

Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or

operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11–144 to read as follows:

§ 165.T11–144 Safety Zone; Red Bull Air Show Practice, San Francisco Bay, CA.

(a) *Location.* The safety zone will include all navigable waters, from the surface to the seafloor, encompassed by connecting the following points to form an approximate square security zone, beginning at 37°48'29.50" N, 122°26'34.08" W, thence 37°48'29.32" N, 122°26'28.65" W, thence 37°48'24.95" N, 122°26'25.25" W, thence 37°48'31.24" N, 122°25'38.66" W, thence 37°48'37.96" N, 122°25'33.80" W, thence 37°48'40.70" N,

122°25'24.74" W, thence 37°48'51.90" N, 122°25'24.79" W, lastly to 37°48'49.14" N, 122°26'34.08" W.

(b) *Definitions.* As used in this section: (1) *Designated representative* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Captain of the Port (COTP), Coast Guard Sector San Francisco, or a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone.

(2) [Reserved]

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone may contact the COTP or his representative at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz). Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his designated representative.

(d) *Enforcement and suspension of enforcement of certain safety zones.* The COTP will provide notice of the enforcement of the safety zones listed in paragraph (a) of this section and notice of suspension of enforcement by the means appropriate to affect the widest publicity, including broadcast notice to mariners and publication in the local notice to mariners.

(e) *Effective period.* This section is effective October 4, 2006 from 10 a.m. through 2 p.m.

Dated: September 8, 2006.

W. J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco, California.

[FR Doc. 06–8134 Filed 9–22–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 177, 178, and 180

[Docket No. PHMSA–05–21812 (HM–218D)]

RIN 2137–AE10

Hazardous Materials; Miscellaneous Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to make miscellaneous amendments to the Hazardous Materials Regulations based on petitions for rulemaking and PHMSA initiatives. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements. Among other provisions, PHMSA is proposing a new proper shipping name and UN identification number for fuel mixtures composed of ethanol and gasoline to help emergency response personnel respond appropriately to incidents involving such fuel mixtures. In addition, PHMSA proposes to update certain incorporations by reference, revise and clarify certain hazard communication requirements, and clarify transportation requirements applicable to dry ice, detonator assemblies and explosives. PHMSA also proposes to provide expanded exceptions from regulation for household hazardous wastes and small amounts of materials used in pharmaceutical research.

DATES: Comments must be received by November 24, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number PHMSA-05-21812 by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 202-493-2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

This NPRM is designed to reduce regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) based on PHMSA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. To this end, we are proposing to eliminate, revise, clarify and relax certain regulatory requirements.

In this NPRM, we are proposing to:

(1) Update incorporations by reference of industry consensus standards issued by the Chlorine Institute and the Compressed Gas Association (*see* §§ 171.7, 173.301, 178.337-9, and 178.337-10).

(2) Add a definition for "household wastes" to clarify the current exception in the HMR for transportation of such materials (*see* §§ 171.8, 173.12 and 173.134).

(3) Revise the Hazardous Materials Table (HMT) to harmonize certain entries with international standards (*see* § 172.101) by removing, adding, and revising certain proper shipping names. Most significantly, we are adding a new hazardous material entry to the HMR for ethanol and gasoline mixtures (E85) to ensure emergency responders utilize the most effective emergency response procedures for incidents involving fuel mixtures of ethanol and gasoline (*see* item no. 9 below).

(4) Revise certain hazard communication requirements to address marine pollutant, limited quantity, and proper shipping name markings on packages and labels on overpacks and intermediate bulk containers (IBCs) (*see* §§ 172.203, 172.315, and 172.406).

(5) Clarify that shippers of materials for which safety permits are required in accordance with the Federal Motor Carrier Safety Regulations must utilize only carriers with current safety permits (*see* § 173.22).

(6) Clarify requirements applicable to the transportation of dry ice on aircraft, detonator assemblies, and packagings authorized for the transportation of certain explosives (*see* §§ 173.24, 173.61, 173.62, 173.217, 175.30, and 175.900).

(7) Add an exception from HMR for small amounts of hazardous materials (*see* § 173.4).

(8) Clarify segregation requirements for hazardous materials transported by motor carrier (*see* § 177.848).

(9) The 2004 Emergency Response Guidebook (ERG2004) refers to Guide 127 (Flammable Liquids Polar/Water-Miscible) for response to incidents involving Alcohols, n.o.s., 3, UN1987, and Denatured alcohol, 3, NA1987. Guide 127 specifies the use of alcohol resistant foam. For incidents involving Flammable liquid, n.o.s., (ethanol, gasoline), 3, UN1993, and Gasohol, 3, NA1203, ERG 2004 refers to Guide 128 (Flammable Liquids Non-Polar/Water-Immiscible). Guide 128 specifies the use of regular foam, but contains the following warning: CAUTION: "For mixtures containing a high percentage of an alcohol or polar solvent, alcohol-resistant foam may be more effective."

To help emergency responders utilize the most effective emergency response procedures for incidents involving fuel mixtures composed of ethanol (or "ethyl alcohol") and gasoline in various concentrations we are proposing to add a new entry "Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II" to the HMT. This proposed new HMT entry is consistent with a proposed amendment to be incorporated into the 15th Revised Edition of the UN Model Regulations. We are also proposing to revise the entry for "Gasohol gasoline mixed with ethyl alcohol, *with not more than 20 percent alcohol*, 3, NA1203, II" to limit this entry gasoline mixtures with no more than 10 percent alcohol. We are also proposing a 2-year transition period for these proposals. (*See* discussion under § 171.14).

Alternative fuels such as bio-diesel, ethanol and methanol, have been produced and used on a small scale for decades, driven by environmental, economic, and energy security concerns. The most common of these fuels is designated E85. E85 is composed of 85 percent ethyl alcohol (ethanol) and 15 percent petroleum (gasoline) and is being used in increasing volumes in the United States. Fires involving E85 and other ethanol/gasoline mixtures containing more than 10% ethanol should be treated differently than traditional gasoline fires because these

mixtures are polar/water-miscible flammable liquids (*i.e.*, they mix with water) and will degrade the effectiveness of fire-fighting foam that is not alcohol-resistant.

We understand that if we adopt this new shipping description, fuel suppliers and cargo tank operators may incur additional costs associate with revisions to the hazard communication requirements. Therefore, we are interested in identifying measures to minimize costs while effectively communicating the hazards to the emergency response community. Because numerical data for these proposals are difficult to obtain, we invite commenters to address the merits of the proposal to add the new entry "Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*," 3, UN3475, II to the HMT and of the proposal to limit the entry for "Gasohol gasoline mixed with ethyl alcohol, *with not more than 20 percent alcohol*, 3, NA1203, II to gasoline mixtures with no more than 10 percent alcohol.

To provide outreach to emergency responders, PHMSA issued a Safety Alert to provide emergency responders with guidance on appropriate procedures for responding to incidents involving fuel mixtures composed of ethanol. In addition, PHMSA is providing Hazardous Material Emergency Preparedness Grants to emergency responders for planning and training which includes training for responses to incidents involving gasoline and ethanol mixtures. PHMSA is also partnering with the Renewable Fuel Association and the International Association of Fire Chiefs to revise existing safety training materials for emergency response personnel to include guidance for responding to incidents involving gasoline and ethanol fuel mixtures.

