ENERGY MARKETERS OF AMERICA EMA

July 29, 2025

Submitted via www.regulations.gov

Mr. Yul B. Baker Jr.
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety
Standards and Rulemaking Division
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Hazardous Materials: Mandatory Regulatory Reviews to Unleash American Energy and Improve Government Efficiency [Docket No. PHMSA-2025-0032 (HM-265B)]

Dear Mr. Baker:

The Energy Marketers of America (EMA) submits the following comments in response to the Pipeline and Hazardous Materials Safety Administration's (PHMSA) stakeholder feedback solicitation on the elimination of regulatory burdens related to the supply of domestic energy resources, particularly motor fuels and heating oil. EMA commends the agency for evaluating deregulatory paths to provide relief to the transportation of vital liquid fuels and to reduce inflationary pressures on consumers.

EMA is a federation of 48 state and regional trade associations representing small business fuel distributors and retailers across the United States. EMA marketers are responsible for supplying 80 percent of all finished motor and heating fuel products nationwide—operating approximately 60,000 retail stations, distributing motor fuels to another 40,000 gas stations, and delivering heating fuel to more than five million homes and businesses. EMA companies safely transport essential fuels in cargo tanks to intermediate bulk plant storage facilities, retail outlets, homes, and businesses across the country.

Below, we have identified three areas ripe for reform within the Hazardous Materials Regulations (HMRs) to reduce undue compliance burdens on small businesses in the downstream energy sector. Cross-agency collaboration with the U.S. Environmental Protection Agency (EPA) to correct inefficiencies in leak testing, resulting from updated cargo tank vapor tightness metrics, should be prioritized to avoid supply chain disruptions and price increases.

Please find below our detailed comments.

I. PHMSA Should Work with EPA to Reincorporate Efficiencies in Cargo Tank Leakage Testing Under Part 180, Subpart E.

PHMSA has long allowed fuel marketers to perform leakage tests on cargo tanks using flexible methods under 49 CFR § 180.407(h). Specifically, paragraph (h)(1) permits leakage testing through a vapor recovery system without the need to pressurize the entire tank—reducing stress on older equipment, minimizing service interruptions, and lowering costs. In addition, paragraph (h)(2) provides a pressure-drop test alternative for cargo tanks equipped with vapor collection equipment, reflecting the state of the industry and avoiding duplicative compliance efforts with the EPA's vapor tightness certification requirements under the Clean Air Act. Together, these provisions have given operators the flexibility to choose a testing method based on tank design and operational needs—with growing reliance on vapor testing for compliance.

However, the EPA's 2023 amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for gasoline distribution have introduced testing complexities that undermine PHMSA's flexible regime. Paragraph (h)(2) had served as a valuable burden-reduction mechanism for petroleum distillate fuel haulers, enabling compliance with both NESHAP and HMRs. But the EPA recent update to its vapor tightness requirements—reducing the allowable pressure drop to 0.5 inches over a five-minute period for most, if not all, energy marketers—has significantly increased testing burdens.

What was once a helpful flexibility has now become an added layer of stringent regulation affecting efficiencies in the transportation of vital liquid energy. In effect, the EPA has imposed additional requirements and disrupted long-standing testing protocols, without adequately coordinating with PHMSA or considering the technical limitations of many tanks in service today.[1]

This disconnect between PHMSA and the EPA undermines both regulatory efficiency and safety by forcing small fuel distributors to use testing methods their tanks were never designed to accommodate. EMA strongly urges PHMSA and the EPA to coordinate de-regulatory efforts and reinstate the option to perform leak tests using a reasonable three-inches pressure-drop test under (h)(2). Doing so would restore a flexible compliance structure that has proven safe over many years, reduce unnecessary regulatory burdens, and support small businesses that ensure reliable fuel delivery across the country.

[1] For instance, the EPA conducted a cost-benefit analysis without considering legacy tanks (MC 306) still in service nor the testing challenges that increase compliance costs for newer tanks (DOT 406). *See* Regulatory Impact Analysis for the Final National Emission Standards for Hazardous Air Pollutants: Gasoline Distribution Technology Review and Standards of Performance for Bulk Gasoline Terminals Review, EPA-452/R-24-022 (Jan. 2024), available at: https://www.regulations.gov/document/EPA-HQ-OAR-2020-0371-0148

II. PHMSA Should Extend the Lowest Flash Point Exception to E15 Gasoline Blends Under Part 172, Subpart F.

PMHSA accepted comments through April 28, 2025, on proposed amendments to cargo tank placarding requirements for petroleum distillate fuels.[2] EMA supported the proposal to allow fuel marketers to use the UN ID number for the lowest flash point in split loads and alternating straight loads of gasoline, diesel, heating oil, and gasoline blends with 10% ethanol (E10). However, EMA urged the agency to expand this flexibility to gasoline blends with up to 15% ethanol (E15), particularly when transported alongside fuels with lower ethanol content.

