

International Vessel Operators Hazardous Materials Association, Inc.

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Dockets Management System
US Department of Transportation
Room PL 401, Nassif Building
400 Seventh Street SW
Washington, DC 20590-0001

Comments re: **Docket RSPA-03-15327 (HM-206B) NPRM Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation.**

The following comments are submitted on behalf of the International Vessel Operators Hazardous Materials Association (VOHMA). VOHMA is a United States based international association, with a membership comprised of thirty-eight ocean common carriers, operating under the flags of several nations, including the United States, with the purpose of serving the domestic and international Trades in matters pertaining to vessel and intermodal transport of hazardous cargoes. The primary goal of VOHMA is to advocate and promote safe, secure, consistent, and cost-beneficial transport of such cargoes based upon discussion and evaluation of issues impacting maritime operations and interconnecting feeder systems, and to develop consensus positions on all issues which may have a significant impact on transportation safety.

Our association is authorized under a United States Federal Maritime Commission (FMC) agreement and represents the U.S. domestic and worldwide Trades between the ports of the US, its territories and possessions, and all other countries. VOHMA members currently transport greater than eighty-four percent (84%) of the ocean freight container moves in the US Trade Lanes. Unlike other trade associations with diversified membership, VOHMA represents only ocean common carriers engaged in the transport of dangerous goods. The international registry of our membership provides us with a unique benefit of cultural diversity in topics brought forth for discussion or evaluation.

Delegates representing member companies are, for the most part, those individuals with senior level management responsibility for regulatory compliance and risk minimization.

We welcome the opportunity to comment regarding proposed amendments in this Docket to Title 49, Code of Federal Regulations. We anticipate that due to the critical importance of the subject of this docket, you will be receiving comments from numerous shippers representing all hazard classes and carriers of all modes, each with specificity toward their unique interests. Thus, we will limit our written comments to those proposed amendments, which could most significantly impact safety in the maritime industry or in intermodal feeder systems.

VOHMA commends the Research and Special Programs Administration (RSPA) for their effort to clarify the meaning of the effected regulations and to improve safety of emergency responders, the general public, as well as offerors and transporters of hazardous materials. We do however have some concerns with certain provisions within the proposed amendments.

NON-ODORIZED LPG

While we understand the rationale for requiring the identification of liquefied petroleum gases that have not been treated with an odorization agent by amending §§172.301, 172.326, 172.328, and 172.330 to require the NON-ODORIZED marking on cylinders, portable tanks, cargo tanks, tank cars, and multi-unit tank car tanks, to alert emergency responders to the fact that a release may not be obvious through the sense of smell, we feel that the carrier may be unfairly held to comply without the benefit of adequate notification. The proposed sections say “no person may offer for transportation or transport” the non-odorized gas without marking the receptacle. However, if the original shipper does not comply with the marking requirement, the carrier has no way of knowing that the shipment is not in compliance during transportation. And, since the preamble reports that approximately 94% of the LPG is transported by motor vehicle and less than 1% of those shipments are non-odorized LPG, the carrier would probably not question the shipper on accepting the cargo. Since the labels, placards, UN Identification numbers, and basic descriptions are identical for the odorized or non-odorized gas, the carrier would have no means of determining whether the shipper was in compliance with the marking requirement. And of course absent an entry on the shipping paper, the only indication that the gas was actually treated with an odorization agent such as Methyl Mercaptan (CH₃SH), would be in the case of a leak from the package detectable by the sense of smell, rendering the package unfit for transportation.

On behalf of the vessel operators and our interconnecting transportation partners, we suggest that if the marking requirements proposed in the rulemaking were to be adopted that §172.203 be further amended by adding paragraph (p) the shipper who offers a non-odorized liquefied petroleum gas subject to the marking requirements of §§172.301, 172.326, 172.328, or 172.330 shall include the entry “NON-ODORIZED” following the basic description on the shipping paper. We believe that the safety of carriers, emergency responders and the general public would be further enhanced by requiring such an entry.

