

**US DOT/PHMSA Rulemaking Update
Presentation
Labelmaster Dangerous Goods
Symposium
Michael Stevens
Standards and Rulemaking Division
Office of Hazardous Materials Safety
September 8, 2016**

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PHMSA's Mission

- Protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives



PHMSA Rulemaking Priorities 2016

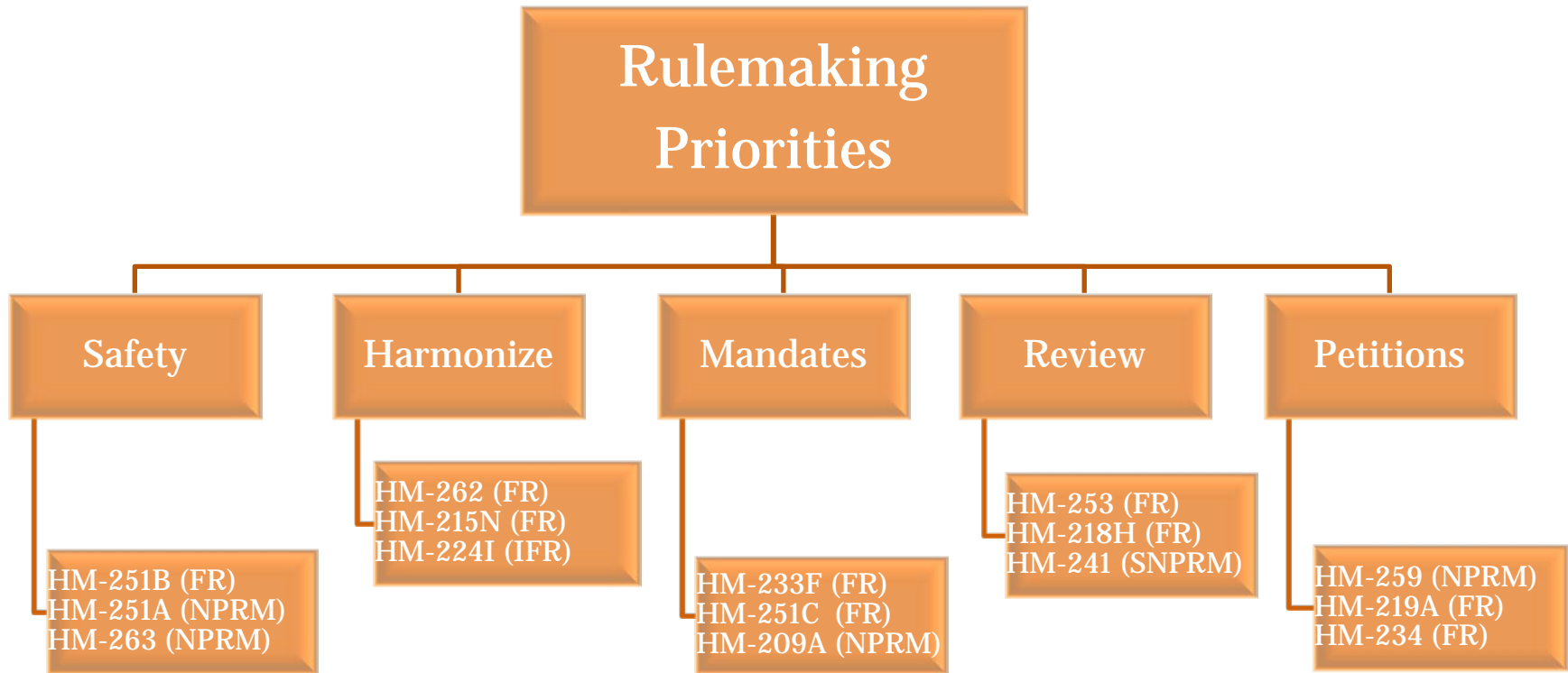
The goal for today is to discuss PHMSA's key regulatory actions for CY 2016.

What drives the regulatory agenda?

