efficiently. PHMSA is already required to conduct periodic reviews of its existing regulations to determine if those regulations have a significant economic impact on a significant number of small entities pursuant to the requirements of § 610 of the Regulatory Flexibility Act. 5 U.S.C. 610. At a minimum, PHMSA should conduct retrospective reviews at a frequency that is consistent with the § 610 schedule, but PHMSA should expand its reviews to assess regulatory burdens for all entities, not just small entities. The reviews would allow PHMSA to assess the data collected from regulatory compliance, but should also include an opportunity for public comment, to help to ensure that PHMSA makes informed decisions on whether there is a continued need for the existing regulations or whether revisions may be warranted to accomplish PHMSA's safety objective in a more efficient manner.

2. Are there existing special permits (issued or requested) or petitions for rulemaking that PHMSA should consider prioritizing to reduce regulatory burdens and improve government efficiency?

Special Permits

PHMSA should prioritize incorporating special permits that have proven to be successful into the HMR. These types of special permits are effective tools in streamlining the transportation of energy products, but administratively inefficient because they are temporary actions that require periodic re-submission and review. Current examples of proven special permits in the transportation of hazardous materials by rail context that warrant inclusion in the HMR are:

- Electronic Shipping Paper/Consist Information: PHMSA's paper shipping paper/consist requirements are antiquated. Several railroads, including all six Class I railroads (or their respective U.S. operating railroads), are authorized to operate under special permits that allow them to use "electronic means to maintain and communicate on-board train consist and shipping paper information in lieu of paper documentation when hazardous materials are transported by rail."[2] The special permit allows railroads to realize substantial regulatory cost savings without a negative impact on safety.

  In the Real-Time Train Consist NPRM, PHMSA acknowledged that these special permits have been a success, noting that it is "not aware of any negative impacts."[3] Indeed, PHMSA even highlighted that there are examples where the electronic consist information was shared with emergency responders to assist in the emergency response. PHMSA has also noted that the use of electronic shipping papers—

  - Improves the availability and accuracy of hazard and response information for shipments and packages;
  - Improves the speed by which information is available to emergency responders when accidents or incidents occur;
  - Improves the security of imported containers through better knowledge of shipments; and
  - Enables U.S. companies to compete more effectively in the global economy by using the best tools available.[4]

[2] DOT–SP 20954 (issued to BNSF Railway Company); DOT–SP 21046 (issued to CSX Transportation); DOT–SP 21053 (issued to Canadian National Railway Company); DOT–SP 21059 (issued to Union Pacific Railroad Company); and DOT–SP 21110 (issued to Norfolk Southern Railroad), and DOT-SP 21323 (issued to CPKC, (f/k/a Canadian Pacific Railway Company).

[3] 88 Fed. Reg. 41541, 41545 (June 17, 2023).

[4] https://www.phmsa.dot.gov/hazmat/hm-access/faqs.

This led PHMSA to acknowledge that the use of electronic shipping paper information provides "economic benefits and proven efficiencies."[5]

Notwithstanding these benefits, in the Real-Time Train Consist Final Rule, PHMSA implemented new requirement in 49 CFR 174.26 and 174.28 for rail carriers to keep and maintain an updated version of *both a printed paper copy and electronic version of the train consist*. This is unnecessarily duplicative and costly. PHMSA should review the permits for codification in the HMR to allow a regulatory alternative to antiquated paper requirements and eliminate the wasteful requirement to keep a paper and electronic version of the consist.

- Light Locomotive Consists: PHMSA currently allows, via a special permit, the transportation of freight using a "light locomotive consist" that includes no more than three locomotives attached to the rear end of a stalled train without positioning buffer cars to separate the locomotives from the rear placarded hazardous materials in the train.[6] The special permit, which contains operating controls to protect the crew and the safety of the train movement, has been in place for approximately two decades. It is effective in providing operational flexibility to allow the use of locomotives to move stalled trains on hills without resorting to marshaling rules. The safety record over the 20 years that the permit has been in place demonstrates the effectiveness of the special permit, and supports codification.

- Unoccupied/Displaced Power: PHMSA has issued special permits to 16 railroads, including all six Class I railroads (or their respective U.S. operating railroads), to allow trains to operate, subject to certain operational controls, without buffer cars between placarded cars and unoccupied locomotive engines.[7] The breadth of these waivers across multiple railroads highlights that the existing regulations serve no safety purpose. Codifying the special permit will reduce regulatory costs while increasing operational efficiency. Indeed, AAR submitted a petition for rulemaking to PHMSA in 2020 on this issue, which is discussed further in the next section below under "Petitions for Rulemaking."[8]

Petitions for Rulemaking

PHMSA should also prioritize two AAR petitions for rulemaking:

[5] *Id*.
[6] DOT-SP 15580
[7] DOT-SP 20996
[8] https://www.regulations.gov/docket/PHMSA-2020-0023.

