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U.S. Department
of Transportation

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

**Pipeline and Hazardous
Materials Safety Administration**

5/25/2017

FOIA Control Number: 2017-0106

Transmitted via Electronic Mail

This letter is in response to your Freedom of Information Act (FOIA) request dated 4/24/2017 and received in the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) FOIA Office on 4/25/2017. You requested a copy of the staff manual on petitions.

Attached, please find 14 pages we are releasing to you in full.

Because the fee for processing your request falls below the minimum amount the Department of Transportation charges for processing FOIA requests, we processed your request at no charge to you. *See* Department of Transportation FOIA Regulations, 49 C.F.R. § 7.43(a)(1).

This concludes our response to your request. If you have any questions, you may contact Madeline Van Nostrand, FOIA Officer, by phone at 202-366-0273 or by email to PHMSA.FOIA@dot.gov. You also may seek the services of our FOIA Public Liaison, Susan Hand, by phone at 202-366-4831 or by email to phmsapublicaffairs@dot.gov.

Sincerely,

Madeline M Van Nostrand

FOIA Officer

Pipeline and Hazardous Materials Safety Administration (PHMSA)

 Digitally signed by Madeline M Van Nostrand
DN: cn=Madeline M Van Nostrand, o=PHMSA, ou=Office of
Chief Counsel, email=madeline.vannostrand@dot.gov, c=US
Date: 2017.05.24 11:28:57 -04'00'

Attachment: 2017-0106 Response Package 2017.05.25.pdf



U.S. Department of Transportation

**Pipeline and Hazardous Materials
Safety Administration**

**Standard Operating Procedures for
Petition for Rulemaking
PHH-10**

The following SOP is authorized as of November 2012

Revised: August 2016

SOP: Petition for Rulemaking (PHH-10)

Issued by the Standards and Rulemaking Division, Office of Hazardous Materials Safety,
Pipeline and Hazardous Materials Safety Administration

Table of Contents

Purpose	1
Background	2
Definitions.....	2
Requirements for Petition Submissions.....	2
Section 1 – Incoming Request for Petition	3
Section 2 – PHH-20 Review	4
Section 3 – PHH-60 Review	4
Section 4 – Acceptance Letter	5
Section 5 – Denial Letter	6
Section 6 – Closing the Petition	6
APPENDIX A – PETITIONS FLOWCHART	7
APPENDIX B – SAMPLE DENIAL LETTER FOR LACK OF INFORMATION.....	8
APPENDIX C – SAMPLE ACKNOWLEDGEMENT LETTER.....	10
APPENDIX D – SAMPLE ACCEPTANCE LETTER.....	11
APPENDIX E – SAMPLE DENIAL LETTER.....	12

Purpose

This document outlines the petition process, including required information and coordination. In accordance with § 106.95 of the 49 CFR, the public may petition the Pipeline and Hazardous Materials Safety Administration (PHMSA) to make regulatory changes. Incoming requests are evaluated to ensure that they contain all required information prior to acceptance as a petition. If a request for a petition is accepted, it will be logged into a tracking system and assigned to a publicly accessible docket. The following SOP describes the process for handling a petition for rulemaking.

Background

In accordance with § 106.95 of the 49 CFR, the public may petition PHMSA to make regulatory changes. A petition request may be submitted electronically via e-mail to phmsapetitions@dot.gov or by mail to PHMSA's Standards and Rulemaking Division (PHH-10), which operates out of the Department of Transportation (DOT) National Headquarters at 1200 New Jersey Avenue, SE, Washington, DC 20590.

Definitions

Commonly used Terms:

<i>Petition for Rulemaking</i>	A petition from the public or regulated community submitted in accordance with § 106.100.
<i>Petitions Coordinator</i>	The person responsible for overseeing the entire petitions process from beginning to end. The current Petitions Coordinator is Steven Andrews (PHH-12).