These proposals are discussed in more detail in the section-by-section review.

II. Section-by-Section Review

The following is a section-by-section summary of the proposed changes.

Part 171

Section 171.4

Section 171.4 prohibits the transportation of materials meeting the definition of a marine pollutant except in accordance with HMR requirements. Currently, paragraph (c) exempts marine pollutants transported in non-bulk packagings from HMR requirements, unless the transportation is by vessel.

We are proposing to revise paragraph (c) to clarify shipments for which all or part of the transportation is by vessel must conform to applicable HMR requirements, even if the initial transportation is by rail or highway. A more complete explanation of this issue can be found in the preamble discussion for § 172.203.

Section 171.7

We have reviewed the updated Chlorine Institute's pamphlets pertaining to cargo tanks and bulk transfer facilities. We have also reviewed the updated Compressed Gas Association's pamphlets pertaining to compressed gas cylinders. As a result, we have found no provisions that would impose additional requirements or would have an adverse impact on safety. Therefore, we are proposing to update, revise, and add the following incorporation by reference (IBR) materials in paragraph (a)(3), within the Table of material incorporated by reference,:

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we propose to update "Type 1½ JQ 225, Dwg., H51970, Revision D April 5, 1989; or Type 1½ JQ 225, Dwg. H50155, Revision F, April 4, 1989" to Revisions F and H respectively.

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we propose to update "Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 3rd Edition, October 1997" to the 4th Edition, October 2003.

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we propose to add "Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002."

- In response to a Chlorine Institute petition (P-1444) and a Midland Manufacturing Corporation petition (P-1448), under the entry "Chlorine Institute," we propose to add "Typical Manway Arrangement Chlorine Cargo Tank, Dwg. 137-5, November 1996."

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we propose to remove the section reference for "Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwg. 137-1 and 137-2, September 1, 1982."

- We propose to update "CGA Pamphlet C-5 Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991" to the reaffirmed 1995 Edition.

- In response to a Compressed Gas Association (CGA) petition (P-1472), we propose to update "CGA Pamphlet C-7, A Guide for the Preparation of Precautionary Markings of Compressed Gas Containers, appendix A, issued 1992 (6th Edition)" to the 2004 (Eighth) Edition. The updated pamphlet allows for hazard class numbers to be placed on subsidiary labels which is prohibited in the 1992 edition.

- In response to a Compressed Gas Association (CGA) petition (P-1440), we propose to permit the use of "CGA Pamphlet S-1.1, Pressure Relief Device Standards-Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition" for DOT specification cylinders and UN pressure receptacles. Currently, the Ninth edition (1996) is authorized for DOT specification cylinders and the Eleventh edition (2003) is authorized for UN pressure receptacles.

- In response to a CGA petition (P-1440), we propose to update "CGA Pamphlet S-7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996" to the 2005 Edition.

- We propose to update "ISO 7225, Gas cylinders—Precautionary labels, First Edition, November 1994, (Corrected and reprinted August 1995), (E)" to the Second edition, July 2005.

We are also proposing to revise paragraph (b) of this section, which is the list of informational materials not requiring incorporation by reference, to add an additional reference to guidance material for those who perform hydrostatic testing and visual inspections on cylinders. This document is entitled "CGA Pamphlet C-1.1-Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion, issued 2004 (1st Edition)."

Section 171.8

The HMR, in § 173.134(b)(13)(i), include an exception from regulatory requirements for household wastes. However, the HMR currently do not define "household wastes." In this NPRM, we are proposing to add a new definition for "Household wastes" to mean "any solid waste (including garbage, trash, and sanitary waste from septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)." We are also proposing to clarify that household wastes are not subject to the HMR. See the preamble discussion for § 173.12 for

a more complete explanation of this clarification.

Section 171.14

This section lists specific transition periods for certain provisions adopted into the HMR. In this NPRM, to provide shippers, carriers and emergency responders sufficient time to plan for and implement the proposed new shipping description pertaining to E85 with minimal costs (*see* § 171.101), we propose to add a new paragraph (g) to provide a 2-year transition period for the mandatory use of the revised proper shipping description “Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*”

Part 172

Section 172.101 Hazardous Materials Table (HMT)

The 2004 Emergency Response Guidebook (ERG2004) refers to Guide 127 (Flammable Liquids Polar/Water-Miscible) for response to incidents involving Alcohols, n.o.s., 3, UN1987, and Denatured alcohol, 3, NA1987. Guide 127 specifies the use of alcohol resistant foam. For incidents involving Flammable liquid, n.o.s., (ethanol, gasoline), 3, UN1993, and Gasohol, 3, NA1203, ERG 2004 refers to Guide 128 (Flammable Liquids Non-Polar/Water-Immiscible). Guide 128 specifies the use of regular foam, but contains the following warning: CAUTION: “For mixtures containing a high percentage of an alcohol or polar solvent, alcohol-resistant foam may be more effective.”

To help emergency responders utilize the most effective emergency response procedures for incidents involving fuel mixtures composed of ethanol (or “ethyl alcohol”) and gasoline in various concentrations we are proposing to add a new entry “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II” to the HMT. This proposed new HMT entry is consistent with a proposed amendment to be incorporated into the 15th Revised Edition of the UN Model Regulations. We are also proposing to revise the entry for “Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*, 3, NA1203, II” to limit this entry gasoline mixtures with no more than 10 percent alcohol. We are also proposing a 2-year transition period for these proposals. (*See* discussion under § 171.14)

Alternative fuels such as bio-diesel, ethanol and methanol, have been produced and used on a small scale for decades, driven by environmental, economic, and energy security concerns.

The most common of these fuels is designated E85. E85 is composed of 85 percent ethyl alcohol (ethanol) and 15 percent petroleum (gasoline) and is being used in increasing volumes in the United States. Fires involving E85 and other ethanol/gasoline mixtures containing more than 10% ethanol should be treated differently than traditional gasoline fires because these mixtures are polar/water-miscible flammable liquids (*i.e.*, they mix with water) and will degrade the effectiveness of fire-fighting foam that is not alcohol-resistant.

We understand that if we adopt this new shipping description, fuel suppliers and cargo tank operators may incur additional costs associate with revisions to the hazard communication requirements. Therefore, we are interested in identifying measures to minimize costs while effectively communicating the hazards to the emergency response community. Because numerical data for these proposals are difficult to obtain, we invite commenters to address the merits of the proposal to add the new entry “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*,” 3, UN3475, II to the HMT and of the proposal to limit the entry for “Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*, 3, NA1203, II to gasoline mixtures with no more than 10 percent alcohol. Commenters may wish to consider the following questions:

- What cost impacts are associated with our proposal to add a new entry to the HMT for fuel mixtures containing ethanol?
- What cost impacts are associated with our proposed revision to the HMT entry for gasohol?
- Are two separate entries for “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*” and “Gasohol *gasoline mixed with ethyl alcohol, with not more than 10 percent alcohol*” necessary or should all alcohol/gasoline mixtures be transported using a single proper shipping name?
- Does the proposed 2-year transition period provide sufficient time for shippers and carriers to incorporate the proposed new shipping name and UN number into shipping papers and package markings with minimal disruptions to normal business operations? Given the emergency response concerns about incidents involving ethanol/gasoline mixtures, should the proposed 2-year transition

period be shortened to ensure that the new shipping name and UN number are utilized as quickly as possible? How should we balance these two potentially competing goals?