Authorizing cargo tank vehicles to display the placard for the petroleum distillate fuel with the lowest flash point transported during different trips on the same day is legally compelled and sound policy. This approach not only reflects the best reading of the regulatory provision but also offers tangible operational benefits without compromising safety.

From a burden reduction perspective, removing the requirement to change placards with each load when hauling multiple fuels of differing flashpoints in alternating trips provides meaningful economic benefits without reducing any margin of safety. Limiting the flash point exception to multi-compartmented tanks carrying multiple distillate fuels at the same time (i.e., split load) requires energy marketers to implement inefficient workarounds when hauling essential energy resources in separate delivery runs (e.g., alternating straight loads), such as load sequencing. This often results in suboptimal routing or partial loads, adding inefficiencies and cost to energy transportation. Thus, EMA strongly supports the application of the lowest flash point exception in § 172.336(c) for the transportation of more than one petroleum distillate fuel in split and alternating straight loads, including during the previous or current business day.

To maximize efficiency gains, the lowest flash point exception should also apply to E15 blends given clear market trends and policy signals. Since 2017, E15 has transitioned from a niche fuel to a more available product in U.S. fuel distribution, driven, in great part, by federal regulatory policy.[3] These developments have led fuel marketers to increasingly transport E15 alongside standard fuel distillates during routine operations. Thus, allowing the lowest flash point placarding exception to apply to E15 would acknowledge these market adjustments and remain consistent

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[2] Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation, 89 Fed. Reg. 85590 (Oct. 28, 2024).

[3] *See* Renewable Fuel Standard (RFS) Program: Standards for 2026 and 2027, Partial Waiver of 2025 Cellulosic Biofuel Volume Requirement, and Other Changes, 90 Fed. Reg. 25784 (June 17, 2025) (proposing ambitious annual renewable fuel volume obligations and creating downstream market pressure for the incorporation of higher-ethanol blends into fuel supply chains); *see also* U.S. Environmental Protection Agency, Fuel Waivers, https://www.epa.gov/gasoline-standards/fuel-waivers#2025 (EPA granting seasonal fuel waivers for E15 blends); *see also* Request from States for Removal of Gasoline Volatility Waiver, 89 Fed. Reg. 14760 (Feb. 29, 2024) (Midwest states opting out of the one-pound gasoline volatility waiver for E10 blends to support broader E15 penetration in the region).

with safety best practices. The longstanding exception for E10 is a strong precedent for allowing E15 to be treated similarly—particularly in compartmented split-load situations where another petroleum distillate is the fuel with the lowest flash point.

EMA urges PHMSA to improve transportation efficiency and reduce costs without compromising safety by promptly finalizing the placarding rule with a broad application of the flash point exception.

III. PHMSA Should Develop a Risk-Based Approach to Hazardous Materials Registration Fees Under Part 107, Subpart G.

PHMSA's proposed fee increase for small business registrants to support the Hazardous Materials Emergency Preparedness (HMEP) grants program imposes disproportionate cost burdens on small fuel marketers while missing an opportunity to improve the overall efficiency of the hazardous materials registration system. Small businesses engaged in motor fuel and heating oil distribution operate in a highly competitive and cost-sensitive environment. While the agency acknowledges that the registration fee system should reflect "the differences in the level of risk to the public and the financial impact associated with the activities of large and small businesses,"[4] PHMSA has applied a uniform inflation-based adjustment without adequately considering the risk profile of the hazardous materials being transported. This approach imposes undue financial burdens on small business liquid energy marketers whose operations pose comparatively lower risks.

EMA strongly encourages PHMSA to revise the proposed fee structure to better align with both business size and the specific risk characteristics of the materials being transported. Not all hazardous materials present the same threat to public health and safety. For instance, substances that are toxic by inhalation, radioactive, or infectious pose significantly higher risks than conventional fuels. As such, registrants transporting these high-risk materials should bear a proportionately larger share of the registration fee burden. Conversely, small business fuel marketers, who primarily handle lower-risk materials such as diesel or gasoline, should not be subject to the same degree of fee increases intended to subsidize riskier activities. A fee structure that treats these fundamentally different risk profiles the same reduces regulatory precision and imposes unnecessary burdens on lower-risk sectors.

Efficiency is not achieved by expanding cost obligations across the board; it is achieved by targeting them based on risk and capacity to absorb cost—a principle and directive embedded in the legislative instruments animating this regulatory change. EMA therefore urges PHMSA to revise the proposed registration fee structure in a way that reflects the dual goals of fairness and regulatory efficiency. A tiered approach based on both business size and material risk would better

[4] Hazardous Materials: Adjusting Registration and Fee Assessment Program, 89 Fed. Reg. 45806 (May 25, 2024).

align fee burdens with safety imperatives while reducing unnecessary regulatory strain on small businesses in the fuel and heating oil sectors.

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EMA appreciates your attention to these important issues that impact our membership across the nation and welcomes the opportunity to meet and discuss its comments. If you have any questions, please contact EMA's Regulatory Counsel, Jeff Leiter (jleiter@bmalaw.net) or Jorge Roman (jroman@bmalaw.net).

Sincerely,

Rob Underwood
President