- P-1741: As noted above, AAR petitioned PHMSA for rulemaking in 2020 seeking to revise the regulatory requirements for buffer cars. Specifically, AAR requested that PHMSA revise paragraph (d) of § 174.85 so that it only applies to occupied locomotives. PHMSA should act quickly on this petition. The existing regulations negatively impact operational efficiency without a corresponding safety benefit, as demonstrated by railroads' experiences operating pursuant the existing special permit.

  The buffer car regulation is a vestige of when railroads used steam engines that produced hot cinders and wooden cars to transport explosives. Railroads have not used steam engines or wooden cars to transport explosives for decades. There is no risk that a modern locomotive will light a railcar on fire. Moreover, the current regulatory requirement has real costs because it reduces operational efficiency and encumbers the use of distributed power locomotives, effectively increasing the cost of using distributed power to assist with train control.[9] This is because if a distributed power locomotive is next to a placarded rail car, the § 174.85 requires the railroad to switch cars to bring a train into compliance. As a result, railroads must perform unnecessary switching moves that impede operational efficiency and potentially negatively impact safety.

  In 2023, PHMSA published an ANPRM, "Modernizing Regulations to Improve Safety and Efficiency" (HM-265A), which sought comment on P-1741.[10] AAR commented that the request in the petition should be incorporated into the HMR.[11] However, PHMSA has not taken additional action to incorporate AAR's recommended changes into the HMR.[12]

- P-1770: AAR submitted a petition for rulemaking in 2022 requesting that PHMSA amend the HMR by replacing the current requirement that each tank car facility have an "AAR-approved" quality assurance plan with a requirement that tank car facilities have quality assurance plans that comply with AAR's Quality Assurance Program (M-1003) specification.[13] This proposed change is intended to clarify the

[9] Distributed power locomotive are placed somewhere in the middle and/or end of a train's consist. Using distributed power helps a locomotive engineer to minimize in-train forces, reduce wear and tear on equipment, and brake faster, amongst other benefits.
[10] 88 Fed. Reg. 43016 (July 5, 2023).
[11] https://www.regulations.gov/comment/PHMSA-2019-0031-0054.
[12] More broadly, the Associations would urge PHMSA to consider a reassessment of § 174.85 generally to tie marshalling requirements to actual commodity risk – for example, by restricting marshalling only to flammable commodities.
[13] https://www.regulations.gov/docket/PHMSA-2022-0130.

respective roles and responsibilities of AAR and DOT with respect to determining compliance with and enforcement of federal regulations.

In 2024, PHMSA published an NPRM, "Advancing Safety of Highway, Rail, and Vessel Transportation" (HM-265), which acknowledged AAR's petition, but proposed a vastly different regulatory regime than what is envisioned in the AAR petition. The HM-265 NPRM proposed to amend 49 CFR § 179.7 to allow a tank car facility to choose its own quality assurance program and register that program with PHMSA. As part of the process, the tank car facility would need to certify that the quality assurance program selected meets the basic requirements identified in § 179.7(b). In response to the NPRM, AAR conducted a detailed gap analysis comparing M-1003 to the requirements in § 179.7, which AAR included in its comment to the NPRM.[14] The findings of the gap analysis showed that while compliance with M-1003 would effectively ensure compliance with § 179.7, compliance with § 179.7 would not ensure compliance with M-1003. The main reason for non-alignment is that requiring mere compliance with § 179.7 would allow tank car facilities to rely on less robust quality assurance programs than M-1003.

PHMSA's approach in HM-265 NPRM was short-sighted and should be corrected. M-1003 is not specific to the transportation of hazardous materials. Indeed, less than 38% of facilities complying with M-1003 conduct activities on tank cars while tank car-exclusive facilities only amount to approximately 21% of all facilities qualified under M-1003. In other words, tank car facilities make up a small minority of the total population of facilities that must comply with M-1003. Therefore, AAR cannot just set aside M-1003 based on PHMSA's proposed changes for tank car facilities. As a result, if HM-265 were finalized it would increase the burdens on railroad facilities by effectively forcing railroad industry facilities to record compliance with two sets of quality assurance requirements, § 179.7 and M-1003.

The Associations request that PHMSA modify HMR consistent with AAR's petition, P-1770. This approach would allow PHMSA and FRA to exercise their existing regulatory authority to determine compliance with and enforce the federal regulations through audits and reviews of facility compliance while having the added benefit of ensuring that tank car facilities have effective quality assurance plans that comply with AAR's thorough M-1003 quality assurance specification.

[14] https://www.regulations.gov/comment/PHMSA-2018-0080-0042

3. What regulatory amendments, interpretations, or determinations (e.g., preemption determinations pursuant to part 107, subpart C), or revised protocols (e.g., Memoranda of Understanding with other Federal agencies or States) could eliminate undue burdens or improve government efficiency by improving or clarifying the scope of PHMSA's regulatory oversight relative to that of each of other Federal agencies and State regulatory authorities? Please identify specific amendments or rescissions meriting consideration.