Fumigated CTUs

In the past several years, RSPA has promulgated rulemakings intended to foster harmonization with the international dangerous goods regulations, and in fact, has dedicated an entire docket to harmonization. At the last session of the International Maritime Organization's Editorial & Technical Group of the Sub-Committee on Dangerous Goods, Solid Cargoes and Containers, clarifying language was adopted for inclusion in the next amendment of the IMDG Code. In order to clarify when a fumigated cargo transport unit was no longer deemed to present a hazard to those entering the CTU the code will now state "A cargo transport unit that has been fumigated is not subject to the provisions of this code if it has been completely ventilated either by opening the doors of the unit or by mechanical ventilation to ensure that no harmful concentration of gas remains." VOHMA suggests that this language be included in §173.9(e) for the sake of harmonization. And, by providing explicit language on ventilation, the safety of emergency responders and others entering a freight container would be enhanced.

Material Poisonous by Inhalation

In the past VOHMA has submitted comments as well as petitioned for RSPA to permit international placards and labels to be used for international shipments of materials poisonous by inhalation. We felt, and continue to feel, that the UN should be the initial agency to first provide specification for such hazard communication and that RSPA should defer adoption of unique domestic placards and labels for this hazard. We further suggested authorizing the word "INHALATION" across the lower quadrant of a class 2.3 or 6.1 placard or label that is authorized for international transportation. A placard so designed could be used internationally and would enhance safety of carriers, handlers, emergency responders, and the general public in all countries by providing a more straight-forward warning of the inhalation hazard. Currently, since the US has not been successful in convincing the UN COE that a unique hazard communication symbol is needed, international shipments must currently be dual placarded with the domestic placard and the international placard and packages within the freight container must be marked "inhalation hazard". While the exception in §171.12(b)(8)(vi) permits the use of the internationally authorized placards in place of the domestic PIH placards when moving in a single port area including a contiguous harbor, export shipments already displaying the US required placards are usually also placarded for the international transport since the domestic placards are not recognized outside the US.

The US delegation to the UN continues to propose adoption of an international hazard communication scheme for materials poisonous by inhalation and has gained some support from other States. We feel that if RSPA now further modifies the existing specification for labels and placards by changing the dimensions of the black diamond, the cost and inconvenience would far outweigh the safety benefits. Even though the dimensions of the symbol may be slightly smaller than originally planned, emergency responders can readily recognize the hazards and we do not believe that changing the size of the black diamond will affect safety. If the UN were in the next few years to adopt an international hazard communication scheme for PIH materials as the US proposes, the industry would again be required to purchase new inventory, perhaps even before the international transition period began. We support the US continuing to propose

international standards for placards and labels to communicate such hazards but we cannot support this proposed change only to correct a dimensional specification.

Placarding Exceptions for Class 9 Materials

§171.12(b) states that “a material which is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified (including a container packing certificate, if applicable) in accordance with the IMDG Code, and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States.”

In the past, RSPA has interpreted this to mean that the person who offers the dangerous goods for transportation intended for vessel under the provisions of the IMDG Code, can prepare the shipment according to the IMDG Code and is authorized to offer it for carriage in the US prior to (or following) vessel transport. If the material meets the definition of class 9 under the provisions of Part 2, Chapter 2.9, it is subject to the IMDG Code and must be packaged, marked, classed, labeled, placarded, described, stowed and segregated in accordance with the IMDG Code when offered for transportation by vessel.

In the past, several letters of interpretation have been issued from DOT in an attempt to apply specific regulatory requirements based on activities performed by a person as the “offeror” who prepares the shipment and offers it to the carrier. And, the person offering the shipment must then meet the provisions of §171.12 for the domestic portion of the move. If the import/export shipment is a point to point shipment, from the initial offeror or consignor to the consignee, the Bill of Lading identifies each of these parties and it should be considered an international consignment. The offeror at the point of origin would then be responsible for compliance with the IMDG Code. On the other hand, if the Bill of Lading identifies the consignee as a freight forwarder or consolidator in or near a port terminal, the shipment may be considered to be a domestic consignment and the Bill of Lading prepared by the freight forwarder would then identify such forwarder as the offeror for the continuing international portion of the move.

