Comments of the American Chemistry Council
To the Office of the Secretary of Transportation
Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs
DOT–OST–2025–0026

May 5, 2025

The American Chemistry Council (ACC) is pleased to submit comments to support the Department of Transportation's (DOT) ongoing regulatory review process. ACC commends the Department's effort to identify existing regulations and other agency actions that should be repealed, replaced or modified.

ACC represents the leading companies in the business of chemistry. Our members provide innovative products and services that make people's lives better, healthier, and safer. As a $633 billion enterprise, our industry is a key element in the nation's economy and a large user of the U.S. freight transportation system across all modes. ACC and its members are committed to the safe transportation of hazardous materials throughout the supply chain. As part of Responsible Care®, the chemical industry's world-class environmental, health, safety and security performance initiative, our members have invested billions of dollars in training, technology, and hazmat packaging safety.

In the following sections, ACC proposes specific DOT actions to reduce unwarranted burdens and anti-competitive regulatory barriers.

Rescind PHMSA Guidance on Tank Car Manway Inspections [Letter of Interpretation Ref. No. 15-0031R]

Description: As part of the pre-trip examination to determine that a tank car is in proper condition and safe for transportation, 49 CFR §173.31(d)(1) requires each person offering a tank car for transportation to perform an external visual inspection including the piping, valves, fittings, and gaskets. The regulations do not expressly require that hinged and bolted manways be opened to satisfy the external visual inspection requirement. However, PHMSA has issued guidance stating, "without opening a hinged and bolted manway and observing the condition of the manway's gasket, there is no way an offeror can reasonably perform a visual inspection of the gasket to meet the minimum requirements" of the regulations. [1]

[1] https://www.phmsa.dot.gov/regulations/title49/interp/15-0031R

As discussed in our December 4, 2023, comments on HM-265A, ACC believes that requiring the opening of a manway cover solely to conduct visual inspection of gaskets creates unnecessary risks, including safety risks at loading and unloading sites, increased wear on the manway structure, and increased opportunity for human error during closure after inspection. On balance, it likely creates more risk for non-accident releases than it mitigates.

The act of opening and closing the manway creates wear and tear on the gasket itself, as well as on manway equipment, and increases the possibility of damage caused by human error (e.g., to overly compress or crimp the gasket or to misalign the manway cover and gasket on the nozzle). Additional wear and tear would be incurred to the eye-bolt securement hardware, compromising its effectiveness to provide an adequate seal. Also, more frequent cycling of the manway lid potentially increases the chance of bending the washer bearing surface on the lid and potentially compromises the lid's ability to provide an adequate seal.

In addition, opening the manway cover can introduce oxygen into the tank car, elevating oxygen levels above established safe threshold levels and potentially leading to chemical reactivity. It also increases the risk of worker exposure to toxic, reactive, or corrosive materials; creating an extremely flammable environment; physical or health hazards; or extreme odors. Opening the manway allows unnecessary venting into the environment. In numerous jurisdictions, tank cars containing certain chemicals cannot be opened without violating air emission permits.

One ACC member reports that opening the manway of a residue empty isocyanate tank car will result in the formation of solids, which will require a tank car to be sent for cleaning. Cleaning costs are estimated at $7,000-$10,000, plus freight charges and the loss of use of the tank car during this period. The company estimates that it would have to increase the size of its tank car fleet by at least 20% to account for the number of tank cars out of service for cleaning.

ACC also believes that PHMSA has sufficient information to authorize the use of various leak detection methods as alternatives to a visual inspection of the manway gasket for both loading and unloading operations. Typically, a facility would perform a general inspection of the manway condition, confirm that all securements are tool tight, and perform leak detection test. Leak detection methods include bubble leak detection, sensitive instrument leak detection, and pressure reduction leak detection. Each of these

methods is authorized by the Special Permit granted to The Dow Chemical Company[2] for unloading operations.

These specified leak detection methods maintain a level of safety at least equivalent to a visual inspection of the gasket. Data submitted to PHMSA by Dow demonstrate that its alternative methods are effective in preventing non-accident releases.

Proposed reform: PHMSA should rescind its Letter of Interpretation (Ref. No. 15-0031R). In addition, PHMSA should initiate a rulemaking to modify 49 CFR §173.31(d)(1) to expressly authorize pre trip inspections of hinged and bolted manway gaskets on both loaded and residue tank cars using a method other than an external visual inspection.