Comprehensive Oil Spill Response Plans

PHMSA should reduce burdens on the rail transportation of refined and unrefined petroleum products by modifying its interpretation of the applicability of the Oil Pollution Act of 1990 (OPA 90) as it relates to the preemption of state requirements for Comprehensive Oil Spill Response Plans (COSRPs).[15]

In 2019, PHMSA published a Final Rule, "Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act)" (HM-251B), which contends that the statutory authority for the oil spill response planning is primarily derived from OPA 90 despite the applicability of other federal laws that govern the transportation of hazardous materials by rail.[16] These include the Hazardous Materials Transportation Act (HMTA),[17] Federal Railroad Safety Act (FRSA),[18] and ICC Termination Act (ICCTA).[19] PHMSA's reliance on OPA 90 effectively allows individual states to regulate requirements, liabilities, and removal activities with respect to the discharge of oil or hazardous substances. As a result, railroads often must prepare separate plans, training programs, and documentation, for the various states where they operate.

PHMSA's interpretation has subjected railroads to a costly and burdensome patchwork of varying state requirements related to oil spill response planning. Moreover, the interpretation subverts the express preemptive intent of the HMTA, FRSA, and ICCTA by allocating undue authority to OPA 90. This unnecessarily inhibits the transportation of refined and unrefined petroleum products by rail. The HMTA, FRSA, and ICCTA supersede other federal laws when hazardous materials are transported by rail, and those statutes should guide PHMSA's preemption analyses relating to all aspects of the COSRP compliance.

[15] 33 U.S.C. § 2701 et seq., codified in the Clean Water Act, 33 U.S.C. § 1251, *et seq*.
[16] 84 Fed. Reg. 6910, 6937-6938 (Feb. 28, 2019).
[17] 49 U.S.C. § 5101, *et seq*.
[18] 49 U.S.C. § 20101, *et seq*.
[19] 49 U.S.C. § 10501, *et seq*.

Hazardous Waste Transportation

PHMSA and FRA should establish a memorandum of understanding with the EPA that railcars containing hazardous waste in transportation would not fall under an EPA Transfer Facility even if held for 10 days or more. This action is necessary to address recent actions where the EPA contacted two Class I railroads regarding the transportation of hazardous waste where the cars transporting the hazardous waste may have been held for 10 days or more. EPA stated that any location where hazardous waste in transportation is held for 10 days or greater would need to be permitted as an "EPA Transfer Facility" even if, due to defects (such as mechanical issues, overloads, or other defects that made the car "non-conforming"), the car was not allowed to continue in transportation.

4. Do PHMSA regulations, implementing guidance, or practices governing special permits in its Hazardous Materials Program Procedures (part 107, subpart B) impose an undue burden on affected stakeholders? Please identify any specific amendments to regulations, guidance, or protocols meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

Codifying Proven Special Permits

PHMSA should establish a proactive process in the HMR for incorporating special permits that have general applicability, have a future effect, and are proven to provide at least an equivalent level of safety as existing the regulation (or are consistent with the public interest and adequately will protect against the risks to life and property inherent in the transportation of hazardous materials in commerce when the regulations do not establish a level of safety).[20] While special permits are helpful because they allow for alternative methods of achieving the safe and efficient transportation of hazardous materials, repeated reliance on special permits is administratively inefficient because special permits are temporary actions that require periodic re-submission and review.

The HMTA limits the length of initial approvals to 2 years, and subsequent renewals are limited to 4 years.[21] The HMTA additionally states that PHMSA must conduct a review and analysis of each special permit that has been in continuous effect for 10 years to determine whether it may be converted into the hazardous materials regulations.[22] The statutory direction to review and analyze for codification after 10-years sets an outer

[20] 49 CFR 107.113(f)(2).
[21] 49 U.S.C. § 5117(a)(2).
[22] 49 U.S.C. § 5117(f).

bound for the analysis. As such, the HMTA does not prevent PHMSA from conducting reviews before the 10 years has expired.

The Associations believe that 6 years is more than sufficient time for PHMSA to determine if a special permit should be converted into a regulation. PHMSA should amend 49 CFR 107.113 to require the Associate Administrator for Hazmat Safety (AA for Hazmat Safety) to review any special permit involving the transportation of hazardous materials by rail that has been in continuous effect for a six-year period to determine if issuing a rule that is consistent with the special permit is in the public interest and consistent with railroad safety. This proposed regulatory change would bring PHMSA regulations in line with existing law that requires FRA to review and analyze waivers after six years for incorporation into the railroad safety regulations,[23] while also improving regulatory efficiency and reducing unnecessary administrative burdens associated with the repeated submission, review, and approval of longstanding special permits.