Commonly used Division Acronyms:

<i>PHH-1</i>	Associate Administrator for Hazardous Materials Safety
<i>PHH-10</i>	Standards and Rulemaking Division
<i>PHH-20</i>	Engineering and Research Division
<i>PHH-60</i>	Program Development Division

Requirements for Petition Submissions

Section 106.95 of the Hazardous Materials Regulations allows anyone to petition PHMSA to add, amend, or delete a regulation by filing a petition for rulemaking. For PHMSA to adequately analyze the merits of a petition, the petitioner must submit the information as required by § 106.100. A submission to PHMSA is considered a complete petition when it contains the following information as required by § 106.100:

§ 106.100 Required information for a petition for rulemaking.

(a) You must include the following information in your petition for rulemaking:

- (1) A summary of your proposed action and an explanation of its purpose.
- (2) The language you propose for a new or amended rule, or the language you would delete from a current rule.

- (3) An explanation of your interest in your proposed action and the interest of anyone you may represent.
 - (4) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.
 - (5) Any specific cases that support or demonstrate the need for your proposed action.
- (b) If the impact of your proposed action is substantial, and data or other information about that impact are available to you, we may ask that you provide information about the following:
- (1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.
 - (2) The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.)
 - (3) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.
 - (4) The recordkeeping and reporting burdens of your proposed action and whom they would affect.
 - (5) The effect of your proposed action on the quality of the natural and social environments.

PHMSA will return letters not containing the preceding information to the petitioner with the option to resubmit the petition with all the information required by § 106.100.

Section 1 – Incoming Request for Petition

1. The Petitions Coordinator receives the request for petition.
2. The Petitions Coordinator assesses the request to determine if it meets the requirements for a petition for rulemaking in accordance with § 106.100.
 - a. If the Petitions Coordinator determines that the request for petition fully complies with § 106.100, go to the next step.
 - b. If the Petitions Coordinator determines that the request for petition does not meet the requirements of § 106.100, the Petitions Coordinator returns the

incomplete petition to the requester along with a “lack of information” letter.
(See Appendix B.)

- i. If a new request for petition is submitted in response to the “lack of information” letter and the new request fully complies with § 106.100, go to the next step.
 - ii. If the Petitions Coordinator does not receive a response from the petitioner, there will be no further action taken on the request.
3. The request for petition is assigned the next “P” number in sequence and officially becomes a petition for rulemaking.
4. The Petitions Coordinator verifies that the acknowledgement letter (see Appendix C) has been developed, sent, docketed, and noted in the Filemaker database and that the coordination database has been updated with relevant information.
5. The Petitions Coordinator initiates the communication and coordination process for the incoming petition for rulemaking.
6. Go to Section 2.

Section 2 – PHH-20 Review

1. The Petitions Coordinator develops an e-mail to transmit a copy of the petition to PHH-20 requesting an evaluation in line with the Safety Analysis protocol. This process enables the Petitions Coordinator to clearly identify the key elements that need to be reviewed by PHH-20. This clear communication is intended to ensure that only a petition that has undergone a Safety Analysis and has been deemed appropriate for regulatory action is accepted for consideration of a future rulemaking.
 - a. PHH-20 works with PHH-10 to fully evaluate the petition.
 - b. PHH-20 provides an evaluation to PHH-10 with a recommendation. The Petitions Coordinator works with PHH-20 to ensure that the recommendation is received within 60 days.
2. If PHH-20 recommends accepting the petition, go to Section 3.
3. If PHH-20 recommends denying the petition, go to Section 5.

Section 3 – PHH-60 Review

4. The Petitions Coordinator develops an e-mail to transmit a copy of the petition to PHH-60 requesting an evaluation in line with the Policy Analysis protocol. This process enables the Petitions Coordinator to clearly identify the key elements that need to be reviewed by PHH-60. This clear communication is intended to ensure that only a

petition that has undergone a Policy Analysis and has been deemed appropriate for regulatory action is accepted for consideration of a future rulemaking.

- a. PHH-60 works with PHH-10 and PHH-20 to fully evaluate the petition.
 - b. PHH-60 provides an evaluation to PHH-10 with a recommendation. The Petitions Coordinator works with PHH-60 to ensure that the recommendation is received within 60 days.
5. If PHH-60 recommends accepting the petition, go to Section 4.
 6. If PHH-60 recommends denying the petition, go to Section 5.