Authorize Use of Electronic Emergency Response Information [49 CFR §172.602]

Description: Carriers that transport hazardous materials must maintain emergency response information (ERI) that meets the requirements of 49 CFR §172.602 onboard their motor vehicle, train, plane, or vessel. Advancements in technology and availability of information resources warrant the reconsideration of PHMSA's existing requirements to maintain physical copies of ERI documents.

DOT has issued several Special Permits to allow electronic shipping documents, including permits issued to United Parcel Service (UPS), CSX, and Union Pacific. However, this represents only a tiny fraction of the entities that could potentially benefit. Data from the US Census bureau shows that there are over 20,000 sites shipping hazmat with more than 500 shipments per year.[3] Furthermore, there are more than 500,000 carrier entities that span from large integrated logistics providers to owner-operators.

Electronic hazard communication offers the potential to improve safety by providing emergency responders with immediate access to critical hazard information during a hazmat transportation incident, even before they arrive at the scene. It may reduce exposure risks by not having responders approach the transport vehicle to find the shipping papers. While recognizing the challenges in providing reliable access to electronic documentation, ACC believes these challenges are surmountable and are outweighed by the limitations of the current system that relies on physical access to paper documents, which can be damaged, destroyed, or inaccessible in an accident or fire. As with the

[2] DOT-SP 21098
[3] US Census. (2021). Retrieved from US Census Bureau: https://data.census.gov/table/CBP2021.CB2100CBP?g=010XX00US&n=325

Special Permits, necessary redundancy through incorporation of a 24/7 phone number can provide access to the necessary information in situations where electronic transmission is hampered through equipment failure or unavailability.

Potential benefits for ACC members include efficiency gains from automated and standardized information flow, both within a company and with its transportation service providers. Electronic hazard information mitigates human error because it pulls directly from the system of record to provide appropriate information to shipping papers. Electronic data can be shared in real time and supports consistent compliance among various shippers and carriers. Switching away from a paper-based system can also help reduce waste and improve a company's environmental footprint.

Proposed Reform: PHMSA should facilitate the issuance and use of additional Special Permits to authorize the use of electronic shipping documents. In addition, PHMSA should consider revising 49 CFR §172.602 to authorize a performance-based electronic hazard communication alternative.

Remove Incorporation by Reference of Non-Consensus Standards [49 CFR 171.7]

ACC strongly supports PHMSA's incorporation of consensus standards in the HMR. This is consistent with the *National Technology Transfer and Advancement Act's* (NTTA) objective of promoting the use of voluntary consensus standards by Federal agencies. As directed by the NTTA,

> *[A]ll Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.*[4]

However, ACC has concerns with incorporation of standards that do not adhere to consensus-based processes, including those developed by the Association of American Railroads' (AAR) Tank Car Committee (TCC).

OMB Circular A-119 provides guidance for government engagement in standards development. Consistent with the NTTA, Circular A-119 establishes a preference for the use of voluntary consensus standards. It also provides a clear definition of a voluntary consensus standards body.

[4] Public Law 104–113: National Technology Transfer and Advancement Act of 1995, MAR. 7, 1996.

"Voluntary consensus standards body" is a type of association, organization, or technical society that plans, develops, establishes, or coordinates voluntary consensus standards using a voluntary consensus standards development process that includes the following attributes or elements:

(i) Openness: The procedures or processes used are open to interested parties. Such parties are provided meaningful opportunities to participate in standards development on a non-discriminatory basis. The ***procedures or processes for participating in standards development and for developing the standard are transparent****.*

(ii) Balance: The standards development process should be balanced. Specifically, there should be meaningful involvement from a broad range of parties, ***with no single interest dominating the decision-making****.*

(iii) Due process: Due process shall include documented and publicly available policies and procedures, adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and ***a fair and impartial process for resolving conflicting views****.*

(iv) Appeals process: An appeals process shall be available ***for the impartial handling of procedural appeals****.*

(v) Consensus: Consensus is defined as general agreement, but not necessarily unanimity. During the development of consensus, ***comments and objections are considered using fair, impartial, open, and transparent processes***.[5] **[Emphasis added].**

PHMSA has incorporated by reference numerous standards developed by the TCC, including AAR's *Tank Car Manual*.[6] However, the TCC does not operate as a voluntary consensus standards body. In particular, TCC procedures do not meet OMB requirements for balance *with no single interest dominating the decision-making*. TCC decisions are controlled by railroad interests. Railroads hold a majority of the Committee's 24 voting

[5] OMB Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, Effective January 27, 2016

[6] *Manual of Standards and Recommended Practices, M-1002, Section C, Part III, Specifications for Tank Cars*. Association of American Railroads (2000).

seats[7] and, under the current TCC Charter, the Committee can only meet when a majority of members present are railroad representatives.