Filing Deadline for Renewing Special Permits

PHMSA should eliminate the requirement in paragraph (b) of 49 CFR § 107.109 for a special permit holder to file an application for renewal at least 60 days before the existing special permit expires to allow the permit holder to continue to use the special permit until PHMSA has taken final administrative action on the application for renewal. The 60-day requirement does not serve a safety purpose; it just establishes an arbitrary filing deadline in advance of the expiration date. Eliminating the 60-day deadline would provide added regulatory certainty while allowing the existing safe practices to remain in place unchanged as PHMSA considers renewing the special permit.

In 2023, PHMSA published an ANPRM, "Modernizing Regulations to Improve Safety and Efficiency" (HM-265A), which sought comment whether to remove the 60-day renewal requirement.[24] The Associations commented in favor of eliminating the requirement.[25] Recently, on July 1, 2025, PHMSA published an NPRM that proposes to eliminate the 60-day renewal requirement.[26] The Associations support this action because it will reduce burdens on carriers without impacting the safe transportation of hazardous materials by rail.

[23] Infrastructure Investment and Jobs Act, P.L. 117-58, § 22411 (2021)
[24] 88 Fed. Reg. 43016 (July 5, 2023).
[25] https://www.regulations.gov/comment/PHMSA-2019-0031-0054.
[26] 90 Fed. Reg. 28524

Special Permits for Subsidiaries

PHMSA should amend 49 CFR § 107.105 to extend the grant of a special permit to all of a petitioner's operating subsidiaries. Currently, Class I railroads with multiple operating subsidiaries submit identical applications to benefit from the same special permit, which increases the regulatory burden on both petitioners and PHMSA staff.

****

6. Do PHMSA compliance practices concerning the National Environmental Policy Act place an undue burden on affected stakeholders? Are there any categorical exclusions PHMSA should adopt for its regulatory oversight activities? If so, please identify the activities meriting a categorical exclusion, as well as the technical, safety, and environmental bases for those additional categorical exclusions. Are there any categorical exclusions employed by other Federal agencies that PHMSA should adopt pursuant to 42 U.S.C. 4336c?

NEPA Compliance Practices

As a general matter the Associations support increasing stakeholder participation in the NEPA review process and setting reasonable expectations for the length of EAs and EISs. PHMSA should make clear that EAs/EISs: (i) concentrate on relevant environmental analyses rather than produce an encyclopedia of all applicable information; (ii) focus on significant issues; (iii) discuss impacts in proportion to their significance; (iv) limit the discussion to an explanation of why more study is not warranted for insignificant impacts; and (v) maximize incorporation by reference and integration of other environmental analyses.

Categorical Exclusions

PHMSA should adopt hazmat transportation-specific categorical exclusions addressing rulemakings and special permits that broadly recognize that agency action in these areas generally do not involve significant environmental impacts. PHMSA recently noted that "[its] regulatory standards are intended to reduce the likelihood of release of hazardous materials into the human environment during ongoing transportation of hazardous materials."[27] Similarly, for a special permit to be granted, the AA for Hazmat Safety must determine that the special permit achieves a level of safety that "is at least equal to that required by the regulation from which the special permit is sought."[28] These factors could be used to support categorical exclusions in both the regulatory and special permit context.

[27] "National Environmental Policy Act Implementing Procedures; Proposed Categorical Exclusions." 90 Fed. Reg. 99327, 99329 (Dec. 10, 2024)
[28] 49 CFR 107.113(f)(2)(i).

Additionally, PHMSA should adopt relevant categorical exclusions from other modes within the U.S. Department of Transportation, including the categorical exclusions employed by FRA. The Associations specifically note that FRA's categorical exclusion found at 23 CFR § 771.116(c)(16)—addressing the "[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals"—should apply to PHMSA rulemakings that impact the transportation of hazardous materials by rail. These changes will increase government efficiency without impacting safety.

7. Are there any interpretations or widely used special permits with established safety records meriting codification within PHMSA's HMR because they would facilitate identification, development, and use of domestic energy resources or would otherwise improve government efficiency?

See the Associations' comments on special permits above.

8. What number of small businesses, small organizations, or small government jurisdictions, as defined in the Regulatory Flexibility Act (5 U.S.C. 6010 et seq.) and its implementing regulations are subject to HMR requirements or bear significant costs associated with HMR compliance by PHMSA-jurisdictional entities? Please provide information about the nature and types of activities of such small businesses and other small entities. Are there any existing HMR requirements that disproportionately impact small businesses or other small entities? Are there alternative regulatory approaches the agency should consider that would achieve its regulatory objectives while minimizing any significant economic impact on small businesses or other small entities?

Over 350 Class II and Class III railroads ("short line railroads") carry hazardous materials by rail. These small business railroads bear significant costs associated with HMR compliance.

