# HAZARDOUS MATERIALS: MANDATORY REGULATORY REVIEWS TO UNLEASH AMERICAN ENERGY AND IMPROVE GOVERNMENT EFFICIENCY (ANPRM)

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Pipeline and Hazardous Materials Safety Administration (PHMSA)
US Department of Transportation (US DOT)

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## AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS COMMENTS

**Attention: Docket No. PHMSA-2025-0032 (HM-265B)**
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## I. Introduction

The American Fuel & Petrochemical Manufacturers ("AFPM") respectfully submits these comments in response to the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") Advance Notice of Proposed Rulemaking ("ANPRM") titled "*Hazardous Materials: Mandatory Regulatory Reviews To Unleash American Energy and Improve Government Efficiency.*"[1] This rulemaking seeks public input on potential amendments to the Hazardous Materials Regulations ("HMR") that would improve transportation safety, enhance regulatory clarity, and reduce outdated or unnecessarily burdensome requirements.

AFPM supports PHMSA's initiative to modernize the HMR in a way that reflects operational realities, evolving technology, and lessons learned from decades of hazardous materials transportation. AFPM also supports efforts to ensure that regulatory requirements are risk-based, clearly defined, and designed to yield safety benefits that are commensurate with the cost and complexity of compliance.

## II. AFPM's Interest in the ANPRM

AFPM is the leading trade association representing the manufacturers of the fuels that power the U.S. economy and the petrochemicals that serve as building blocks for countless essential products. To produce and deliver these goods, AFPM members rely on the nation's transportation system to transport crude oil, natural gas liquids, refined products, and petrochemicals safely and efficiently. These materials are considered "hazardous materials" and therefore subject to PHMSA's HMR.

AFPM members comply with the HMR and have made significant investments in equipment, training, and procedures to support safe transportation of their products and reduce the risk of incidents. However, some current regulations do not reflect modern best practices or technological advancements. In some cases, regulatory ambiguity or overlap has created operational inefficiencies and compliance challenges without improving safety outcomes. AFPM supports PHMSA's efforts to identify and amend such provisions to ensure the HMR remains effective, practical, and aligned with the realities of today's transportation system.

## III. AFPM Comments on Procedural Regulations and Actions

AFPM supports PHMSA incorporating in the HMR explicit requirements for the agency to conduct retrospective regulatory reviews at specified intervals to identify undue burdens and improve government efficiency. Reviews should, at a minimum, take place every two years. Regarding other procedural regulations and actions AFPM refers PHMSA to previous comments filed on the Department's NPRM on "Administrative Rulemaking, Guidance, and Enforcement Procedures," in which we specifically highlight the need to formalize processes that clearly distinguish binding rules for advisory guidance, and incorporate mechanisms for public input throughout the rulemaking and guidance development lifecycle.[2]

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[1] See 90 FR 23656, Hazardous Materials: Modernizing Regulations to Improve Safety and Efficiency. Docket No. PHMSA-2025-0032 (HM-265B), Published June 4, 2025.

[2] *See* AFPM comments to Docket No. DOT-OST-2025-0007 filed June 17, 20225.

## IV. AFPM Comments on Hazardous Materials Program Procedures and Hazardous Materials Regulations

AFPM urges PHMSA to modernize the HMR in ways that reflect the realities of hazardous materials transportation, prioritize risk reduction, and promote clear, enforceable, and cost-effective safety standards. Below AFPM provides feedback and recommendations on the questions proposed in the ANPRM.

**PHMSA Question 10**: *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.*

**AFPM Recommendation – Shipping Papers**: With the growing use of online carrier portals and third-party booking or logistics systems, particularly in the rail sector, the generation and handling of electronic bills of lading has introduced practical challenges for compliance with certain provisions in 49 CFR Part 172—particularly those related to shipping papers and shipper certifications under Subpart C.[3]

A recurring issue involves the shipper's certification requirement, which mandates that a hazmat-trained employee's name be listed as the responsible party on the shipping document. In many cases, however, hazardous materials shipment information is entered directly into a carrier's digital platform, and the resulting shipping papers are generated and stored within that system—not at the shipping facility. As a result, facilities may never see or physically handle the final bill of lading that accompanies the railcar and thus have limited control over the formatting or completeness of the document.