We are also proposing to harmonize certain entries in the HMR with the most recent editions of the UN Recommendations for the Transport of Dangerous Goods (UN Recommendations), the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the International Maritime Organization Dangerous Goods Code (IMDG Code), and correct other entries, as follows:

- The entry “Radioactive material, Type A package non-special form, non fissile or fissile-excepted, UN2915” is revised to add a reference “419” to column (8B) and “418” to column (8C). This proposed revision will correct these packaging references inadvertently omitted in a final rule published on September 23, 2005, under Docket No. PHMSA 05–22071 (HM–189Y; 70 FR 56084).

- The entry “Sodium aluminate, solid, UN2812,” is revised to include an “A” in column 1 of the HMT to indicate this material is only regulated when offered or intended for transportation by aircraft. We propose to revise this entry to align with the UN Recommendations, which only apply to solid forms of sodium aluminate when transported by air. Under the ICAO Technical Instructions, sodium aluminate is regulated for air transportation because of its corrosive effects on aluminum, which is the primary construction material for aircraft.

- We are proposing to add several new entries to the HMT to assist shippers in determining the most appropriate hazardous materials description to use when shipping polyamines. The proposed new entries include:

- Polyamines, flammable, corrosive, n.o.s. *see* Amines, flammable, corrosive, n.o.s.
- Polyamines, liquid, corrosive, flammable, n.o.s. *see* Amines, liquid, corrosive, flammable, n.o.s.
- Polyamines, liquid, corrosive, n.o.s. *see* Amines, liquid, corrosive, n.o.s.

- We are proposing to remove the entry “Gas generator assemblies (aircraft), *containing a non-flammable non-toxic gas and a propellant cartridge.*” This description was removed from the ICAO Technical Instructions in the 2003–2004 edition. In addition, we are proposing to remove the packaging section for gas generator

assemblies specified in § 173.335 in its entirety.

Section 172.102

When column 7 of the § 172.102 table refers to a special provision for a hazardous material, the meaning and requirements of that special provision are set forth in this section. In this NPRM, we are proposing to add a new Special Provision 177 and revise Special Provision B69. The proposed special provision addition and revision are as follows:

- Consistent with the proposed new proper shipping description “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II,” we are proposing to add a new Special Provision 177 to specify proper applicability of this description.

- Currently, Special Provision B69 specifies that “Dry sodium cyanide or potassium cyanide” may be shipped in a sift-proof weather-resistant metal covered hopper car, covered motor vehicle, portable tank or non-specification bin. Bins must be approved by the Associate Administrator. We are proposing to amend Special Provision B69 to clarify that metal covered hopper cars, covered motor vehicles, portable tanks, and non-specification bins must be sift-proof and weather-resistant. The current wording of this special provision has caused some confusion as to whether the requirement for the packaging to be sift-proof and weather-resistant applies only to metal-covered hopper cars or to all packagings authorized for the transportation of dry sodium cyanide and potassium cyanide. In addition, we are proposing to amend Special Provision B69 to remove the requirement for bins to be approved by the Associate Administrator.

So long as the bins meet applicable requirements, approval is not necessary.

Section 172.203

Section 172.203(l) addresses shipping paper requirements for shipments of marine pollutants. Paragraph (l)(4) excepts marine pollutants in non-bulk packagings from the requirements of the HMR unless the transportation is by vessel. The International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) petitioned PHMSA (P-1465) to amend paragraph (l)(4) to clarify that the exception for non-bulk packages of marine pollutants transported by motor vehicle, rail car or aircraft does not apply to a marine pollutant “intended for transport” aboard a vessel. VOHMA states the current language suggests the consignor

who prepares the shipment and offers it in intermodal transportation has no obligation to declare the marine pollutant on the shipping paper if the initial transport is by motor vehicle or rail. Because the current language in the HMR suggests there is no obligation by the consignor, when preparing a non-bulk shipment for intermodal transportation, to indicate on a shipping paper the words “Marine Pollutant” in association with the basic description for a material which is a marine pollutant, a shipment intended for transportation by vessel and initially offered into transportation by highway, rail or air may be improperly described on the vessel shipping documents by a freight forwarder. This was not our intention when this provision was originally adopted. Therefore, we are proposing to revise paragraph (l)(4) to clarify that marine pollutants in non-bulk packagings transported all or in part by vessel must be indicated on a shipping paper by the words “Marine Pollutant” in association with the basic description.

Section 172.315

Except for transportation by aircraft, this section excepts limited quantity shipments of hazardous materials from the requirement for marking the proper shipping name of the material on the package when the identification number of the material is shown within a square-on-point configuration. Section 172.324 requires materials that are hazardous substances, as defined in § 171.8, to be marked with the name of the hazardous substance and the letters “RQ” in association with the proper shipping name. We are proposing to clarify if a shipper identifies a limited quantity material which is also a hazardous substance, the shipper is required to mark the letters “RQ” on the package in association with the square-on-point configuration containing the identification number of the material. We also invite comments on whether or not the name of the hazardous substance should also be included along with letters “RQ,” even though the proper shipping name is not required.

Section 172.336

Paragraphs (c)(4) and (c)(5) except from the identification number marking requirements each of the different liquid petroleum distillate fuels, including gasoline and gasohol, transported in a compartmented cargo tank, tank car or cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point. As a result of the proposed new HMT entry “Ethanol and gasoline

mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*,” 3, UN3475, II, individuals could attempt to apply this exception to the proposed new entry, which is not our intent (*see* discussion under § 172.101). Therefore, to eliminate any confusion, we are proposing to revise paragraphs (c)(4) and (c)(5) to specify the provisions of the paragraphs (c)(4) and (c)(5) do not apply to “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*.” We are also proposing a 2-year transition period for this proposal. We understand that if we adopt this new shipping description, fuel suppliers and cargo tank operators may incur additional costs associated with revisions to the hazard communication requirements. Therefore, we are interested in identifying measures to minimize costs while effectively communicating the hazards to the emergency response community. As a result of this proposal, we invite commenters to specifically address the following questions:

- Does the proposed 2-year transition period provide sufficient time for shippers and carriers to incorporate the proposed new shipping name and UN number into shipping papers and package markings with minimal disruptions to normal business operations? Given the emergency response concerns about incidents involving ethanol/gasoline mixtures, should the proposed 2-year transition period be shortened to ensure that the new shipping name and UN number are utilized as quickly as possible? How should we balance these two potentially competing goals?
- Are there measures that can be employed to ease potential costs to shippers and carriers with respect to cargo tanks that are permanently marked?
- What are the cost impacts of our proposal to limit the applicability of the current exceptions in § 172.336 (c)(4) and (c)(5)?

Section 172.406

Paragraph (e) of this section prescribes requirements for the duplicate labeling of packages based on size. Paragraph (e)(1) requires each package or overpack having a volume of 1.8m³ (64 cubic feet) or more to be labeled on at least two sides or two ends (other than the bottom of the package). There has been some confusion as to whether this requirement also applies to IBCs. Therefore, we are proposing to add a new paragraph (e)(6) to clarify IBCs having a volume of 1.8m³ (64 cubic

feet) or more are required to be labeled on at least two sides or two ends.