B. Hazardous Materials Program Procedures (49 CFR Part 107) and Hazardous Materials Regulations (49 CFR Parts 171 Through 180)

1. What provisions of the HMR either impose an undue burden on identification, development, and use of domestic energy resources, or are examples of government inefficiency, insofar as they impose outsized compliance burdens for comparatively small safety benefits or limit technological innovation? Are there any HMR provisions that are

unnecessary because their safety benefits are adequately addressed by other HMR requirements?

There are numerous requirements in the HMR that impose undue burdens on railroad operations. The Associations address the burdens existing regulations in the response to PHMSA's part-specific questions below.

****

3. Are there opportunities for efficiency gains in Hazardous Materials Program Procedures requirements at part 107 governing each of the designation of approval and certifying agencies (subpart E), registration of certain manufacturers, assemblers, repairers, inspectors, testers and design certification engineers for cargo tanks and cargo tank vehicles (subpart F), and approvals of cylinder inspection, testing, and qualification entities (subpart I) for affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

AAR has had preliminary discussions with other interested parties to identify a design certifying engineer (DCE) concept for certifying tank cars. Those efforts have the potential to yield efficiencies, but only if the approach is well-defined and includes appropriate safeguards to help ensure compliance with PHMSA's tank car safety standards and AAR's interchange rules. These issues need to be addressed before finalizing HM-265. For instance, the Associations recommend that careful consideration needs to be given to who is authorized to certify product compatibility, how conflicts of interest are handled, what qualifications are necessary for DCEs, and how DCE certification interacts with AAR's interchange rules.

4. What consensus international or industry standards and recommended practices (or updated editions thereof) merit incorporation by reference within the HMR because they would eliminate undue burdens on affected stakeholders? What consensus international or industry standards and recommended practices currently incorporated by reference within the HMR merit updating or revision. Please identify the pertinent standards and recommended practices as well the specific provisions of the HMR that should reference those standards, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

The Associations are concerned that PHMSA does not update to the current international and industry standards in a timely manner. Delays in updating international and industry standards is burdensome and costly for the rail industry.

For example, the HMR currently incorporates by reference (IBR) the 2000 version of M-1002. M-1002 is an industry standard containing tank car specifications that is maintained and updated, as needed, by AAR. AAR has made several changes to M-1002 in the 25 years since the 2000 version was published. Indeed, AAR published the most recent version of M-1002 in May 2024. The 2024 version of M-1002 includes important updates to welding requirements, NDT requirements, and includes updated DOT-117 requirements to support the HMR specification requirements in 49 CFR § 179.202, that are intended to improve the safe transportation of hazardous materials in rail tank cars. However, for regulatory compliance purposes, tank cars offered into transportation must continue to be compliant with the 25-year old version of M-1002 because that version is currently IBR'd in the HMR.

In HM-265, PHMSA recently proposed revising the HMR to IBR the 2014 version of M-1002, a version of M-1002 that is already more than ten years old.[29] In doing so, PHMSA states that it intends to IBR individual chapters and appendices of M-1002 rather than the whole thing as single document. The Associations do not object to the approach of IBR'ing individual chapters and appendices, but recommends that PHMSA IBR the applicable chapters and appendices from the current version of M-1002, last updated in May 2024.

5. Do HMR reporting and notification requirements (e.g., part 171, subpart B) impose an undue burden on affected stakeholders? Are any of those reporting requirements inefficient because of their limited safety value compared to their associated costs? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

Incident Reporting

Currently, the HMR requires telephonic notification of reportable incidents to the National Response Center (NRC).[30] PHMSA should update the HMR to allow railroads and other relevant parties to email incident notifications to the NRC. Requiring telephonic notification is antiquated. It causes unnecessary delays and limits the reporting railroad's ability to transmit useful information that could assist with incident response. Railroads reporting incidents by telephone find that they can be on hold for up to one hour, which limits a railroad's ability to actively assist with emergency

[29] 89 Fed. Reg. at 85598.
[30] 49 CFR 171.15.

response. Electronic reporting is more reliable, faster, and minimizes the potential for miscommunications regarding the key facts of a hazardous materials incident. The Associations understand that NRC is working on the ability to accept email notifications. Accordingly, the Associations request that PHMSA amend § 171.15(b) to remove "telephone" from the first sentence.

Incident Report Forms

PHMSA should implement mode-specific incident report forms. The current 5800.1 form is used by all entities that report hazardous materials incidents, whether the reporting entity is an offeror, shipper, railroad, air carrier, trucking company, etc. As a result, the current 5800.1 form is unwieldy and inefficient. Mode-specific incident report forms would allow PHMSA tailor the reporting form to gather relevant information in the context of the type of hazmat incident that occurred. It would also relieve burdens on the reporting parties who must fill out the 5800.1 form while navigating information boxes that are not relevant to the type of incident that occurred. Additionally, the updated 5800.1 report form should allow the importing of data from a carrier or third-party software platforms.