- Safety**
- Harmonization**
- Mandates**
- Regulatory Review**
- Petitions for Rulemaking and RCSPs**



Hazmat Rulemaking Priorities 2016



FAST Act

- **Summary:** On December 4, 2015 President Obama signed into law the Fixing America's Surface Transportation Act, or FAST Act. The FAST Act includes many rulemakings, studies and reports to congress, and other mandates and programmatic changes for OHMS. In general, the FAST Act mandates have very strict timelines. Regulatory Focus areas include:
 - **Phase Out All DOT-111 Tank Cars Used to Transport Class 3 Flammable Liquids**
 - **Require ½ Inch Thermal Blankets for DOT 117R Tank Cars**
 - **Require Top Fitting Protection for DOT 117R Tank Cars**
 - **Implement Additional Reporting Requirements to Capture DOT 117R Retrofitting Progress**
 - **Establish Requirements for Real-Time Emergency Response Info for All Hazmat**
 - **Require Railroads to Provide Info to SERCs on HHFT Movements**
 - **Issue and Report on Rulemaking to Expand Requirements for Oil Spill Response Plans**

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Hazmat Rulemaking Priorities 2016

Safety Rulemakings

- ❑ **HM-251B (NPRM) Oil Spill Planning and Info Sharing for HHFTs**
 - ❑ Publish date: July 29, 2016
 - ❑ Comment period closed on August 29, 2016
 - ❑ Drivers: NTSB recommendations, Derailments, Congressional interest - FAST Act, Public interest

- ❑ **HM-251A (NPRM) Review & Update of Rail Carrier Regs in Part 174**
 - ❑ Anticipated publication date: September 2017
 - ❑ Drivers: Petitions for rulemaking, Public, NTSB recommendations, RSAC, FAST Act

- ❑ **HM-263 (NPRM) Real-Time Emergency Resp. Info / Fusion Centers**
 - ❑ Anticipated publication date: Required within 1 year by the FAST Act – NPRM – December 2016
 - ❑ Drivers: Congressional interest - FAST Act



HM-251B: Oil Spill Planning and Info Sharing for HHFTs

- ANPRM published August 1, 2014
 - Comment period closed September 30, 2014
- NPRM published July 29, 2016
 - Comment period closes September 27, 2016
- Purpose:
 - Revises the HMR to expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard flammable trains (HHFTs) based on thresholds of crude oil.
- Summary:
 - In coordination with the Federal Railroad Administration (FRA).
 - Applicability based on thresholds of crude oil that apply to an entire train consist.



Hazmat Rulemaking Priorities 2016

Harmonization Rulemakings

- ❑ **HM-262 (FR) Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage**
 - ❑ Published: May 19, 2016
 - ❑ Drivers: Int'l harmonization, NTSB recommendations, Congressional / Public interest

- ❑ **HM-215N (NPRM) International Harmonization**
 - ❑ Publication date: September 7, 2016
 - ❑ Comment period closes on November 7, 2016
 - ❑ Drivers: Regulatory Review Initiative, Int'l harmonization

- ❑ **HM-224I (IFR) Revised Lithium Battery Provisions**
 - ❑ Anticipated publication date: October 2016
 - ❑ Drivers: Congressional interest – Safety



HM-262: Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage

- Interim final rule published October 30, 2015
 - Effective date November 6, 2015.
- Purpose:
 - To prohibit passengers and crewmembers from carrying battery-powered portable electronic smoking devices in checked baggage
- Summary
 - Interim final rule prohibits battery-powered portable electronic smoking devices, such as e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers, electronic nicotine delivery systems from being placed in checked baggage
 - Devices are prohibited from being charged on board the aircraft.
 - Actions consistent with those taken by the International Civil Aviation Organization (ICAO) addendum



ICAO Lithium Battery Safety Advisory

- PHMSA issued a safety advisory on April 1, 2016
- ICAO amendments include:
 - Prohibition of lithium batteries as cargo aboard passenger carrying aircraft
 - 30% state of charge
 - Limit the number of packages of lithium ion and lithium metal batteries on cargo aircraft
- PHMSA is considering additional actions, including appropriate amendments to the HMR

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HM-215N: International Harmonization

- NPRM published September 7, 2016
 - Comment period closes November 6, 2016
- Rulemaking proposes to align the US Hazardous Materials Regulations with:
 - 2017-2018 ICAO TI
 - Amendment 38-16 to the IMDG Code
 - 19th Revised Edition of the UN Model Regulations
 - 6th Revised Edition of the UN Manual of Tests and Criteria
 - 6th Revised Edition of the GHS
 - Canadian TDG Regulations to include SOR/2014-152 and SOR/2014-159 published July 2, 2014; SOR/2014-159 Erratum published July 16, 2014; SOR/2014-152 Erratum published August 27, 2014; SOR/2014-306 published December 31, 2014; SOR/2014-306 Erratum published January 28, 2015; and SOR/2015-100 published May 20, 2015
 - Updated International Organization for Standardization (ISO) standards.