Part 173

Section 173.4

This section establishes exceptions for small quantities of hazardous materials. The Dangerous Goods Advisory Council (DGAC) (P-1454) and Pharmaceutical Research and Manufacturers of America (PhRMA) (P-1457) petitioned PHMSA to provide an exception from the HMR for de minimis quantities, less than 1 gram for solids and less than 1 milliliter for liquids, of PG II and PG III materials of Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9. The petitioners estimate an annual cost savings of approximately \$1 million if their petitions are implemented. After reviewing the petitions and evaluating the risks associated with the de minimis quantities, we agree with the petitioners that because these materials are present in minute quantities, usually a gram or less, and are packaged in such a manner, and have determined that safety would not be undermined by allowing these minute quantities and would not pose an unreasonable risk during transportation. Therefore, we are proposing to add a new paragraph (e) to provide conditions for authorizing de minimis quantities of these materials to be excepted from the HMR.

Section 173.5

This section establishes the conditions under which agricultural products such as pesticides and fertilizers are excepted from HMR requirements. Paragraph (b)(2) specifies limits for the amount of agricultural product that may be transported in a single vehicle in order to utilize the exception applicable to transportation to or from a farm, within 150 miles of the farm. The HMR do not define the term "single vehicle;" thus, it is not clear whether the exception applies to agricultural products transported in a single "motor vehicle" or "transport vehicle." To clarify this exception, we are proposing to revise paragraph (b)(2) to replace the term "vehicle" with "motor vehicle." The term "motor vehicle" is defined in § 171.8 to mean a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used on the highways to transport people or property.

Section 173.12

In a final rule published on January 24, 2005, under Docket No. RSPA 03-16370 (HM-233; 70 FR 3304), we added

a new paragraph (e) to this section to authorize the storage, loading and transportation of waste cyanide and waste cyanide mixtures or solutions with Class 8 acids under certain conditions. Acids are not only found in Class 8, but also in Class 3 and in Divisions 4.1, 4.2, 4.3, 5.1 and 5.2. We believe acids in the aforementioned Classes and Divisions may be safely transported and stored with waste cyanide and waste cyanide mixtures or solution under the conditions specified in §§ 174.81(c), 176.83(b), and 177.848(c). Therefore, in this NPRM, we are proposing to revise paragraph (e) to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with all acids.

In this section, we are also proposing to add a new paragraph (f) to specify that materials meeting the proposed definition of "household wastes" in § 171.8 would not be subject to the requirements of the HMR. Currently, § 173.134(b)(13) excepts any waste or recyclable material, other than regulated medical waste, from regulation under the HMR. However, the location of this exception in the section of Part 173 that establishes definitions for Division 6.2 materials (infectious substances) suggests the current exception excepts household wastes only from requirements applicable to Division 6.2 materials. This was not our intention. In letters of interpretation, including an October 8, 2004 letter to Mr. David Allard of Pennsylvania Department of Environmental Protection (Ref. No. 04-0197), we specify household wastes as being excepted from the HMR. The addition of a broad exception for "household wastes" in the proposed paragraph (f) will clarify our intent.

Section 173.22

This section establishes a shipper's responsibility for complying with applicable requirements of the HMR. National Tank Truck Carriers (NTTC) petitioned PHMSA (P-1469) to amend this section to specify that shippers who offer certain hazardous materials for transportation must use carriers holding a valid safety permit issued by the Federal Motor Carrier Safety Administration (FMCSA). FMCSA regulations (49 CFR Part 385, Subpart E) require motor carriers transporting certain types and amounts of hazardous materials to apply for a safety permit. To obtain a safety permit, a carrier must have a "satisfactory" safety rating and must meet certain other safety and security requirements. The safety permit requirements apply to motor carriers transporting: (1) A highway route-controlled quantity of a Class 7

(radioactive) material; (2) certain high explosives; (3) certain TIH materials; and (4) certain bulk shipments of liquefied methane gas and liquefied natural gas. A carrier may not transport any of the listed materials unless it has a valid safety permit. In response to the NTTC petition, we are proposing in this NPRM to prohibit a person from offering any of the materials for which a safety permit is required to a motor carrier not possessing a valid safety permit.

Section 173.24

This section establishes general requirements for packagings and packages. Paragraph (g) of this section addresses venting from packages during transportation and currently specifies that a package containing a hazardous material and transported on board an aircraft must not vent. This provision conflicts with current § 173.217, which requires carbon dioxide, solid (dry ice) to be packed in packagings designed and constructed to permit the release of carbon dioxide gas to prevent a buildup of pressure that could rupture the packaging when offered for transportation or transported by aircraft or water. To eliminate these contradictory requirements, in this NPRM we are proposing to revise paragraph (g)(1) to specify that the venting of packagings containing carbon dioxide, solid (dry ice) would not be prohibited for air transportation. We also invite comments on other materials to which this provision would also apply.

Section 173.61

This section establishes general requirements for transporting Class 1 materials (explosives) in the same outside packaging. Paragraph (c) of this section lists specific explosives that may not be transported in the same outside packaging as other Class 1 materials. In a final rule published May 6, 1997 (HM 215B; 62 FR 24708) we added a new entry to the Hazardous Materials Table "Detonator, assemblies, non-electric for blasting," UN0500. This entry should have also been added to paragraph (c) to indicate that this material is not authorized to be packed together with other Class 1 explosives. Therefore, we are proposing to correct this oversight by amending paragraph (c) to include UN 0500 "Detonator assemblies, non-electric for blasting."

Section 173.62

This section establishes specific packaging requirements for Class 1 materials. The Table of Packing Methods in paragraph (c) specifies the packing instructions assigned to each

explosive. To harmonize the HMR with international standards and to remove a source of potential confusion within the regulated community, we are proposing to revise packing instruction (PI) 134 in the Table of Packing Methods, in paragraph (c), to authorize the use of a specification 4H1 plastic box as an outer packaging for certain explosives.

Section 173.134

This section establishes definitions and exceptions for infectious substances. Paragraph (b)(13)(i) contains an exception from the requirements of the HMR relative to Division 6.2 materials for waste derived from households. We are proposing to revise this paragraph to incorporate the proposed new household waste definition in § 171.8. See preamble discussions in specified above in §§ 171.8 and 173.12 for background information.

Section 173.217

This section establishes packaging requirements for carbon dioxide, solid (dry ice). We are proposing to revise this section for clarity and to harmonize the HMR with requirements in the ICAO Technical Instructions applicable to the transportation of dry ice by air. Currently under paragraph (d), the HMR require the shipper to have a specific and special written arrangement with the air carrier to transport more than 441 pounds of dry ice in a single compartment. The ICAO Technical Instructions no longer include this requirement. The United Parcel Service (UPS) petitioned PHMSA (P-1439) to amend this section for consistency with the most recent edition of the ICAO Technical Instructions. We agree and are proposing to revise the current paragraph (d) accordingly. In addition, we are proposing to revise paragraph (d) to address air specific provisions such as ventilation safety procedures, net mass marking requirements, and quantity limit exceptions for dry ice used as a refrigerant for non-hazardous materials. In addition, we are proposing requirements for air carriers who transport dry ice in the proposed new § 175.900. See § 175.900 preamble discussion.