6. Do procedures in the HMR at part 171, subpart C, authorizing use of certain international transportation standards (e.g., the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air or Transport Canada's Transportation of Dangerous Goods Regulations) impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

International Harmonization Rulemakings

PHMSA is currently two years behind on its Harmonization with International Standards rulemakings (i.e., HM-215 series rulemakings) that help to facilitate the efficient transportation of hazardous materials in commerce, both domestically and abroad. PHMSA needs to get back on schedule so that the final rules are in place by the time the international standards become effective on the international level. Discrepancies between international requirements and the HMR have the potential to cause serious confusion that results in delays in the export and import of hazardous materials as well as impinging on the movement of such materials within the United States. When there are delays in publishing the harmonization final rules, PHMSA has attempted to ameliorate the disruptions in the transportation of hazardous materials by issuing stop

gap enforcement discretion letters.[31] However, enforcement discretion letters do not eliminate the confusion and delays continue to occur. PHMSA should consider adopting fast-track procedures, such as an abbreviated review process, to help ensure the rulemakings are published on schedule.

Canadian PIH Placards

The lack of harmonization between the United States and Canada on placards for use with PIH materials is inefficient and creates an undue burden for railroads that make cross-border movements between the two countries. Trains entering the United States from Canada must carry different placards for when the train enters transportation in the United States, essentially doubling the cost of placards for PIH transportation.

7. Are there elements of the Hazardous Materials Table (HMT) at part 172 that impose an undue burden on affected stakeholders? Are there particular materials whose safety risks do not merit inclusion within the HMT? Are there assignments of requirements (either via hazard class, packing group, special provisions, packaging or quantity limitations, or vessel stowage restrictions) which are not commensurate with the safety risks posed by specific materials? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

PHMSA should adopt sub-categories in Class 9 for batteries to assist offerors and carriers in the safe transportation of Class 9 batteries. The hazard and risk of the shipment should be clear from the information provided pursuant to the HMT. Additional details for a battery shipment may be necessary to convey the hazard that exists—speaking to batteries, energy shipments (BESS, etc.)—so that there is an indication of how "energized" the battery is when shipped along with an indication of the battery's chemistry.

8. Do any of the special provisions to the HMT listed at Sec. 172.102 as applied to one or more materials listed in the HMT impose undue burdens on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

[31] *See e.g.*, https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2024-12/Notice%20of%20Enforcement%20Policy%20Regarding%20International%20Standards%202024.pdf.

PHMSA should eliminate the use of non-weather-resistant placards in the railroad environment. Such placards can quickly become degraded and unreadable when exposed to the elements. Unreadable placards contribute to delays in transit and can hinder emergency response. Section 172.519(a)(1), currently only requires placards to withstand a "30-day exposure." For rail transportation, this "placard exposure time" should be at least one year.

9. Are there any HMR provisions at part 172 pertaining to shipping paper documentation (subpart C), hazard marking (subpart D), labeling (subpart E), placarding (subpart F), and emergency response information (subpart G) that may be revised or modernized to assist stakeholders in efficiently communicating the hazard of materials transported? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

Emergency Response Information

On July 1, 2025, PHMSA proposed to revise § 172.602 of the HMR to allow domestic carriers the option to maintain electronic copies of emergency response information rather than requiring a hard copy printed on paper. The Associations support this action because it will reduce burdens on carriers without impacting the safe transportation of hazardous materials by rail.

Electronic Shipping Papers

As noted in the Associations' comments above on shipping papers (and consistent with PHMSA's actions on emergency response information), PHMSA should revise the HMR to allow electronic shipping papers, without the use of special permit, as an alternative to paper.

Shipments of Hazardous Waste

PHMSA should revise paragraph (f) of 49 CFR § 172.205 to streamline the process, eliminate unnecessary requirements, and assist in the efficient movement of hazardous waste in transportation. For example, currently, under subparagraph (f)(1)(iii)(C) the initial rail carrier must forward at least three manifests to the last rail carrier designated to handle the waste in the United States. This requirement serves no safety purpose. PHMSA should eliminate the burden of providing the manifests to the last rail carrier and merely require that the manifest be provided to the next non-rail transporter or the designated facility whether the shipment is delivered.

10. Do any of the HMR provisions at part 172, subpart H, pertaining to training impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

PHMSA should revise the HMR's recordkeeping requirements for hazmat employee training. Specifically, paragraphs (d)(4) and (d)(5) of § 172.704 are antiquated and unnecessary. The requirements to include the name and address of the person providing the training and a certification that the hazmat employee has been trained and tested as required, predate the widespread implementation of learning managements systems (LMS).