Section 4 – Acceptance Letter

1. The Petitions Coordinator drafts a letter accepting the petition for rulemaking.
2. The Senior Regulations Officer reviews and approves the acceptance letter. (See Appendix D.)
3. Once approved, the Petitions Coordinator places the acceptance letter on PHMSA letterhead and grid.
4. At a minimum, the Petitions Coordinator must provide the acceptance letter to the following Divisions and personnel for review and concurrence:
 - a. PHH-10
 - b. PHH-20
 - c. PHH-60
 - d. Technical Writer
 - e. PHH-1
5. Contingent on the petition content, review and concurrence by the applicable modal contact (FAA/FMCSA/FRA/USCG) or PHC may also be required.
6. Once the adequate concurrences have been received, the Petitions Coordinator provides the acceptance letter to the Director of the Standards and Rulemaking Division for signature.
7. Once signed, the Petitions Coordinator ensures that the signed version of the document is saved in the “Accepted” petitions folder on the N drive.
8. The Petitions Coordinator ensures that a signed copy of the acceptance letter is placed in the public docket for the petition.
9. The Petitions Coordinator works with the Senior Regulations Officer to determine an appropriate rulemaking to address the accepted petition.
10. Go to Section 6.

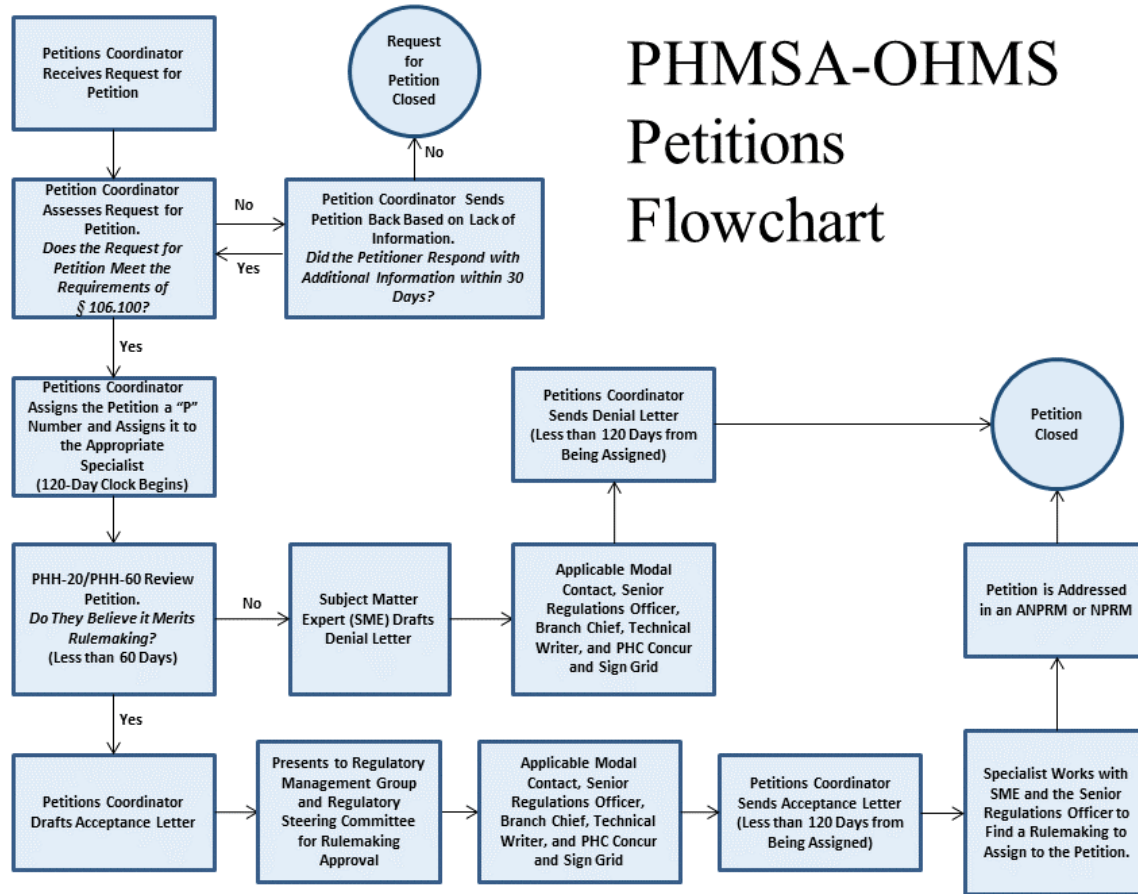
Section 5 – Denial Letter

1. The Petitions Coordinator drafts a letter denying the petition for rulemaking.
2. The Senior Regulations Officer reviews and approves the denial letter. (See Appendix E.)
3. Once approved, the Petitions Coordinator places the denial letter on PHMSA letterhead and grid.
4. At a minimum, the Petitions Coordinator must provide the denial letter to the following Divisions and personnel for review and concurrence:
 - a. PHH-10
 - b. PHH-20
 - c. PHH-60
 - d. Technical Writer
 - e. PHH-1
5. Contingent on the petition content, review and concurrence by the applicable modal contact (FAA/FMCSA/FRA/USCG) and PHC may also be required.
6. Once the adequate concurrences have been received, the Petitions Coordinator provides the denial letter to the Director of the Standards and Rulemaking Division for signature.
7. Once signed, the Petitions Coordinator ensures that the signed version of the document is saved in the “Denied” petitions folder on the N drive.
8. The Petitions Coordinator ensures that a signed copy of the denial letter is placed in the public docket for the petition.
9. Go to Section 6.

Section 6 – Closing the Petition

1. By this point, a petition should have been accepted or denied and signed by the Director of the Standards and Rulemaking Division.
2. If a petition is accepted, the Petitions Coordinator and the Senior Regulations Officer work together to determine an appropriate rulemaking for the petition.
3. The Petitions Coordinator continues to work with the rulemaking team leader to ensure that the petition has been appropriately addressed in the rulemaking.