Currently, paragraph (e) in § 173.217 provides an exception from the shipping paper and certification requirements for dry ice shipments prepared in accordance with paragraphs (a) and (d) provided the package is marked "Carbon dioxide, solid" or "Dry ice" and with an indication that the material being refrigerated is used for diagnostic or treatment purposes. To eliminate any confusion, we are proposing to revise

paragraph (e) to specify only dry ice actually used to refrigerate materials being shipped for diagnostic or treatment purposes may be transported under this exception.

For clarity and ease of use by the reader, we are proposing to consolidate the modal requirements applicable to dry ice by relocating the vessel provisions to paragraph (b) and the aircraft provisions to paragraph (c). As a result of this proposal, the dry ice provisions relative to diagnostic specimens currently in paragraph (e) would be moved to paragraph (d).

Section 173.301

This section establishes general requirements for the transportation of compressed gases in cylinders and spherical pressure vessels. Paragraph (f) of this section addresses pressure relief devices (PRDs); paragraph (g) addresses manifolding cylinders in transportation. CGA petitioned PHMSA (P-1440) to update the incorporation by reference of CGA Pamphlets S-1.1 and S-7, which are both referenced in paragraphs (f)(1) and (g)(1). The pamphlets contain requirements for PRDs on cylinders. We reviewed the differences between currently referenced pamphlets and the updated pamphlets. We agree the incorporations by reference should be updated to the current editions.

Section 173.335

This section establishes requirements for the transportation of gas generator assemblies. This entry was initially added in a December 21, 1990 (55 FR 52402; HM-181) rulemaking to harmonize the HMR with various international standards such as the ICAO Technical Instructions, IMDG Code, and UN Recommendations. However, ICAO removed this entry in the 2003-2004 edition of the ICAO Technical Instructions. Therefore, we are proposing to remove this section in its entirety to harmonize with ICAO. The removal of this entry does not mean that the material is not subject to the HMR. Section 173.22 requires each shipper to properly class a material and prepare it for transportation. See the preamble discussion under § 172.101 Hazardous Materials Table (HMT) regarding Gas generator assemblies.

Part 175

Section 175.10

This section establishes exceptions for the transportation of certain hazardous materials by aircraft, including hazardous materials that may be carried by passengers or crew members in checked or carry-on baggage. We are

proposing to revise paragraph (a)(10) to harmonize the HMR with an ICAO provision applicable to the transportation of dry ice in checked or carry-on baggage. Specifically, we are proposing to authorize exceptions for shipments of dry ice used to pack perishables in carry-on and checked baggage.

Section 175.900

In response to a UPS petition (P-1439) and to harmonize with international standards, we are proposing to add a new § 175.900 to adopt the ICAO Technical Instructions loading requirements for carbon dioxide, solid (dry ice). This provision will provide guidelines to the operator for handling dry ice shipments, including informing ground staff, checking aircraft ventilation rates, stowage, and providing the Pilot-in-Command with information to reflect any quantity change of dry ice. Comments are invited regarding the use of the term "suitable arrangements" in this section. See the preamble discussion in § 173.217 for further discussion.

Part 177

Section 177.848

This section addresses segregation requirements for hazardous materials transported by motor carrier. Paragraph (a), which discusses the applicability requirements for segregation, does not specifically include all bulk packages that may be placarded instead of labeled as packages for which segregation requirements must be met. To correct this oversight, we are proposing to revise paragraph (a)(1) to specify that the segregation requirements for hazardous materials would be applicable to packages that are required to be placarded. The addition of this provision ensures hazardous materials when packaged in IBCs and Large Packagings are properly segregated.

Part 178

Section 178.274

This section establishes design and manufacturing requirements for UN portable tanks. In paragraph (b)(1), the end value for temperature range is incorrectly specified as "– 50 °C." The negative symbol should be removed and value should be specified as "50 °C." We are proposing to revise paragraph (b)(1) to correct this error.

Section 178.337-9

This section establishes requirements for pressure relief devices, piping, valves, hoses, and fittings on MC 331

specification cargo tanks. Currently, paragraph (b)(8) requires angle valves used on cargo tanks intended for chlorine service to comply with the standards of The Chlorine Institute Dwg. 104-8. The Chlorine Institute (P-1444) and Midland Manufacturing Corporation (P-1448) petitioned PHMSA to incorporate Chlorine Institute Pamphlet 166, which contains provisions for the use of angle valves on cargo tanks in chlorine service. In its petition, The Chlorine Institute points to DOT exemptions/special permits such as DOT-E 9694, which has authorized the use of an angle valve that conforms to this pamphlet for over fifteen years. Therefore, we are proposing to revise paragraph (b)(8) to include a reference to the Chlorine Institute's "Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition," dated October 2002 to allow for the use of alternative angle valves for cargo tanks that transport chlorine.

Section 178.337-10

This section establishes accident damage protection requirements for MC 331 specification cargo tanks. The Chlorine Institute petitioned PHMSA (P-1444) to update the references to the Chlorine Institute's drawings 137-1 and 137-2 entitled "Standards for Housing and Manway Covers for Steel Cargo Tanks," dated September 1, 1982 by replacing them with the Chlorine Institute's drawing 137-5 entitled "Typical Manway Arrangement Chlorine Cargo Tank," dated November 1996. The petitioner states that this is necessary to provide critical manway arrangement details to ensure the use of CI Emergency Kit C, which is referenced in § 177.840(e)(2). We are proposing to revise paragraph (d) to incorporate the petitioner's request. We are proposing removing the old drawings (drawings 137-1 and 137-2), completely from the HMR. We are soliciting comments regarding this proposed deletion to determine whether this poses an undue regulatory burden.

Part 180

Section 180.205

This section establishes general requirements for the requalification of cylinders. Paragraph (g) of this section establishes requirements for pressure testing. We are proposing to add a new paragraph (g)(6) to incorporate guidance material for cylinder requalifiers that perform volumetric expansion tests on cylinders. This document is entitled "CGA Pamphlet C-1.1—Personnel Training and Certification Guidelines for Cylinder Requalification By the

Volumetric Expansion, issued 2004 (1st Edition)."

III. Sunset Provision

To assure the HMR account for new technologies and updated business practices, PHMSA is considering whether certain requirements proposed in this NPRM should be afforded a "sunset" provision. If we adopt such a provision, certain amendments adopted through this rulemaking would expire after a fixed amount of time (*e.g.* 10 years) from the publication date of the final rule.

Certain standards that we are proposing to adopt by reference likely will be updated periodically in response to changes in international standards or may be replaced by other more relevant or technically superior standards. Future changes to these standards would have to consider whether to retain or extend the sunset date. If we choose to do nothing, a sunset provision would mean the HMR would revert to the language and requirements in effect before the issuance of the final rule. We are requesting comments on whether certain amendments should be tied to a sunset provision.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations, such as the Chlorine Institute and CGA, to update and add references to standards that are incorporated in the HMR. PHMSA anticipates the proposals contained in

this rule will have economic benefits to the regulated community. This NPRM is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs. Further, the addition of an exception from regulatory requirements for small amounts of hazardous materials used in pharmaceutical research and clarification of the exception for household hazardous wastes will result in reduced compliance costs by eliminating some or all regulations a person must comply with and reducing packaging costs. This NPRM also proposes to update a number of incorporations by reference to permit the industry to utilize the most recent versions of industry consensus standards. Incorporation of material by reference reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus are accepted and followed by the industry; thus, their inclusion in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal.