11. Do HMR requirements at part 172, subpart I, governing the safety and security plans impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

Routing Issues POC

PHMSA should eliminate the requirement in § 172.820(g)(2) of the HMR to provide point of contact information to state, local, and tribal officials for jurisdictions that may be affected by a rail carrier's routing decisions. Rail carriers do not object to providing such information to relevant personnel. Indeed, they already provide the information to the applicable SERCs and TERCs. However, it is unduly burdensome to require railroads to identify the appropriate state, local, and tribal officials who should have the POC information. The SERCs and TERCs are in a better position to know which officials qualify to receive the information and can distribute the POC information, as necessary.

Notification of a Delay in Transportation

The Associations request that PHMSA revise the notification requirements for when there is "a significant delay during transportation" by removing the following sentence "[n]otification should be made by a method acceptable to both the rail carrier and consignee." This requirement is unnecessary. Carriers have sophisticated tracking tools that are available to and regularly used by shippers and consignees. Deleting the sentence would reduce an unnecessary regulatory burden in a manner that will not negatively impact safety.

****

15. Do any of the classification and packaging requirements for Class 7 radioactive materials set forth at part 173, subpart I, and elsewhere in the HMR impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

Currently, part 173 does not clearly specify tank cars that are authorized to transport radioactive liquids, such as "Tritium Water." PHMSA should include tank car specifications or design requirements in § 173.410.

****

18. Do any of the requirements for rail transportation of hazardous materials set forth at part 174 of the HMR impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

48-Hour Rule

Section 174.14 of the HMR currently requires a railroad to "forward each shipment of hazardous materials promptly and within 48 hours (Saturdays, Sundays, and holidays excluded), after acceptance at the originating point or receipt at any yard, transfer station, or interchange point, except that where biweekly or weekly service only is performed, a shipment of hazardous materials must be forwarded on the first available train." In the HM-265, PHMSA proposed to add exceptions to address situations when there are circumstances that preclude delivery to the consignee destination and when the shipment only contains residue hazardous material. PHMSA also proposed to require the railroad to document the reason for each delay beyond 48 hours. As AAR noted in its comment to HM-265, the proposed exceptions are a step in the right direction, but PHMSA's proposed recordkeeping requirement is wasteful paper exercise.[32]

[32] PHMSA underestimates the compliance burden associated with the proposed change. PHMSA does not estimate any costs associated with building out of a new reporting program. Moreover, PHMSA's estimate that the paperwork can be completed in 5 seconds is completely unrealistic. PHMSA does not explain how it arrived at this figure, but it is beyond reality to think that a person would be able access a reporting system and create a record within 5 seconds.

The Associations believe that the better approach is to eliminate the 48-hour rule requirement. The requirement to forward hazardous materials within a 48-hour window has outlived its usefulness. It can result in circular train movements that occur solely to comply with the 48-hour rule, which can be costly and expose the public to unnecessary risks. Shippers and consignees have access to sophisticated tracking tools for hazmat shipments on the rail network, so they are well aware of where their tank cars are when en route to their final destination. In the current rail environment, the 48-hour rule creates a regulatory burden without a corresponding safety benefit.

Cutting Off Cars in Motion

Revise switching rules in 49 CFR § 174.83 to allow DOT-113 cars and container on flat cars (COFC) to be cut off in motion during switching operations or when engineering controls are present. This would align with regulations allowing other cars to be cut away while in motion during switching operations. There is not a justifiable safety reason for the limitation and eliminating the limitation would increase operational efficiency.

Unoccupied Locomotives at Buffer Cars

See the Associations' comments on Special Permits and Petitions for Rulemakings above. Unoccupied locomotives should be allowed for use as buffer cars. For the transportation of non-PIH materials, the Associations recommend that one non-hazmat car or an unoccupied locomotive can be used as a buffer car. For the transportation of PIH materials, the Associations recommend that railroads can use a combination of 5 cars or unoccupied locomotives as buffer cars.

Authorizations for Transport of Bulk Packaging

The existing bulk packaging requirements in 49 CFR § 174.63, which require approval by FRA's Associate Administrator for Safety (AA for Safety), unnecessarily burden hazmat transportation by rail. In HM-265, PHMSA proposed revising the bulk packaging requirements, but those proposed changes do little to address the Associations' concerns. The Associations recommend revising § 174.63 to state that if a bulk package is authorized for transport in part 173 then it is authorized to be transported pursuant to § 174.63 without requiring approval by FRA's AA for Safety, provided the commodity is transported in an approved package pursuant to § 172.101 and the package can be secured in a manner that is consistent with the current industry standard.

Railroads safely transport a variety of hazardous materials in bulk packages on TOFCs and COFCs as well as other types of rail cars daily. Hazardous materials accident rates demonstrate that incidents have declined by 80% since 2005 and 21% since 2015; and the most recent data continue to show that more than 99.99% of hazardous materials transported by rail reach their destination without incident.[33] Based on this safety performance, FRA has recognized that freight rail is "the safest land-based method of moving large quantities of chemicals over long distances."[34] However, despite the railroad industry's proven safety record, PHMSA proposed new requirements in HM-265 that would continue to require FRA's AA for Safety to grant approval to railroads before they can transport a variety of hazmat commodities by rail in bulk packing. PHMSA proposed to continue with this requirement even though the same hazmat commodities may be transported in the same bulk packaging by other modes of transportation without the requirement of modal specific DOT approval.