4. Once a rulemaking is published or a petition is denied, the Petitions Coordinator must close the petition in the Filemaker database by filling out all applicable fields.

APPENDIX A – PETITIONS FLOWCHART



APPENDIX B – SAMPLE DENIAL LETTER FOR LACK OF INFORMATION

John Q. Doe
Director
General Services Company
123 Main Street
Anytown, USA 12345

Dear Mr. Doe:

This letter responds to your December 15, 2008, letter requesting changes to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation in commerce of anhydrous ammonia in agricultural nurse tanks. After further review of your letter, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has determined that it does not contain the following information as required by § 106.100(a) of the HMR to be accepted as a petition for rulemaking:

- The language you propose for a new or amended rule, or the language you would delete from a current rule;
- Information and arguments that support your proposed action, including relevant technical and scientific data available to you; and
- Any specific cases that support or demonstrate the need for your proposed action.

Since your petition lacks the information necessary for PHMSA to move forward with a rulemaking, we are not accepting it as a petition for rulemaking. However, you are encouraged to resubmit your petition to PHMSA with all the required information. Please note that it appears that the regulatory action you are proposing is likely to be deemed substantial and will, therefore, require additional information in accordance with § 106.100(b). This information includes:

- The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular;
- The direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of your proposed action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government. (See 49 CFR part 107, subpart C, regarding preemption.);
- The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes;
- The recordkeeping and reporting burdens of your proposed action and whom they would affect; and

- The effect of your proposed action on the quality of the natural and social environments.

If you have any questions, please contact (Name of current Petitions Coordinator) in the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,

(Name of current Director)
Director,
Standards and Rulemaking Division
Office of Hazardous Materials Standards

APPENDIX C – SAMPLE ACKNOWLEDGEMENT LETTER

John Q. Doe
Director
General Services Company
123 Main Street
Anytown, USA 12345

Dear Mr. Doe:

This letter acknowledges receipt of your August 22, 2014, petition for rulemaking requesting changes to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to exceptions for Class 3 flammable and combustible liquids. Specifically, you have petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) to revise § 173.150(g) to remove the phrase “sold as retail products.”

