

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 172**

[Docket No. 04–19886 (HM–224E)]

RIN 2137-AE05

**Hazardous Materials: Prohibition on the Transportation of Primary Lithium Batteries and Cells Aboard Passenger Aircraft**

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

**ACTION:** Final rule; correction.

**SUMMARY:** PHMSA is correcting an error in an interim final rule, published in the *Federal Register* on December 15, 2004. That interim final rule imposed a limited prohibition on offering for transportation and transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large lithium batteries.

**DATES:** *Effective date:* October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale, 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**

On December 15, 2004, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published an interim final rule under Docket HM–224E (69 FR 75208). That final rule imposed a limited prohibition on offering for transportation and transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large lithium batteries.

This document corrects an error in the December 15, 2004 final rule. In Special Provision A101 we imposed a gross weight limitation of 5 kilograms for primary lithium batteries packed with equipment that were excepted from the prohibition for transportation aboard passenger-carrying aircraft. We intended for this limit to be based on net weight. A gross weight limitation applies to the total weight of the packaging plus its contents (*i.e.*, the weight of the equipment, battery and the packaging). A net weight limitation applies only to the weight of the lithium batteries packed with the equipment.

In this final rule, we are correcting Special Provision A101 to specify that the net weight of a package containing a lithium battery or cell that is packed with equipment may be transported on board passenger carrying aircraft provided the net weight of the lithium batteries in the package does not exceed 5 kg and the other conditions set forth in the special provision are met. This limit does not affect the amount of lithium authorized in a battery or a cell. Those limits (*i.e.*, 1 and 2 grams for liquid and solid untested batteries, respectively, and 25 grams for tested batteries) are specified in § 173.185(b) and (c). This amendment does not affect the aircraft quantity limits for those lithium batteries that are transported as Class 9.

We received 39 comments on the December 15, 2004, interim final rule. We will address these comments in a future rulemaking action to be published under this docket.

**II. Regulatory Analyses and Notices***A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule will not result in increased compliance costs for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (“Federalism”). This final rule does not adopt any regulation that: (1) 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; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. PHMSA is not aware of any State, local, or Indian tribe requirements that would be preempted by making this minor regulatory change. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

*C. Executive Order 13175*

This final 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 final 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.

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

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule corrects an error in the HMR. The correction will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

*E. Unfunded Mandates Reform Act of 1995*

This 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.

*F. Paperwork Reduction Act*

There are no new information collection requirements in this final rule.

*G. Environmental Impact Analysis*

There are no environmental impacts associated with this final rule.

*H. 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.

**List of Subjects in 49 CFR Part 172**

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

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

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

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

■ 2. In § 172.102, in paragraph (c)(2) Special Provision A101 is revised to read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

*Code/Special Provisions*

\* \* \* \* \*

A101 A primary (non-rechargeable) lithium battery or cell packed with equipment is forbidden for transport aboard a passenger carrying aircraft unless:

a. The battery or cell complies with the requirements and limitations of § 173.185(b)(1), (b)(2), (b)(3), (b)(4) and (b)(6) or § 173.185(c)(1), (c)(2), (c)(3) and (c)(5) of this subchapter;

b. The package contains no more than the number of lithium batteries or cells necessary to power the intended piece of equipment;

c. The equipment and the battery or cell are packed in a strong packaging;

d. The net weight of the lithium batteries in the package does not exceed 5 kg. Packages complying with the requirements of this special provision are excepted from all other requirements of this subchapter.

\* \* \* \* \*

Issued in Washington, DC on September 25, 2006, under authority delegated in 49 CFR part 1.

**Thomas J. Barrett,**  
*Administrator.*

[FR Doc. E6–15941 Filed 9–27–06; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 051104293–5344–02; I.D. 092206D]

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure of commercial fishery.

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2006, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

**DATES:** Effective 0001 hours September 28, 2006, through 2400 hours, December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281–9341

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 965,368 lb (437,884 kg). The 2006 allocation was reduced to 931,750 lb (422,635 kg) due to research set-aside and quota overage from 2005.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS

(Regional Administrator) to monitor state commercial quotas and to determine when a state’s commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state’s commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours September 28, 2006, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 28, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 25, 2006.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 06–8337 Filed 9–25–06; 1:47 pm]

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