The 2004 Emergency Response Guidebook (ERG2004) refers to Guide 127 (Flammable Liquids Polar/Water-Miscible) for response to incidents involving Alcohols, n.o.s., 3, UN1987, and Denatured alcohol, 3, NA1987. Guide 127 specifies the use of alcohol resistant foam. For incidents involving Flammable liquid, n.o.s., (ethanol, gasoline), 3, UN1993, and Gasohol, 3, NA1203, ERG 2004 refers to Guide 128 (Flammable Liquids Non-Polar/Water-Immiscible). Guide 128 specifies the use of regular foam, but contains the following warning: CAUTION: "For mixtures containing a high percentage of an alcohol or polar solvent, alcohol-resistant foam may be more effective." Therefore, to help emergency responders utilize the most effective emergency response procedures for incidents involving fuel mixtures composed of ethanol (or "ethyl alcohol") and gasoline in various concentrations we are proposing to add a new entry "Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol, 3, UN3475, II" to the HMT. Overall, the proposals in this NPRM should reduce regulatory burdens on the regulated community while increasing flexibility and transportation options.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on our own initiatives and also on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and would update references to consensus standards that are incorporated in the HMR. The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities. Therefore, I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used

to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. PHMSA proposes to make miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The proposed amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. We determined there would be no significant environmental impacts associated with this proposed rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

List of Subjects*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by Reference, Labeling, Markings, Packaging and containers,

Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by Reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Hazardous materials transportation, Air carriers, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Incorporation by reference, Motor carriers, Segregation requirements, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

2. In § 171.4, paragraph (c) is revised to read as follows:

§ 171.4 Marine Pollutants.

* * * * *

(c) Exceptions. Except when all or part of the transportation is by vessel, the requirements of this subchapter specific to marine pollutants do not apply to non-bulk packagings transported by motor vehicle, rail car or aircraft.

3. In § 171.7, in paragraph (a)(3) and (b) tables, the following amendments are made:

a. Under the entry “Chlorine Institute, Inc.,” the entry “Type 1½ JQ 225, Dwg., H51970, Revision D April 5, 1989; or Type 1½ JQ 225, Dwg. H50155, Revision F, April 4, 1989” is revised;

b. Under the entry “Chlorine Institute, Inc.,” the entry “Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 3rd Edition, October 1997” is revised;

c. Under the entry “Chlorine Institute, Inc.,” the entry “Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002” is added;

d. Under the entry “Chlorine Institute, Inc.,” the entry “Typical Manway Arrangement Chlorine Cargo Tank, Dwg. 137–5, November 1996” is added;

e. Under the entry “Chlorine Institute, Inc.,” the entry “Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwg. 137–1 and 137–2, September 1, 1982” is removed;

f. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet C–5 Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991” is revised;

g. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings of Compressed Gas Containers, appendix A, issued 1992 (6th Edition)” is revised;

h. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA

Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 (with the exception of paragraph 9.1.1.1), Ninth Edition” is removed;

i. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2003 (with the exception of paragraph 9.1.1.1), Eleventh Edition” is removed;

j. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition” is added;

k. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996” is revised;

l. Under the entry “International Organization for Standardization,” the entry “ISO 7225, Gas cylinders—Precautionary labels, First Edition, November 1994, (Corrected and reprinted August 1995), (E)” is revised; and

m. In paragraph (b), a new entry “Compressed Gas Association, Inc.,” 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151, “CGA Pamphlet C–1.1—Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion, issued 2004 (1st Edition)” is added in alphabetical order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * *	
<i>Chlorine Institute, Inc.</i>	
* * * * *	
Type 1½ JQ 225, Dwg., H51970, Revision F, November 1996; or Type 1½ JQ 225, Dwg. H50155, Revision H, November 1996 ..	173.315.
Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, Edition 4, October 2003	177.840.
Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002	178.337–9.
* * * * *	
Typical Manway Arrangement Chlorine Cargo Tank, Dwg 137–5, November 1996	178.337–10.

Source and name of material	49 CFR reference
* * * * *	*
<i>Compressed Gas Association, Inc.</i>	
CGA Pamphlet C-5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 (reaffirmed 1995)	172.302(a).
CGA Pamphlet C-7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, appendix A, issued 2004 (8th Edition)	172.400a.
CGA Pamphlet S-1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition	173.301, 173.304a, 178.75.
CGA Pamphlet S-7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 2005	173.301.
<i>International Organization for Standardization,</i>	
ISO 7225, Gas cylinders—Precautionary labels, Second Edition, July 2005, (E)	178.71

(b) List of informational materials not requiring incorporation by reference.

* * * * *

Source and name of material	49 CFR reference
* * * * *	*
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151. CGA Pamphlet C-1.1, Personnel Training and Certification Guidelines For Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition	180.209.
* * * * *	*

4. In § 171.8, a new definition for “Household waste” is added in alphabetical order as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Household waste means any solid waste (including garbage, trash, and sanitary waste from septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

* * * * *

5. In § 171.14, a new paragraph (g) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(g) The proper shipping name “Gasohol gasoline mixed with ethyl alcohol, with not more than 20% alcohol” in effect on [DATE OF PUBLICATION OF FINAL RULE] may continue to be used until [DATE TWO YEARS FROM EFFECTIVE DATE OF FINAL RULE].

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

7. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	Packaging (§ 173.***)		Quantity limitations (g)		Vessel stowage (10)		
							Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
[REMOVE:]													
	Gas generator assemblies (aircraft), containing a non-flammable non-toxic gas and a propellant cartridge.	*	2.2	*	2.2	*	None	335	None	75 kg	150 kg	A.	
D	Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol.	*	3 NA1203	II	3	144	150	202	242	5 L	60 L	E.	
[ADD:]													
D	Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, with more than 10% ethanol.	*	3 UN3475	II	3	144, 177, IB2, T4, TP1.	150	202	242	5 L	60 L	E.	
D	Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol.	*	3 NA1203	II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	E.	
	Polyamines, flammable, corrosive, n.o.s. see Amines, flammable, corrosive, n.o.s.	*											
	Polyamines, liquid, corrosive, n.o.s. see Amines, liquid, corrosive, n.o.s.	*											
	Polyamines, liquid, corrosive, flammable, n.o.s. see Amines, liquid, corrosive, flammable, n.o.s.	*											
[REVISE:]													

§ 172.101.—HAZARDOUS MATERIALS TABLE—CONTINUED

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations			(10) Vessel stowage			
							(8A) Exceptions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger aircraft/rail	(9B) Cargo aircraft only	(10A) Location	(10B) Other			
	Radioactive material, package Type A	7	UN2915		7	A56, W7, W8.	None	415, 415, 419.	415, 418, 419.	*	*				95, 130	
	package non-special form, non fissile or fissile-accepted.															
A	Sodium aluminate, solid.	8	UN2812	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A.				
										*	*					

* * * * *

8. In § 172.102, in paragraph (c)(1), Special provision 177 is added and in paragraph (c)(3), Special provision B69 is revised to read as follows.