Railroads typically do not own tank cars, which are generally purchased and maintained by equipment leasing companies or by shippers themselves. Rail shippers, tank car builders, and tank car owners are the most directly impacted by TCC standards and often have technical knowledge critical to their development. However, their perspectives can be disregarded by the railroad interests that dominate TCC proceedings. This lack of balance inevitably skews TCC decisions towards the perspectives of a single industry rather than the broad public interest that DOT pursues in its rulemaking procedures.

Proposed Reform: PHMSA should remove references to AAR's M-1002 tank car standard and amend its regulations to detail its specific requirements for tank car manufacturing and maintenance. In addition, PHMSA should establish a clear policy that it will strongly favor the use of standards developed by voluntary consensus standards bodies over non-consensus standards.

Rescind Guidance on Movement of Nonconforming or Leaking packages [HMG-127 Revision 5]

Description: FRA has established extensive guidance and submission procedures for obtaining One Time Movement Approvals (OTMA) to forward non-conforming or leaking packages. However, the current version of the guidance document (HMG-127 Revision 5, released October 2, 2024) does not reflect consensus views and makes the OTMA process more burdensome and problematic. Implementation of this guidance has led to unwarranted delays in obtaining OTMAs.

The original intent of HMG-127, in part, was to allow expedited movement of nonconforming packages that posed no or very low risk to avoid rail service disruptions. That intent is no longer reflected in the current guidance. In particular, Revision 5 limits the conditions that are considered eligible for an OTMA-3 movement. Eight defects were eliminated from OTMA-3 eligibility and must now be requested as OTMA-1 movements, a more cumbersome process that creates significant delays in rail shipments without necessarily improving safety. Most defect conditions that were removed from the OTMA-3 list appear to be related to the repair or replacement of certain service equipment, even if

[7] On the TCC, railroad interests hold 14 voting seats, shippers hold seven voting seats, and builders/lessors hold three voting seats.

the defect did not result in a leak (or is no longer leaking) and the defect is expected to not result in an unsafe movement.

Proposed reform: Revoke HMG-127 Revision 5 and develop new guidance consistent with recommendations developed by FRA's Rail Safety Advisory Committee's OTMA Task Force in 2016 so that only conditions which truly affect safety require movement approvals.

Provide Grace Period for QAP Approvals of On-Site Tank Car Service Providers [49 CFR §179.7]

Description: DOT regulations delegate tank car facility Quality Assurance Program (QAP) approvals to the AAR TCC. PHMSA and FRA have recognized that the current system requiring AAR approvals creates a regulatory bottleneck without commensurate safety benefits for the regulated industry. In the Advance Notice of Proposed Rulemaking for HM-265, PHMSA proposes significant revisions to the current system. As discussed in our April 28, 2025, comments on HM-265, ACC supports the intent of providing a more efficient QAP approval process. However, the proposed rule leaves numerous questions and implementation issues unresolved. ACC strongly believes that PHMSA should engage with stakeholders to further develop a workable QAP program.

While this long-term objective is pursued, PHMSA should take immediate steps to provide appropriate relief from unwarranted regulatory burdens. In particular, some larger shipper facilities including ACC members utilize on-site tank car service providers. These service providers must have an AAR-approved QAP for the specific work they do at a shipper location. Unfortunately, because of the bottlenecks identified by PHMSA and FRA, these QAP approvals can take a year or more. This has the effect of locking the shipper facility into using its current provider, even when they receive unsatisfactory service or simply wish to seek competitive service options.

Proposed reform: To reduce burdens and anti-competitive regulatory barriers, PHMSA should revise 49 CFR §179.7 to provide a one-year grace period for a tank car service provider with an approved QAP for its own tank car facility to perform on-site services at a customer location while it seeks AAR approval for that location-specific QAP.

Conclusion

ACC appreciates the opportunity to provide input into DOT's regulatory reform process. We believe that the regulatory changes proposed in these comments would reduce unjustifiable regulatory burdens while maintaining or improving transportation safety.

Thank you for your consideration of these comments. For questions or additional information regarding this submission, please contact Jeff Sloan, Senior Director of Regulatory Affairs, at (202) 249 6710 or jeffrey_sloan@americanchemistry.com.