This disconnect has led to instances where companies have received notices of violation (NOVs) for certification statements that were either missing due to system limitations or inaccurately completed, such as listing a company name or railroad name in place of a designated individual. These errors typically stem not from noncompliance by the shipper, but from limitations in carrier-controlled systems that do not align with regulatory formatting expectations.

To address this issue, AFPM recommends that PHMSA consider modernizing the shipper certification requirements under Subpart C to allow for greater flexibility in electronic systems—such as permitting a company name or digital identifier in lieu of a physical signature from a specific employee, provided the shipment is prepared by hazmat-trained personnel in accordance with the HMR. This change would better reflect current industry practices, reduce the issuance of minor administrative violations that are burdensome do not promote safety, and align the

[3] *See* 49 C.F.R. Part 172 Subpart C

regulation with the increasing adoption of electronic documentation platforms across the hazardous materials transportation sector.

**PHMSA Question 11**: *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.*

**AFPM Recommendation – Hazardous Materials Training:** Several provisions under 49 CFR Part 172, Subpart H pertaining to hazmat training may warrant revision to better align with current training practices and reduce unnecessary administrative burdens on regulated entities.[4] Specifically, the regulations require that a hazmat employee's training certification include the name of the individual (not the company) who provided the training, along with a physical address**.** In practice, this requirement can be problematic—particularly in the context of online training platforms, which have become a standard method of delivering hazmat training across the industry. Many of these programs are developed and administered by third-party providers, and the training may be completed asynchronously or remotely. As such, identifying a single individual responsible for the training is often impractical or inconsistent with how the training is actually delivered.

AFPM members have received NOVs for listing a company name rather than an individual trainer, even when the training was developed and delivered by a qualified entity. Additionally, the requirement to list a physical address does not reflect the realities of remote work, where the trainer or training developer may not be tied to a single fixed location. Neither of these NOVs promote safety but they do add burdens on shippers.

To reflect modern practices, AFPM recommends that PHMSA consider amending the training certification requirements to allow for identification of a training provider or organization**,** rather than requiring the name of an individual trainer. Likewise, allowing a business address or digital contact in lieu of a physical location would improve clarity and reduce compliance risk without compromising safety. These revisions would provide greater flexibility for employers, particularly those utilizing online or third-party training platforms, and better align the regulation with contemporary workforce structures and technology.

**PHMSA Question 13**: *Do any of the HMR requirements at part 173, subpart B, governing preparation of hazardous materials for transportation 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.*

**AFPM Recommendation – Residue IBC:** While AFPM members recognize that residual hazardous materials can still pose some level of risk, enforcement actions related to the return shipment of railcars or intermediate bulk containers (IBCs) containing only residue appear

[4] See 49 C.F.R. Part 172 Subpart H

disproportionate in many cases.[5] This is especially true where the receiver's role is limited to fully emptying the package, with no further processing or rehandling of the material. These stakeholders are often responsible for preparing the emptied packages for return, despite not having loaded the hazardous material or otherwise engaged in the initial offering for transport.

In practice, AFPM members have observed that certain DOT special permits have already been issued to allow for the return transport of empty IBC totes without triple rinsing, recognizing the low-risk profile in many such scenarios. These exemptions have worked effectively and indicate that a broader regulatory update may be appropriate.

AFPM recommends that PHMSA consider expanding regulatory flexibility for the return shipment of multi-use packaging containing only residue, such as tank cars and IBCs, particularly when they are being returned directly to the original shipper. Introducing a broader exemption or streamlined standard for such movements would reduce the compliance burden on hazmat receivers without compromising safety, especially where the packages have been emptied to the maximum extent practicable in accordance with existing definitions under 49 CFR 171.8. This revision would benefit a wide range of facilities and carriers engaged in routine, low-risk return operations, and better align regulatory oversight with actual risk.

