

# ISSUE BACKGROUND

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## The Paint and Coatings Industry Addresses Hazmat Transportation Safety and Security

As an industry group, the National Paint and Coatings Association (NPCA) has made safe transport and distribution of its industry's raw materials and finished goods a leading priority. The association's Transportation and Distribution Committee is responsible for recommending NPCA policy on matters relating to the safe and economic movement of members' products. The committee also facilitates communication between the industry and the U.S. Department of Transportation's Research and Special Programs Administration (DOT/RSPA).

Another role of the committee is to keep NPCA members apprised of developments that may affect the transportation and distribution of hazardous materials (hazmat) and provide guidance documents to encourage full compliance among association members. In every way, NPCA is an advocate of its industry's commitment to safe and responsible transportation and distribution of its products. This *Issue Background* focuses on NPCA's response to various transportation issues affecting its industry.

### REGULATORY COMPLIANCE AND ADVOCACY ACTIVITIES

NPCA is committed to providing its members with the latest and best information and tools they may use to comply with multiple regulations governing transportation and distribution of hazardous materials. As such, NPCA remains attentive to transportation regulatory activity affecting its members, meeting with DOT, providing comments on developing rulemakings and interfacing with members to keep them informed. NPCA regularly publishes special transportation and distribution bulletins on packaging and shipping regulations and requirements, and distributes them to the membership in both print and electronic versions. These timely notices are also available to members on NPCA's web site.

The association also encourages members to implement the principles of Coatings Care®, NPCA's landmark health, safety and environmental management program, which counts safe transportation and distribution as one of its four pillars. The Transportation and Distribution Code under Coatings Care® seeks to ensure the safe shipping of coatings products to the industry's customers, and to reinforce the integral role of health, safety

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and environmental considerations in the distribution chain. Toward that end, NPCA has published the *Coatings Care® Transportation and Distribution Implementation Guide*, which includes sample policies, procedures, and other program resources, as well as descriptions of key management practices germane to hazmat shipping.

But before companies even have to comply with legal requirements, NPCA acts as a sponsor of its members' best interests in ensuring safe hazmat transportation. The association and its members have and continue to be very involved in RSPA's rulemakings that affect the coatings industry, always in pursuit of constructive and fair regulation. Take, for example, RSPA's HM-223 "Applicability of Hazardous Materials Regulations (HMR) to the Loading, Unloading and Storage of Hazardous Materials that Is Incidental to Transportation," which would weaken federal regulatory and enforcement authority for certain hazmat transportation activities and permit local regulation of those activities. NPCA has historically advocated national uniformity for regulations governing the transportation of hazardous materials as the ultimate key to maintaining safety and continues to believe that national uniformity in regulation is a primary reason for its exemplary safety record. In order to preserve a safe and secure transportation infrastruc-

ture, NPCA believes it imperative that DOT/RSPA assert its jurisdictional reach for *all* hazmat transportation regulation. On that basis, NPCA objects to RSPA's proposed amendments for HM-223 finding that permitting local regulation of certain activities will damage the "safety net" the regulated community has in place. Uniform regulations will not only help the regulated community comply with HMR, but also help eliminate confusion with regard to the authority of other federal, state and local agencies, thereby minimizing excessive handling of hazardous materials and increased opportunities for accidents/incidents/injuries to hazmat employees and the general public.

NPCA, on behalf of its Transportation and Distribution Committee has participated in the public comment on this rulemaking and others, in an effort to not only protect its members from complying with multiple onerous regulations, but to effect the safest regulation all around.

As an advocate for the paint and coatings industry, NPCA recently, along with several other industry trade associations, challenged DOT in U.S. District Court in the District of Columbia, for failure to act according to its statutory mandate in adjusting the registration fees for hazmat transporters, as intended in HM-208. The suit requests that the court issue an order finding DOT in violation of the Hazardous Materials Transpor-

tation Act and order DOT to adjust the fees appropriately. To date, DOT has failed to adjust the hazmat registration fee as required to reflect the unexpended balance in the Hazardous Materials Emergency Preparedness (HMEP) program fund and, instead, has held the unexpended balance in reserve pending its requests to Congress, to use the HMEP fund for purposes other than those specified under the law. These requests have been repeatedly rejected.

### TRAINING

As training is fundamental to any sound hazmat program for the safe transport of goods, NPCA does its part in providing its members the means for learning about the training as well as the training itself. Through the years, NPCA has sponsored many hazardous materials training seminars for hazmat suppliers, vendors, and customers, offering instruction from experienced members of NPCA's Transportation and Distribution Committee to help fulfill DOT's training requirements. Training covers a range of topics from classification, placarding, loading and unloading, shipping documentation, penalties and violations, and labeling and packaging, in addition to specialized training for aerosol shipments. NPCA also publishes and provides to all members the *Guide to Training Hazardous Materials Employees Involved in Transportation*, designed to

assist paint and coatings manufacturers in complying with DOT's regulations on hazardous materials employee training. NPCA's members genuinely rely on the guide and use it in their employee training.

