

# INTERESTED PARTIES FOR HAZARDOUS MATERIALS TRANSPORTATION

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April 4, 2016

Dr. Magdy El-Sibaie  
Associate Administrator for Hazardous Materials Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
Washington, DC 20590

## **Re: Request for Withdrawal of a Letter of Interpretation**

Dear Dr. El-Sibaie,

On behalf of the Interested Parties for Hazardous Materials Transportation (Interested Parties), we are writing to request that you withdraw a letter of interpretation issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) to Andrew N. Romach of AECOM on December 11, 2015. The letter addresses the regulatory definitions of “bulk” and “non-bulk” packagings seeking to introduce new regulatory interpretations in contravention of the Administrative Procedure Act (APA). A copy of the letter is attached for your reference.

The letter was issued in response to a question from Mr. Romach about a packaging that, when filled, would have a maximum net mass greater than 400 kg (882 lbs.) and a maximum capacity less than 450 L (119 gallons). Under the current definitions of non-bulk and bulk packaging found in §171.8 the filled package would meet neither definition.

The solution offered by PHMSA would revise the definition of “bulk packaging” at 49 CFR 171.8 to mean “...a packaging which has either a maximum net mass greater than 400 kg (882 lbs.) or a maximum capacity greater than 450 L (119 gallons) as a receptacle for a solid...”. A definitional change of this kind may not be accomplished through issuance of a letter of interpretation.

Although the Interested Parties are sympathetic to the issue raised in Mr. Romach’s letter to PHMSA, the answer provided would first have to be reached through rulemaking. In fact, this issue was once raised in a rulemaking (HM-231; 75 FR 5376 et seq.), but the Agency left the issue unaddressed.

In conclusion, this interpretive letter does not merely seek to explain a rule, it would change the existing rule. Since the APA requires that the public be informed of and afforded an opportunity to comment on proposed rules before they become final and take effect, we respectfully ask that the December 11, 2015 letter of interpretation issued by PHMSA to Andrew N. Romach be withdrawn.

Sincerely,  
Agricultural Retailers Association

American Chemistry Council  
American Coatings Association  
American Fuel & Petrochemical Manufacturers  
American Pyrotechnics Association  
American Trucking Associations  
Association of Hazmat Shippers, Inc.  
The Chlorine Institute  
Council on Safe Transportation of Hazardous Articles  
Dangerous Goods Advisory Council  
Gases and Welding Distributors Association  
Institute of Makers of Explosives  
International Liquid Terminals Association  
International Vessel Operators Dangerous Goods Association, Inc.  
National Association of Chemical Distributors  
The National Industrial Transportation League  
National Private Truck Council  
National Tank Truck Carriers, Inc.  
PRBA-The Rechargeable Battery Association  
Reusable Industrial Packaging Association  
SPI: The Plastics Industry Trade Association  
Sporting Arms & Ammunition Manufacturers' Institute  
The Sulphur Institute  
Truckload Carriers Association  
Utility Solid Waste Activities Group

Attachment