



Commercial Vehicle Safety Alliance

promoting commercial motor vehicle safety and security

October 28, 2015

The Honorable Marie Therese Dominguez
Administrator
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Petition for Rulemaking – Corrections to Title 49 C.F.R. §172.336 Identification numbers; special provisions.

Dear Administrator Dominguez:

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 106.95, the Commercial Vehicle Safety Alliance (CVSA) petitions the Pipeline and Hazardous Materials Safety Administration (PHMSA), requesting corrections to Title 49 C.F.R. § 172.336 of the Hazardous Materials Regulations (HMR). Specifically, the petitioner requests that the following language be inserted into § 172.336:

§ 172.336 Identification numbers; special provisions.

(c) Identification numbers are not required:

...

(4) For each of the different liquid petroleum distillate fuels, including gasoline, in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point. After October 1, 2010, if a compartmented cargo tank or tank car contains such fuels together with a gasoline and alcohol fuel blend containing more than ten percent ethanol, the identification number "3475" or "1987" must also be displayed as appropriate in addition to the identification number for the liquid petroleum distillate fuel having the lowest flash point.

(5) For each of the different liquid petroleum distillate fuels, including gasoline transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point.

Justification

On March 7, 2013, PHMSA issued a Final Rule addressing numerous petitions for rulemaking related to the HMRs. Included in this Final Rule, PHMSA-2011-0142, was language removing references to 'gasohol' in 49 C.F.R.

§ 172. Upon review of the Final Rule, PHMSA's intent was to remove the references to 'gasohol' in the Hazardous Materials Table (49 C.F.R. § 172.101), as well as the references to 'gasohol' in § 172.336(c)(4) and (5). The summary of the changes made by the Final Rule reads:

"Revise the Hazardous Materials Table (HMT; 49 CFR § 172.101) by removing the listing for "NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol"; and **removing reference to gasohol** [emphasis added] in Sections §§ 172.336(c)(4) and 172.336(c)(5);"

However, the Final Rule inadvertently completely deleted § 172.336(c)(4) and (5) from the HMRs. There is nothing in the Final Rule to indicate that the intention was to strike these sections entirely. This deletion, which we believe to be a drafting error, has created an unjustifiable training burden on industry, enforcement and first responders and has caused a lack of uniformity in enforcement and compliance. The inadvertent deletion changed 20 plus years of regulatory and interpretive intent with no corresponding benefit to safety. Furthermore, the lack of uniformity in enforcement and compliance can lead to inadvertent marking errors, which in turn can directly affect response efforts during a hazardous materials incident.

Therefore, CVSA respectfully requests that PHMSA reinstate § 172.336(c)(4) and (5), without the reference to 'gasohol', as was originally intended in the Final Rule.

The Alliance works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Collin B. Mooney', written in a cursive style.

Collin B. Mooney
Acting Executive Director