**AFPM Recommendation – Tank Car Manway Inspections:** AFPM recommends PHMSA reconsider rules that require constant opening and closing of manway covers for inspection.[6] AFPM members that participate in the Verified Sustainable Products (VSP) Ride Tight® program typically do not engage in routine gasket material selection, as these specifications are managed through standardized processes under the program. However, AFPM members that top-load tank cars do conduct visual inspections of the manway gaskets prior to each shipment.

The time spent per shipment to open a manway and visually inspect the gasket varies but is generally estimated at 15 to 30 minutes, depending on car configuration and the presence of any complications (e.g., residual pressure or product buildup). For non-flammable products shipped in pressurized cars, inspections are typically performed prior to loading and release, using pressure-based leak tests rather than physically opening the manway. This minimizes wear and tear on the gasket and reduces the risk of compromising the seal.

AFPM members emphasize that gasket failures are more commonly caused by improper torquing of the manway rather than failure of the gasket material itself. Repeated opening and closing of the manway can degrade gasket integrity over time, even with robust materials. Therefore, members advocate for procedures that limit unnecessary disturbance to the gasket while still ensuring a leakproof condition, such as air pressure unloading and selective visual and olfactory inspections for flammable product shipments. These approaches are effective and avoid introducing additional operational burdens or safety risks.

**PHMSA Question 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*

[5] *See* 49 C.F.R. § 173.29
[6] *See* 49 C.F.R. § 173.31(d)(1)(ii)

*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.*

**AFPM Recommendation – Delegated Authority for Tank Cars:** As a common carrier, a railroad is required to provide the instrumentalities of transportation, including rail cars, for their customers to use. However, tank cars are unique in this regard, as tank cars are typically provided by the shippers and not the railroad. Consequently, shippers desiring to transport their bulk liquid and gaseous commodities by rail must obtain their own tank cars, either by purchase or lease, before engaging a railroad's transportation services. The nation's railroads own virtually no tank cars.

Although railroads do not provide tank cars, they still must be intimately familiar with tank cars in order to safely transport them across the country. To facilitate discussions regarding tank car safety, design, and improvements, the rail industry has long utilized the American Association of Railroads ("AAR") Tank Car Committee ("TCC"), whose members include railroads, tank car manufacturers and suppliers, and railroad customers. DOT also is an ex officio non-voting member. PHMSA and other DOT agencies recognize the influential role played by the TCC and to this end PHMSA expressly has delegated certain authority to the TCC to conduct the initial review of, and make recommendations regarding, proposed changes or additions to tank car specifications.[7] In addition, PHMSA has authorized the TCC to approve designs, materials, and construction under existing tank car specifications.[8]

Historically, the TCC has functioned collaboratively, with the various stakeholders (railroads, tank car manufacturers and suppliers, and railroad customers) reaching agreement on the recommendations and approvals specified in PHMSA's regulations. That historical collaboration, however, has broken down on several occasions over the last two decades. These disagreements at the TCC were colored by the composition and internal rules of the TCC itself. Railroads hold a majority of the seats on the TCC, and TCC actions can be taken simply with a majority vote. Moreover, the TCC charter states that votes cannot take place unless there is a railroad majority present. Given this organizational structure, railroads can control and dictate the actions of the TCC, which is precisely what they have done by exercising their majority position to require compliance with tank car requirements that deviate from PHMSA specifications without the concurrence of other stakeholders.

The AAR has threatened to impose the tank car requirements "approved" by the TCC as the baseline standards for all tank cars through the AAR Interchange Rules. Because these rules apply not just to the railroads themselves, but also to tank car shippers who must agree to abide by those rules before any railroad will accept their private tank cars for service, the AAR is the self-anointed "gatekeeper" of all tank cars that can be used in North America. Thus, through the mechanism of the AAR Interchange Rules, the rail industry is capable of unilaterally requiring compliance with tank car specifications that deviate from PHMSA regulations. Due to the AAR's "gatekeeper" role for virtually all railroad transportation in the U.S., private AAR standards

[7] See 49 C.F.R. 179.4.
[8] See 49 C.F.R. 179.3.

effectively become the national standards for tank car specifications regardless of the PHMSA hazmat packaging regulations.