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HM-215N: International Harmonization

Proposals of note include:

- Provisions for Polymerizing Substances
- Modification of the Marine Pollutant List
- Packaging Requirements for Water-Reactive Materials Transported by Vessel
- Hazard Communication Requirements for Lithium Batteries
- Engine, Internal Combustion/Machinery, Internal Combustion
- U.S.-Canada Regulatory Cooperation Council (RCC) Proposals

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HM-215N: International Harmonization

Noteworthy issues not considered for adoption in the international harmonization proposal:

- Large salvage cylinders
- Large packagings for waste aerosols
- Table tennis balls
- IMO portable tank marking
- Classification inconsistencies
- Filling procedures for UN pressure receptacles
- Intentionally infected animals
- Special aircraft operations
- Enhanced safety provisions for lithium batteries transported by air
- Sterilization devices containing nitrogen tetroxide or nitric oxide
- Cylinders containing gases for use in fire extinguishers or stationary fire-fighting installations

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Hazmat Rulemaking Priorities 2016

Mandated Rulemakings

❑ **HM-233F (FR) Special Permit Incorporation**

- ❑ Published: January 21, 2016
- ❑ Drivers: MAP-21 mandated rule by October 1, 2015

❑ **HM-251C (FR) FAST Act Requirements for Flammable Liquids and Rail Tank Cars**

- ❑ Publish date: August 15, 2016
- ❑ Drivers: Congressional interest - FAST Act

❑ **HM-209A (NPRM) Revisions to Requirements for Hazmat Grants**

- ❑ Anticipated publication date: September 2016
- ❑ Drivers: Congressional interest - FAST Act, Retrospective Regulatory Review (RRR)

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HM-233F: Adoption of Special Permits (MAP-21) (RRR)

- Final Rule published January 21, 2016
 - Effective Date: February 22, 2016
 - Delayed Compliance Date: January 23, 2017
- Purpose:
 - To adopt provisions contained in certain widely-used or long-standing special permits that have an established safety record.
- Summary:
 - Codified requirements in 96 special permits.
 - Provide wider access to regulatory flexibility offered in special permits and eliminate need for renewal requests.
 - Reduce paperwork burdens and facilitate commerce while maintaining an appropriate level of safety.

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Hazmat Rulemaking Priorities 2016

Regulatory Review Rulemakings

❑ **HM-253 (FR) Reverse Logistics**

- ❑ Published: March 31, 2016
- ❑ Effective date: March 31, 2016
- ❑ Drivers: Regulatory Review Initiative

❑ **HM-218H (FR) Miscellaneous Amendments**

- ❑ Published: June 2, 2016
- ❑ Effective date: July 5, 2016
- ❑ Drivers: Regulatory Review Initiative

❑ **HM-241 (FR) ASME Code**

- ❑ Anticipated publication date: January 2017
- ❑ Drivers: Responds to one petition for rulemaking



HM-253: Reverse Logistics (RRR)

- Final Rule published March 31, 2016
 - Effective Date: March 31, 2016
- Purpose:
 - To adopt regulatory amendments specific to reverse logistics shipments of certain hazardous materials by highway transportation
- Summary:
 - Rulemaking added definition of “reverse logistics”
 - Added § 173.157 to provide exception for certain limited quantity reverse logistics shipments
 - Amended § 173.159(e) to allow for carrier to pick up lead acid batteries for recycling from multiple locations



HM-218H: Miscellaneous Amendments (RRR)

- Final rule published June 2, 2016
 - Effective date: July 5, 2016*
- Purpose:
 - Rulemaking intended to promote safer transportation practices, address petitions for rulemaking, respond to National Transportation Safety Board (NTSB) Safety Recommendations, facilitate international commerce, make editorial corrections, and simplify the regulations.
- Summary:
 - Proposed revisions include, but are not limited to, removing the packing group II designation for certain organic peroxides, self-reactive substances and explosives, incorporating requirements for trailers of manifolded acetylene cylinders, and providing requirements to allow for the shipment of damaged wet electric batteries.
 - Includes an additional proposal to revise the requirements for packaging of nitric acid, testing of pressure relief devices on cargo tanks, and shipments of black or smokeless powder for small arms.