The Associations recommend deleting or revising paragraph (a) of the existing regulation to eliminate the requirement for FRA approval and making corresponding changes to the existing paragraph (e). Additionally, the Associations recommend deleting paragraph (c)(1) rather than revising it and deleting the other conditions in paragraph (c) of the existing regulations with the exception of paragraphs (c)(4) and (c)(5)(i).

One-Time Movement Authority

In HM-265, PHMSA proposed several changes to the One-Time Movement Authority (OTMA) in 49 CFR § 174.50, including incorporating HMG-127 (Revision 5). The Associations oppose those proposed changes because they would, if finalized, establish unnecessary regulatory burdens to the safe movement of tank cars for repair.

The initial version of HMG-127 was developed in 2017 in consultation with the OTMA Task Force, which included representatives from FRA, PHMSA, RSI, AAR, Chlorine Institute, The Fertilizer Institute, and the American Petroleum Institute. However, in the intervening 8 years, HMG-127 has gone through five (5) revisions, and the OTMA Task Force did not review or approve the current version of HMG-127 (Revision 5), which was not published until October 2, 2024.

[33] AAR Analysis of FRA Train Accident Database, as of March 2025. Notes: Carloads terminated are from the Bureau of Explosives annual reports. Carload and accident data for 2024 is preliminary as of March 2025.
[34] https://railroads.dot.gov/research-development/program-areas/hazmat-transportation/hazardous-materials-transportation.

HMG-127 (Revision 5) adds to regulatory burdens because it eliminates multiple OTMA-3 defect codes from earlier versions of HM-127, which necessarily expands the applicability of OTMA-1 to the transportation of new types of "non-conforming tank cars" for repair. As result, reliance on HMG-127 (Revision 5) creates a situation that "non-conforming tank cars" are being held unnecessarily while the railroads wait for shippers and car owners to file the necessary paperwork and for FRA to issue an OTMA approval, even though there is not a safety basis holding the car until the OTMA approval is issued, resulting unnecessary delays in making repairs and returning the car to service.

****

23. Do any of the specifications for rail tank cars of hazardous materials set forth at part 179 of the HMR impose an undue burden on affected stakeholders? Please identify any specific regulatory amendments meriting consideration, as well as the technical, safety, and economic reasons (including the categories and number of affected entities) supporting those recommended amendments.

For the reasons discussed above, § 179.7 should be revised in a manner that is consistent with AAR's petition for rulemaking, P-1770. Additionally, the Associations supports reasonable changes to strengthen tank car specifications that reduce the likelihood of release while a railroad tank car is in transit. For instance, PHMSA should consider addressing concerns related to hinged and bolted manway covers and bottom outlet valves on tank cars transporting flammable liquids.

24. Specific to transporting liquefied natural gas (LNG) by rail tank car, PHMSA is interested in hearing from stakeholders about the possibility of any future markets for transportation of LNG by rail tank car. As such, PHMSA seeks information on the following questions.

First, is there a current or potential future market for special permits to transport LNG by rail tank car? Second, is there current market demand to transport other flammable cryogenic materials, including, but not limited to, ethylene in tank cars built to the DOT-113C120W9 specifications? Note the DOT-113C120W9 rail tank car is characterized as having minimum wall thickness of the outer jacket shell and the outer jacket heads must be no less than 9/16-inch after forming, which exceeds the 7/16-inch outer jacket shell as specified in 49 CFR 179.400-8(d)(1).

Other entities than AAR and ASLRRA are better positioned than the Associations to comment on whether there is a current or future market for the transportation of LNG by rail. However, the Associations reiterate the statement in AAR's 2018 petition for rulemaking that rail is a safe method of transporting this commodity.[35] The Associations are also not in the best position to express an opinion on whether there is a market for other flammable cryogenic materials, such as ethylene, to be transported in DOT-113C120W9 (W9) tank cars. However, this may be a moot point in the immediate future given that PHMSA has deleted the W9 specification from the HMR.[36]

****

Thank you for your consideration of these comments.

Respectfully submitted,

Stephen N. Gordon
Associate General Counsel – Safety
Association of American Railroads
425 3rd Street, SW, Suite 1000
Washington, DC 20024

Sarah Yurasko
General Counsel
American Short Line and Regional Railroad Association
50 F Street NW, Suite 500
Washington, DC 20001

Date: August 4, 2025

[35] https://www.regulations.gov/document/PHMSA-2017-0020-0002.
[36] 90 FR 26455 (June 23, 2025)