In addition to the "gatekeeper" role the TCC plays with regulations it also plays a similar role for tank car design approvals and Quality Assurance Program ("QAP") approval. Currently, AAR TCC approves tank car designs and manages QAP approval, as well as develops its own standards for the design and operation of tank cars.[9] PHMSA and FRA provide regulatory oversight to the AAR TCC approval process to ensure the committee is operating within the HMR's purview. The committee votes on the proposed designs, materials, construction, and conversion or alteration based on AAR TCC staff review of design drawings and/or service trial results. Once a car is approved, all North American railroad companies will accept that car for transport. This is an issue PHMSA had expressed concerns with and sought to change in its October 2023 proposal.[10] Specifically, PHMSA identified in the NRPM that AAR being the sole entity responsible for approving tank car design has created bottlenecks that slow the approval process. To address this issue, PHMSA and FRA proposed to revise the AAR process to approve tank car facility QAPs and tank car designs.

It is clear PHMSA's delegated authority to the AAR TCC causes undue burden on tank car owners by creating a dual set of regulatory standards and slowing approval of tank car designs. This is not a new problem as on August 12, 2016, a group of trade associations, including AFPM, petitioned PHMSA to initiate a rulemaking related to the role of AAR's TCC in development of tank car standards[11]. This petition remains open and PHMSA has taken no action. We call on the DOT to respond to the rail shippers petition and take action that would allow for an open and transparent discussion on TCC reform focused on improving efficiency and reducing burden.

**AFPM Recommendation – Offering a Tank Car After Qualification Expiration:** AFPM members support PHMSA taking clear action to forbid the offering of any loaded tank car for transportation once it is overdue for requalification, regardless of when the car was loaded. While current regulations allow for a loophole based on the loading date,[12] this practice creates unnecessary confusion—particularly for railroads—regarding the status of cars, even when only containing residue.

AFPM members recognize the potential value of a short grace period, such as up to three months prior to the tank qualification (TQ) date, to allow for operational flexibility. However, anything beyond that introduces ambiguity and opens the door for misuse or inconsistent application across the industry.

Moreover, from a safety and asset management standpoint, AFPM members emphasize the importance of avoiding risks associated with extended storage of loaded cars, especially in high-

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[9] The process by which the AAR TCC approves tank car and service equipment designs, materials, and construction, and conversion or alteration, is not specified in § 179.3; however, typically the committee votes on the proposed designs, materials, and construction, and conversion or alteration based on AAR TCC staff review of design drawings and/or service trial results.

[10] *See* 88 *FR* 43016 Docket No. PHMSA-2019-0031 (HM-265A) "Hazardous Materials: Modernizing Regulations To Improve Safety and Efficiency" published July 5, 2023.

[11] *See* P-1678 Petition to Amend Relating to Tank Car Standards filed August 15, 2016.

[12] *See* 49 C.F.R. 173.31(a)(3).

humidity or salt-air environments such as the Gulf Coast, where there is a real potential for bearing degradation or other mechanical concerns. As a matter of policy, many AFPM members scrap tank cars at their TQ date and ensure they are emptied and returned to company facilities well in advance of that date.

For these reasons, PHMSA should expressly clarify the regulations to prohibit offering a loaded tank car for transportation after its requalification due date**,** as this would enhance clarity, promote uniform compliance, and uphold safety standards across the tank car fleet.

## V. Conclusion

AFPM appreciates the opportunity to provide comments on the proposed regulatory changes and related safety issues. As reflected in the responses above, AFPM members support practical, risk-based regulations that improve safety without creating undue burdens or operational ambiguity. Proposals such as prohibiting the offering of loaded tank cars beyond their requalification dates align with best practices already in place across much of the industry. AFPM members urge PHMSA to consider implementation timelines, infrastructure readiness, and stakeholder roles carefully, and to promote standards that reflect real-world practices, foster transparency, and ultimately advance safety without compromising efficiency. Please contact me at (202) 457-0480 or rkelsey@afpm.org if you wish to discuss these issues further.

Sincerely,

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