HM-241: Adoption of ASME Code Section XII and the NBIC

- NPRM published December 27, 2013
 - Comment period closed April 30, 2014
 - SNPRM published on April 29, 2016
 - Final rule expected January 2017
- Purpose:
 - Respond to petitions for rulemaking from ASME, the National Board of Boiler and Pressure Vessel Inspectors and the Pressure Vessel Manufacturers Association.
- Summary:
 - Proposes to incorporate the 2015 edition of Section XII of the American Society of Mechanical Engineers Code that was developed for the design, construction & certification of transport tanks, & the National Board Inspection Code, related to the qualification & maintenance of transport tanks.



Hazmat Rulemaking Priorities 2016

Petitions and RCSPs Rulemakings

❑ **HM-234 (NPRM) Cylinder Petitions**

- ❑ Published: July 26, 2016
- ❑ Comment period closes: September 26, 2016
- ❑ Drivers: Regulatory Review Initiative, Responds to 18 petitions for rulemaking

❑ **HM-259 (NPRM) Notification of the Pilot in Command and Response to Air related Petitions for Rulemaking**

- ❑ Anticipated publication date: September 2016
- ❑ Drivers: Modal Interest, Petitions for rulemaking

❑ **HM-219A (NPRM) Response to Petitions for Rulemaking**

- ❑ Published: June 30, 2016
- ❑ Comment period closed: August 29, 2016
- ❑ Drivers: Petitions for rulemaking

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HM-234: Petitions of Specification Cylinders (RRR)

- ANPRM published May 29, 2012
 - Comment period closed August 27, 2012
- NPRM published July 26, 2016
 - Comment period closes September 26, 2016
- Purpose:
 - To seek comment regarding the revising of certain requirements applicable to the manufacture, use, and requalification of DOT specification cylinders
 - Published in response to petitions for rulemaking submitted by the regulated community and a review of the regulations applicable to compressed gas cylinders
- Summary:
 - ANPRM and NPRM focused on specific petitions for rulemaking and special permits
 - PHMSA accepted comments on the HMR applicable to all compressed gas cylinders
 - NPRM comments will be combined with a retrospective review of existing requirements aimed to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome



HM-219A: Response to Petitions for Rulemaking

- NPRM published June 30, 2016
 - Comment period closed August 29, 2016
 - Final rule expected March 2017
- Proposed to Incorporate by Reference (IBR) multiple publications from the Compressed Gas Association (CGA) and the Chlorine Institute
- Proposed to address inconsistencies with domestic and international labels and placards
- Proposed to permit alternative testing for aerosols
- Proposed to no longer mandate that excepted quantities comply with the emergency response telephone number requirement
- Proposed to allow electronic signatures for Environmental Protection Agency (EPA) manifest forms
- Proposed to no longer require the service pressure to be marked on Department of Transportation (DOT) 8 and 8L cylinders

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HM-259: Air Related Petitions

- NPRM publication expected September 2016
- Proposal to harmonize with the 2015–2016 ICAO Technical Instructions for intermediate packaging requirements for low and medium danger hazardous material entries assigned special provisions A3 and A6
- Addresses the exception to allow passengers (and crewmembers for personal use) to bring aboard an aircraft portable medical electronic devices (and spare batteries for these medical devices) that exceed current lithium battery watt hour limits
- Proposes the harmonization of the Notification to Pilot in Command (NOPIC), also referred to as Notification to Captain (NOTOC)
- Addresses the acceptance of packages, outside containers, or overpacks containing holes that do not compromise the integrity of the containment device
- Addresses the inspection of packages requiring that HM/DG loaded in an aircraft be protected from damage, including by the movement of baggage, mail, stores, or other cargo, as well as during loading operations through dragging or mishandling of packages containing hazardous materials.