Prior to this proposal, a point to point shipment was considered to be in international transportation authorized by §171.12(b) and the exception at §172.504(f)(9) had been deemed not to apply since it stated “For domestic transportation, a Class 9 placard is not required.”

However, the language now proposed to state “including that portion of international transportation, defined in §171.8 of this subchapter, which occurs within the United States” will present situations which will be detrimental to safety and should not be adopted. VOHMA would like to point out the following:

One of the major problems experienced by vessel operators is that shipments authorized for domestic exceptions often end up in international transportation. Often, the person offering these cargoes in freight containers may be unaware of the fact that the exception only applies to transportation within the United States and sometimes only in the

highway mode. Therefore they offer the containerized cargo to the vessel operator as “Freight all kinds” or “FAK” and do not declare the hazardous cargo.

One of the most obvious indicators that hazardous materials are packed within a freight container is the display of placards on the exterior of the container. To except these placards from display on the domestic portion of the international shipment when they would be expected to appear for international vessel transport, would exacerbate the problem of non-declared cargoes escaping detection. The safety of the ship and crew, including on-board emergency responders, can be adversely effected by non-declared dangerous goods cargoes and RSPA should consider continuing safety in international export trade as well as domestic transportation.

Replacing of placards in a seaport terminal can be extremely expensive. Often, the cost of placards affixed by unionized employees are charged back to the shipper or the water carrier, sometimes at rates as high as \$500 per freight container. If the domestic motor carrier were to remove the Class 9 placards affixed by the shipper, as would be authorized under the proposed amendment for the domestic portion of an international shipment, the Class 9 placards, when required by the IMDG Code, would need to be re-affixed prior to loading aboard the vessel. The responsibility for providing and affixing these placards is not assigned under the proposed rulemaking and it is doubtful that the motor carrier would assume such responsibility. The shipper, having previously affixed the Class 9 placards prior to highway transport to meet the IMDG Code requirements, could not be expected to again pay for re-affixing more placards. The placards must be properly affixed and displayed prior to offering the container to the vessel operator who should not bear responsibility for this activity. The high costs associated with re-affixing Class 9 placards and with frustrated shipments rejected for loading for lack of placards places an unfair burden on those who have fulfilled their compliance responsibility for international transportation of dangerous goods cargo, only to have their compliance efforts thwarted by an authorized domestic exception exercised by an interlining carrier.

The original reason for relaxing the placarding requirement for Class 9 hazardous materials was to alleviate the shortage of CDL drivers with a hazmat endorsement required for transporting placarded loads. While their may still be an advantage for this exception domestically for drivers dedicated to hauling a specific cargo meeting the definition of Class 9, the majority of drivers operating tractor chassis combinations hauling freight containers are called upon every day to haul hazardous materials cargoes of any number of hazard classes or combinations thereof. These drivers possess the required CDL with a hazmat endorsement, often as a condition of employment by the motor carrier providing container drayage service to and from seaports.

Therefore, in order to maintain consistency between §§171.12, 172.504, and 172.506, VOHMA requests that the language at §172.504(f)(9) not be amended and that the current exception be limited to domestic shipments only. Since the Class 9 placards would be required to be displayed when complying with §171.12(b) according to the IMDG Code, the responsibility for providing and affixing placards as specified at 172.506 would also be reinforced since the placards would be required to be provided by

the shipper when offered for international transportation by vessel and maintained by all interlining carriers.

We are grateful for the opportunity to provide our comments on these important issues and we hope you will find them helpful. VOHMA members welcome the opportunity to participate with the regulatory community in formulating reasonable and effective controls that reflect international harmonization and that will help to safeguard the citizens of the United States as well as all other countries. We also stand ready to shoulder our legal and ethical responsibility in assisting national and international governments in implementing these harmonized controls throughout the maritime industry. Please do not hesitate to contact us for clarification or additional information on these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John V. Currie". The signature is fluid and cursive, with a large initial "J" and "C".

John V. Currie
VOHMA Administrator