## **NPCA PREPARES MEMBERS FOR COMPLIANCE WITH INTERNATIONAL REGS**

As many of its members export raw materials and products, NPCA remains on top of the hazmat transportation regulations they need to comply with abroad. In fact, when the Canadian Clear Language Amendments modified Transport Canada's (DOT equivalent) Transport of Dangerous Goods regulations, NPCA participated in the public process and argued that deviation from the UN Recommendations and U.S. regulations would be counter to the goal of international harmonization. As a result, NPCA members continue their safe transport of goods virtually uninterrupted.

Similarly, NPCA updates its members on new requirements for air transport, and has even published a brochure entitled "Paint Doesn't Fly," which addresses potential risks associated with shipping paint by air or carrying paint aboard a passenger aircraft. NPCA has encouraged its members to circulate the brochure in loca-

tions or with persons responsible for the shipment of paint, including stores, warehouses, salespeople and customers. In this way, NPCA is taking steps not only to ensure that the roads on which its members' raw materials and products are traveling are safe, but that the skies are safe as well.

## **SECURITY**

While hazmat transportation safety has always been a consideration in the anticipation of disastrous spill scenarios, the new looming realization of a hijacking and bioterror situation has forced hazmat *security* to the front. In October, following the Sept. 11 terrorist attacks, NPCA forwarded government security advisories to members, keeping them informed about what they needed to evaluate and do. NPCA even created a bulletin to assist the membership, providing details on re-evaluating and upgrading site security to address potential terrorist threats involving stored or transported hazardous materials and building on existing site security guidance offered under the Manufacturing Management Code of Coatings Care®. NPCA also co-sponsored a series of free site security seminars, including one on Distribution Security, and is currently exploring a new Security Code incorporating distribution security as an addition to the Coatings Care® tenets.

Stating the urgency for bolstered security in the aftermath of the Sept. 11 terrorist attack, in May, RSPA published a notice of proposed rulemaking (NPRM) for HM-232, designed to enhance the security of hazardous materials transported in commerce. The proposal will require shippers and motor carriers to develop a security plan; carry more documentation of the material being shipped; its originator and its recipient; develop improved communications with in-transit vehicles; and provide enhanced security training of its personnel. NPCA shares RSPA's desire to expedite enhancements to the security of hazardous materials transportation, but remains concerned that implementation of the proposed requirements will not result in increased security. While the urgency of "securing" the nation's hazardous materials transportation infrastructure is all too evident since the attacks of Sept. 11, this urgency should not override meaningful consideration of any additional requirements, including the practical ramifications from imposing such requirements but also the costs and benefits obtained from such proposals.

For example, NPCA questions how requiring each registered motor carrier to carry a copy of the current registration certificate will help law enforcement officials determine whether a carrier is a legitimate transporter of dangerous goods. As the

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registration program was never intended to be a tool for law enforcement personnel and, there is no current requirement for an investigative background check for applicants prior to issuance of a DOT registration number, anyone who sends in an application with an accompanying check would be issued such a certificate. NPCA maintains that the additional requirement of making sure that a copy of the actual certificate is present in each motor carrier is arbitrary and does not add any additional measure of 'security' to hazardous materials transportation. NPCA suggests that RSPA reconsider this element of the proposed rule and address the issue of investigative background checks of applicants to the registration program before HM-232 is finalized.

Additionally, NPCA is concerned about RSPA's seemingly hasty "one size fits all" prescription for a written security plan. RSPA's proposal that all registered shippers must

prepare a written security plan is overbroad and should be tailored more to shippers and carriers of highly hazardous materials. As written, this proposal would require virtually every registered company — from high volume producers of high hazard materials to manufacturers of primarily latex paint to retail paint stores — to evaluate their operations, develop a plan and begin implementation and training immediately. To make this provision apply to any shipment that requires placarding is too general, extremely burdensome and not necessary for every single placarded shipment in commerce. Instead, NPCA urges RSPA to redefine the universe of persons that should be subject to a requirement to develop and implement a written security plan. NPCA also believes that the compliance deadline for security training for hazardous materials employees must be adjusted to reflect the time and resources required to develop a written security plan.

### CONTACT

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## NPCA

NPCA is a voluntary nonprofit trade association representing some 400 paint and coatings manufacturers, raw materials suppliers and distributors. As the preeminent organization representing the paint and coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on legislative, regulatory, and judicial issues at the federal, state and local levels. In addition, NPCA provides members with such services as research and technical information, statistical management information, legal guidance, and community service project support.