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HM-ACCESS

Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments

- **Paperless Hazard Communications Pilot Program under Section 33005 of the Moving Ahead for Progress in the 21st Century Act (MAP-21)**
- **Analysis and testing completed**
- **Report is in the PHMSA concurrence process**



OHMS Field Operations

- **Lithium Battery Plan**
- **Accident/Incident Investigation**
- **Sampling and Testing Plan Requirement**



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Sampling and Testing Plan Requirements

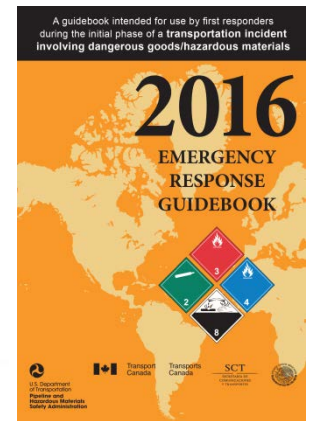
A sampling and testing plan is required for all unrefined petroleum-based products

- **Who – Offerors**
- **When – Effective May 2015**
- **What – Petroleum products (crude oil, gas, etc.)**
- **Outreach – New guidance publication, *Sampling and Testing Program for Unrefined Petroleum-Based Products***



Outreach Initiatives

- Resource materials -- Transportation Rail Incident Preparedness and Response (TRIPR) for flammable liquid unit trains
- New guidance publication -- Cargo Tank Motor Vehicle (CTMV) Loading/Unloading Operations: Recommended Best Practices Guide and Pocket Guide
- Sampling and testing program for unrefined petroleum-based products brochure
- 2016 Emergency Response Guidebook
- 2016 ERG mobile apps and desktop version



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Current Regulatory Portfolio

Rule	Description	Rulemaking Status	Current Target
<i>HM-233F</i>	Special Permit Adoption (Final rule)	<i>Published 1/21/16</i>	<i>N/A</i>
<i>HM-253</i>	Reverse Logistics (Final rule)	<i>Published 3/31/16</i>	<i>N/A</i>
<i>HM-261</i>	IBR 2015 ASME (Direct Final rule)	<i>Published 4/29/16</i>	<i>N/A</i>
<i>HM-218H</i>	Miscellaneous Amendments (Final rule)	<i>Published 6/2/16</i>	<i>N/A</i>
<i>HM-258D</i>	Revisions of Max/Min Civil Penalties (IFR)	<i>Published 6/29/16</i>	<i>N/A</i>
<i>HM-262</i>	Battery Powered E-Devices (Final rule)	<i>Published 5/19/16</i>	<i>N/A</i>
<i>HM-251C</i>	FAST Act: Tank Cars (Final rule)	<i>Published 8/15/16</i>	<i>N/A</i>
<i>HM-219A</i>	Miscellaneous Petitions (NPRM)	<i>Published 6/30/16</i>	<i>Comment Period Closed 8/29/16</i>
<i>HM-234</i>	Cylinders Petitions (NPRM)	<i>Published 7/26/16</i>	<i>Comment Period Closes 9/26/16</i>
<i>HM-251B</i>	Oil Spill Response Plans (NPRM)	<i>Published 7/29/16</i>	<i>Comment Period Closes 9/27/16</i>
<i>HM-215N</i>	International Harmonization (NPRM)	<i>Published 9/7/16</i>	<i>Comment Period Closes 11/7/16</i>
<i>HM-251D</i>	Volatility of Unrefined Petroleum (ANPRM)	<i>Formal Concurrence</i>	<i>September 2016</i>
<i>HM-259</i>	NOTOC and Air Petitions (NPRM)	<i>Formal Concurrence</i>	<i>September 2016</i>
<i>HM-209A</i>	Grants Revisions (NPRM)	<i>Formal Concurrence</i>	<i>September 2016</i>
<i>HM-213E</i>	Cargo Tank ID Numbers (ANPRM)	<i>Informal Concurrence</i>	<i>September 2016</i>
<i>HM-224I</i>	Revised Lithium Battery (IFR)	<i>Formal Concurrence</i>	<i>October 2016</i>
<i>HM-263</i>	ERI / Fusion Centers (NPRM)	<i>Formal Concurrence</i>	<i>December 2016</i>
<i>HM-241</i>	ASME Code Section XII (Final rule)	<i>Drafting</i>	<i>January 2017</i>
<i>HM-251A</i>	Part 174 Revision (NPRM)	<i>Initial Cost Analysis / Drafting</i>	<i>September 2017</i>



QUESTIONS?