Your request has been assigned Petition Number (P-1640) (Docket No. PHMSA-2014-0128). This number is for tracking purposes only. In accordance with § 106.105, PHMSA will assess your petition and determine if it merits consideration in a future rulemaking.

In your efforts to contact PHMSA regarding this petition, please refer to this Petition Number (P-1640). If you have any questions, please contact me at (202) 366-8553.

Sincerely,

(Name of current Petitions Coordinator)
Transportation Regulations Specialist
Office of Hazardous Materials Standards

APPENDIX D – SAMPLE ACCEPTANCE LETTER

John Q. Doe
Director
General Services Company
123 Main Street
Anytown, USA 12345

Dear Mr. Doe:

This letter responds to your May 11, 2011, petition for rulemaking (P-1781) requesting changes to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to residue of molten sulfur on the outside of a rail car. Specifically, you have petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) to amend 49 CFR 171.7 to incorporate by reference the Sulphur Institute's *Molten Sulphur Tank Rail Car Guidance Document, November 18, 2010*. Concurrently, you ask that PHMSA amend § 173.24(b)(4) to add the sentence "Dried residue of molten sulfur on tank cars shall meet the 'Molten Sulphur Rail Car Guidance Document, November 18, 2010,' incorporated by reference in § 171.7."

In accordance with § 106.105, PHMSA has assessed your petition and determined that your request merits consideration in a future rulemaking. All correspondence pertaining to this petition will be transferred to the petition docket (Docket No. PHMSA-2004-0128). You may comment on the petition in accordance with the procedures specified in Part 106, Subpart B.

If you have any questions, please contact (Name of current Petitions Coordinator) in the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,

(Name of current Director)
Director,
Standards and Rulemaking Division
Office of Hazardous Materials Standards

APPENDIX E – SAMPLE DENIAL LETTER

John Q. Doe
Director
General Services Company
123 Main Street
Anytown, USA 12345

Dear Mr. Doe:

This letter responds to your April 11, 2011, petition for rulemaking (P-2004) requesting changes to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to Division 1.1 fireworks. Specifically, you have petitioned the Pipeline and Hazardous Materials Safety Administration (PHMSA) to amend § 173.56(j) by inserting the words “Division 1.1” before the words “Division 1.3 and 1.4” in the first sentence of paragraph (j). Consequently, this revision would then authorize the option that all fireworks (e.g., Division 1.1, 1.3, or 1.4) could be classed and approved by the Associate Administrator without prior examination and offered for transportation if all the remaining conditions § 173.56(j) were met.

In accordance with § 106.105, PHMSA has assessed your petition and determined that your request does not merit consideration in a future rulemaking. All correspondence pertaining to this petition will be transferred to the petition docket (Docket No. PHMSA-2004-0120).

PHMSA has denied your petition for the following reason:

On February 21, 2012, PHMSA published in the Federal Register a Final Notice No. 11-6 entitled “Clarification on the Division 1.1 Fireworks Approvals Policy,” which restated its policy clarification that it will accept only those classification approval applications for Division 1.1 fireworks that have been examined and assigned a recommended shipping description, division, and compatibility group by a DOT-approved explosives test laboratory, or those that have been issued an approval for the explosive by the competent authority of a foreign government acknowledged by PHMSA’s Associate Administrator. That policy clarification was intended to enhance safety by ensuring that fireworks transported in commerce meet the established criteria for their assigned classification, thereby minimizing the potential shipment of incorrectly classified or forbidden fireworks. However, your petition request runs counter to what PHMSA reemphasized in that February 21, 2012 policy clarification. To access the dockets to read background documents for Final Notice No. 11-6, please go to <http://www.regulations.gov> and search by Docket No. PHMSA-2011-0157.

If you have any questions, please contact (Name of current Petitions Coordinator) in the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,

(Name of current Director)
Director,
Standards and Rulemaking Division
Office of Hazardous Materials Standards