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

177 Ethanol and gasoline mixtures for use in spark-ignition engines (e.g. in automobiles, stationary engines and other engines) shall be assigned to this entry regardless of variations in volatility.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B69 Dry sodium cyanide or potassium cyanide may be shipped in the following sift-proof and weather resistant packagings: Metal covered hopper cars, covered motor vehicles, portable tanks, or non-specification bins.

* * * * *

9. In § 172.203, paragraph (l)(4) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(l) * * *

(4) Except when all or part of transportation is by vessel, marine pollutants in non-bulk packagings are not subject to the requirements of paragraphs (l)(1) and (l)(2) of this section (see § 171.4 of this subchapter).

* * * * *

10. In § 172.315, a new paragraph (c) is added as follows:

§ 172.315 Packages containing limited quantities.

* * * * *

(c) As applicable, the letters "RQ" should be marked in association with the square-on-point border containing the identification (ID) number.

11. In § 172.336, paragraphs (c)(4) and (c)(5) are revised to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(c) * * *

(4) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest

flash point. Effective [DATE TWO YEARS FROM EFFECTIVE DATE OF FINAL RULE] the provisions of this paragraph do not apply to an Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol.

(5) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point. Effective [DATE TWO YEARS FROM EFFECTIVE DATE OF FINAL RULE] the provisions of this paragraph do not apply to an Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol.

* * * * *

13. In § 172.406, paragraphs (e)(4) and (e)(5) are revised and a new paragraph (e)(6) is added to read as follows:

§ 172.406 Placement of labels.

* * * * *

(e) * * *

(4) Each portable tank of less than 3,785 L (1000 gallons) capacity;

(5) Each freight container or aircraft unit load device having a volume of 1.8 m³ (64 cubic feet) or more, but less than 18 m³ (640 cubic feet). One of each required label must be displayed on or near the closure; and

(6) An IBC having a volume of 1.8 m³ (64 cubic feet) or more.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

15. In § 173.4, a new paragraph (e) is added to read as follows:

§ 173.4 Small quantity exceptions.

* * * * *

(e) Packing Groups II and III materials in Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9 are not subject to any other requirements of this subchapter when—

(1) The maximum quantity of material per inner receptacle or article is limited to—

(i) One (1) mL (0.03 ounce) for authorized liquids; and

(ii) One (1) g (0.04 ounce) for authorized solid materials;

(2) Each inner receptacle with a removable closure has its closure held securely in place with wire, tape, or other positive means;

(3) Unless equivalent cushioning and absorbent material surrounds the inside packaging, each inner receptacle is securely packed in an inside packaging with cushioning and absorbent material that:

(i) Will not react chemically with the material, and

(ii) Is capable of absorbing the entire contents (if a liquid) of the receptacle;

(4) The inside packaging is securely packed in a strong outside packaging;

(5) The completed package is capable of sustaining—

(i) Each of the following free drops made from a height of 1.8 m (5.9 feet) directly onto a solid unyielding surface without breakage or leakage from any inner receptacle and without a substantial reduction in the effectiveness of the package:

(A) One drop flat on bottom;

(B) One drop flat on top;

(C) One drop flat on the long side;

(D) One drop flat on the short side;

and

(E) One drop on a corner at the junction of three intersecting edges; and

(ii) A compressive load as specified in § 178.606(c) of this subchapter.

Each of the tests in this paragraph (e)(5) may be performed on a different but identical package; that is, all tests need not be performed on the same package.

(6) Placement of the material in the package or packing different materials in the package does not result in a violation of § 173.21;

(7) The aggregate quantity of hazardous material per package must not exceed 100 g (0.22 pounds) or 100 ml (3.38 ounces);

(8) The gross mass of the completed package does not exceed 29 kg (64 pounds); and

(9) The package is not opened or otherwise altered until it is no longer in commerce.

16. In § 173.5, paragraph (b)(2) is revised to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(b) * * *

(2) The total amount of agricultural product being transported on a single motor vehicle does not exceed:

(i) 7,300 kg (16,094 lbs.) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 1900 L (502 gallons) for liquids or gases, or 2,300 kg (5,070 lbs.) for solids, of any other agricultural product;

* * * * *

17. In § 173.12, paragraph (e)(1)(ii) is revised and a new paragraph (f) added as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *
 (e) * * *
 (1) * * *

(ii) The acids must be packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(f) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter.

18. In § 173.22, paragraph (b) is added to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(b) No person may offer a motor carrier any hazardous material specified

in 49 CFR 385.403 unless that motor carrier holds a safety permit issued by the Federal Motor Carrier Safety Administration.

* * * * *

19. In § 173.24, paragraph (g)(1) is revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(g) * * *

(1) Except for shipments of carbon dioxide, solid (dry ice), transportation by aircraft is not involved;

* * * * *

20. In § 173.61, paragraph (c) is revised to read as follows:

§ 173.61 Mixed packaging requirements.

* * * * *

(c) The following explosives may not be packed together with other Class 1 explosives: UN 0029, UN 0030, UN 0073, UN 0106, UN 0107, UN 0255, UN 0257, UN 0267, UN 0350, UN 0360, UN 0361, UN 0364, UN 0365, UN 0366, UN 0367, UN 0408, UN 0409, UN 0410, UN 0455, UN 0456, and UN 0500. These explosives may be mix-packed with each other in accordance with the compatibility requirements prescribed in paragraph (e).

* * * * *

21. In § 173.62, in paragraph (c), the "Table of Packing Methods," is amended by revising entry 134 to read as follows:

§ 173.62 Mixed packaging requirements.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
134	Bags: water resistant Receptacles: fibreboard, metal, plastics, wood. Sheets: fibreboard, corrugated Tubes: fibreboard	Not necessary	Boxes: steel (4A), aluminium (4B), wood, natural, ordinary (4C1), wood natural, sift proof walls (4C2), plywood (4D), reconstituted wood (4F), fibreboard (4G), plastics, expanded (4H1), plastics, solid (4H2). Drums: fibreboard (1G), plastics, removable head (1H2), steel, removable head (1A2), aluminium, removable head (1B2), Plywood (1D).

22. In § 173.134, paragraph (b)(13)(i), as amended in FR Rule Doc. 06-4992, published at 71 FR 32244, June 2, 2006, effective October 1, 2006, is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *
 (b) * * *
 (13) * * *

(i) Household waste as defined in § 171.8,

* * * * *

23. Section 173.217 is revised to read as follows:

§ 173.217 Carbon dioxide, solid (dry ice).

(a) Carbon dioxide, solid (dry ice), when offered for transportation or transported by aircraft or water, must be packed in packagings designed and constructed to permit the release of carbon dioxide gas to prevent a buildup of pressure that could rupture the packagings. Packagings must conform to

the general packaging requirements of subpart B of this part but need not conform to the requirements of part 178 of this subchapter.

(b) For transportation by vessel:
 (1) Each transport vehicle and freight container containing solid carbon dioxide must be conspicuously marked on two sides "WARNING CO₂ SOLID (DRY ICE)."

(2) Other packagings containing solid carbon dioxide must be marked "CARBON DIOXIDE, SOLID—DO NOT STOW BELOW DECKS."

(c) For transportation by aircraft:
 (1) The net mass of the carbon dioxide, solid (dry ice) must be marked on the outside of the package.

(2) Arrangements between shipper and operator(s) must be made for each shipment, to monitor and limit ventilation rates to ensure passengers, flight crew members, and animals are not affected by the venting of carbon dioxide.

(3) Dry ice used as a refrigerant for other than hazardous materials loaded

in a unit load device or, other type of pallet, the quantity limits per package shown in Columns (9A) and (9B) of the Hazardous Materials Table in § 172.101 are not applicable. In such a case, the unit load device, or other type of pallet must be identified to the operator and must allow the venting of the carbon dioxide gas to prevent a dangerous build up of pressure.

(4) Dry ice is excepted from the shipping paper requirements of subpart C of part 172 of this subchapter, provided alternative written documentation is supplied containing the following information: Proper shipping name (Dry ice or Carbon dioxide, solid), class 9, UN number 1845, the number of packages, and the net quantity of dry ice in each package. The information must be included with the description of the materials.

(5) Carbon dioxide, solid (dry ice), in quantities not exceeding 2.3 kg (5 pounds) per package and used as a refrigerant for the contents of the package is excepted from all other

requirements of this subchapter if the requirements of paragraph (a) of this section are complied with and the package is marked "Carbon dioxide, solid" or "Dry ice", marked with the name of the contents being cooled, and marked with the net weight of the dry ice or an indication that the net weight is 2.3 kg (5 pounds) or less.

(d) Carbon dioxide, solid (dry ice), when used to refrigerate materials being shipped for diagnostic or treatment purposes (e.g., frozen medical specimens), is excepted from the shipping paper and certification requirements of this subchapter if the requirements of paragraphs (a) and (c)(2) of this section are met and the package is marked "Carbon dioxide, solid" or "Dry ice" and marked with an indication that the material being refrigerated is being transported for diagnostic or treatment purposes.

24. In § 173.301, paragraphs (f)(1) and (g)(1) are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(f) * * *

(1) Except as provided in paragraphs (f)(5), (f)(6), and (l)(2) of this section, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S-1.1 (compliance with paragraph 9.1.1.1 of CGA S-1.1 is not required) and S-7. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA C-14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA C-12 (IBR, see § 171.7 of this subchapter).

* * * * *

(g) * * *

(1) Cylinder manifolding is authorized only under conditions prescribed in this paragraph (g). Manifolled cylinders must be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves that otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section, except that pressure relief devices on manifolled horizontal cylinders that are mounted on a motor vehicle or framework may be

selected as to type, location, and quantity according to the lowest marked pressure limit of an individual cylinder in the manifolled unit. The pressure relief devices selected for the manifolled unit must have been tested in accordance with CGA S-1.1 and S-7. Pressure relief devices on manifolled horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the PRDs must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders. Valves and pressure relief devices on manifolled cylinders filled with a compressed gas must be protected from damage by framing, a cabinet, or other method. Manifolding is authorized for cylinders containing the following gases:

(i) Nonliquefied (permanent) compressed gases authorized by § 173.302.

(ii) Liquefied compressed gases authorized by § 173.304. Each manifolled cylinder containing a liquefied compressed gas must be separately filled and means must be provided to ensure no interchange of cylinder contents can occur during transportation.

(iii) Acetylene as authorized by § 173.303.

* * * * *

§ 173.335 [Removed]

25. Section 173.335 is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

26. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; 49 CFR 1.45 and 1.53.

27. In § 175.10, paragraph (a)(10) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

* * * * *

(a) * * *

(10) Dry ice (carbon dioxide, solid):

(i) in quantities not exceeding 2.3 kg (5 pounds) per person in carry-on baggage, when used to pack perishables not subject to the HMR. The package must permit the release of carbon dioxide gas; and/or

(ii) in checked baggage, with the approval of the operator(s), when each package is marked "DRY ICE" or "CARBON DIOXIDE, SOLID", and marked with the net mass of dry ice or

an indication the net weight is 2.3 kg (5 pounds) or less.

* * * * *

28. A new § 175.900 is added to read as follows:

§ 175.900 Handling requirements for carbon dioxide, solid (dry ice).

Carbon dioxide, solid (dry ice) when shipped by itself or when used as a refrigerant for other commodities, may only be carried provided the operator has made suitable arrangements dependent on the aircraft type, the aircraft ventilation rates, the method of packing and stowing, whether animals will be carried on the same flight and other factors. The operator must ensure that the ground staff is informed that the dry ice is being loaded or is on board the aircraft. For arrangements between the shipper and operator see § 173.217 of this subchapter. Where dry ice is contained in a unit load device or other type of pallet prepared by a single shipper in accordance with § 173.217 and the operator after the acceptance adds additional dry ice, the operator must ensure that the information provided to the Pilot-in-Command reflects that revised quantity of dry ice.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

29. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101-5128; 49 CFR 1.53.

30. In § 177.848, paragraph (a)(1) is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

(a) * * *

(1) In packages that must be labeled or placarded in accordance with part 172 of this subchapter;

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

31. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101-5128; 49 CFR 1.53.

32. In § 178.274, in paragraph (b)(1), the first sentence is revised to read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(b) *General design and construction requirements.* (1) The design temperature range for the shell must be -40 °C to 50 °C (-40 °F to 122 °F) for hazardous materials transported under normal conditions of transportation,

except for portable tanks used for refrigerated liquefied gases where the minimum design temperature must not be higher than the lowest (coldest) temperature (for example, service temperature) of the contents during filling, discharge or transportation.

* * *

* * * * *

33. In § 178.337-9, paragraph (b)(8) is revised to read as follows:

§ 178.337-9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(8) *Chlorine cargo tanks.* Angle valves on cargo tanks intended for chlorine service must conform to the standards of The Chlorine Institute, Inc., Dwg. 104-8 or "Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation." (IBR, see § 171.7 of this subchapter). Before installation, each angle valve must be tested for leakage at

not less than 225 psig using dry air or inert gas.

* * * * *

34. In § 178.337-10, paragraph (d) is revised to read as follows:

§ 178.337-10 Accident damage protection.

* * * * *

(d) *Chlorine tanks.* A chlorine tank must be equipped with a protective housing and a manway cover to permit the use of standard emergency kits for controlling leaks in fittings on the dome cover plate. For tanks manufactured on or after and [PUBLICATION DATE OF FINAL RULE], the housing and manway cover must conform to the Chlorine Institute, Inc., Dwg. 137-5 (IBR, see § 171.7 of this subchapter).

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

35. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101-5128; 49 CFR 1.53.

36. In § 180.205, a new paragraph (g)(6) added to read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(g) * * *

(6) The guidelines contained in CGA Pamphlet C 1.1 may be used for training persons who requalify cylinders using the volumetric expansion test method.

* * * * *

Issued in Washington, DC on September 15, 2006 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 06-7913 Filed 9-22-06; 8:45 am]

BILLING CODE 4910-60-P