

Fund, the Bureau issues this clarification.

The Commission's eligibility rules set forth in 47 CFR 64.604(c)(5)(iii)(F) provide that TRS providers eligible for receiving payments from the Interstate TRS Fund must be:

- (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to section 64.605 of the Commission's rules; or
- (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to section 64.604 of the Commission's rules; or
- (3) Interstate common carriers offering TRS pursuant to section 64.604 of the Commission's rules; or
- (4) Video Relay Service (VRS)[, \* \* \*] Internet Protocol (IP) Relay \* \* \*, and IP CTS] providers certified by the Commission pursuant to section 64.605 of the Commission's rules.

The fourth eligibility criterion—certification by the Commission—was adopted in *Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (2005) (*2005 IP Relay/VRS Certification Order*), published at 71 FR 2942, January 18, 2006. Prior to that time, there was no federal certification process for relay providers seeking compensation from the Fund; the regulations provided only for the certification of state TRS programs. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, (*2004 TRS Report and Order*), 19 FCC Rcd 12475, 12516, paragraph 99 (2004), published at 69 FR 53346 and 69 FR 53382, September 1, 2004.

The Commission has interpreted the third eligibility criterion—an interstate common carrier offering TRS pursuant to section 64.604—to apply only to common carriers “offering telephone voice transmission services that are obligated to provide TRS in a state that does not have a certified TRS program.” *2004 TRS Report and Order*, 19 FCC Rcd at 12517, paragraph 103, note 304. As the Commission explained in the *2005 IP Relay/VRS Certification Order*:

The third eligibility category—“Interstate common carriers offering TRS pursuant to § 64.604”—has been the means by which some entities that are not voice telephone service providers have sought to offer VRS, and not the other forms of TRS, and be

compensated for doing so from the Interstate TRS Fund. The Commission previously construed [in the *2004 TRS Report and Order*] the third eligibility prong, however, as applying to common carriers obligated to provide TRS in a state that does not have a certified program. Because we now adopt a fourth eligibility criterion, which will allow common carriers seeking to offer VRS or IP Relay and receive compensation to do so without being part of a certified state program or contracting with an entity that is, it is not necessary at this time to revisit this construction of the third eligibility category. *2005 IP Relay/VRS Certification Order*, 20 FCC Rcd at 20587, paragraph 18.

Against this background, in the *IP CTS Declaratory Ruling*, the Commission expressly addressed the manner in which IP CTS providers may be eligible for compensation from the Fund. The Commission concluded that “an entity desiring to provide IP captioned telephone service \* \* \* may choose to seek certification from the Commission under [§ 64.605],” and that therefore, “[a]s a general matter, potential IP CTS providers may become eligible for compensation from the Fund by being accepted into a certified state TRS program or subcontracting with an entity that is part of a certified state program, or by seeking Commission certification.” *IP CTS Declaratory Ruling*, 22 FCC Rcd at 391, paragraph 28. The Commission made clear that “[p]resent eligibility to receive compensation from the Fund for the provision of other forms of TRS (including captioned telephone service) does not confer eligibility with regard to the provision of the IP CTS recognized in this Declaratory Ruling.”

The Bureau therefore clarifies that, to establish eligibility for compensation from the Fund, IP CTS providers must either: (1) Seek certification from the Commission pursuant to 47 CFR 64.605; (2) become part of a certified state program; or (3) subcontract with an entity that is part of a certified state program. Only where an IP CTS provider is a common carrier offering telephone voice transmission services and obligated to provide IP CTS in a state that does not have a certified TRS program would it be able to establish eligibility for compensation from the Fund via section 64.604(c)(5)(iii)(F)(3) of the Commission's rules. Further, the fact that a provider is eligible to receive compensation from the Fund for the provision of other forms of TRS is not sufficient grounds, on its own, to establish a provider's eligibility to receive compensation from the Fund for the provision of IP CTS. The intent of the more specific eligibility rules for IP CTS providers set forth in the *IP CTS Declaratory Ruling* is to ensure that

either the Commission or a state has oversight responsibility for each provider.

The Bureau also clarifies that IP CTS providers seeking compensation from the Fund must notify the Fund administrator (currently, the National Exchange Carrier Association (NECA)) 30 days prior to the date they submit minutes to the Fund administrator for payment. 47 CFR 64.604(c)(5)(iii)(G). This requirement applies even if the provider presently offers other forms of TRS and is compensated from the Fund. Because the *2007 IP CTS Declaratory Ruling* specifically states that merely being a relay provider of another service is not enough to confer eligibility, it follows that for IP CTS providers to become eligible for compensation, they must both seek Commission or state certification (or be a subcontractor), and must notify NECA 30 days prior to submitting minutes for payment.

Federal Communications Commission.

**Nicole McGinnis,**

*Deputy Chief, Consumer and Governmental Affairs Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 171, 173, and 175

[Docket No. PHMSA–2006–25446 (HM–243)]

RIN 2137–AE19

#### Hazardous Materials: Fuel Cell Cartridges and Systems Transported on Board Passenger Aircraft in Carry-On Baggage

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

**ACTION:** Final rule.

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**SUMMARY:** PHMSA is amending the Hazardous Materials Regulations (HMR) to permit certain fuel cell cartridges and fuel cell systems designed for portable electronic devices to be transported by passengers and crew in carry-on baggage on board passenger-carrying aircraft. Fuel cell cartridges and fuel cell systems are an emerging energy technology developed to provide a more efficient, longer-lasting, and renewable power source for electrically operated equipment. This final rule prescribes regulations for transporting fuel cells containing flammable liquids, including methanol; formic acid; certain

borohydride materials; or butane that meet certain performance and consumer use standards. PHMSA is issuing this final rule in cooperation with the Federal Aviation Administration (FAA).

**DATES:** *Effective date:* The effective date of these amendments is October 1, 2008.

*Voluntary Compliance Date:* Voluntary compliance is authorized as of May 30, 2008.

*Incorporation by Reference Date:* The incorporation by reference of publications listed in this final rule is approved by the Director of the Federal Register as of October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590, facsimile telephone number (202) 366-7435, or by e-mail to [Eileen.Edmonson@dot.gov](mailto:Eileen.Edmonson@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On September 20, 2007, PHMSA published a notice of proposed rulemaking (NPRM; 72 FR 53744) that proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to permit certain fuel cell cartridges and systems designed for use in portable electronic devices to be transported in carry-on baggage on board passenger-carrying aircraft. Consistent with the requirements adopted by the International Civil Aviation Organization (ICAO) in section 8.1.1.2(r) of the 2007-2008 edition of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the NPRM proposed to permit fuel cell systems and cartridges that contain flammable liquids (including methanol), formic acid, and butane in carry-on baggage on board passenger-carrying aircraft provided the fuel cells conform to the industry technical specification governing the design and consumer use of fuel cell cartridges, power units, and power systems developed by the International Electrotechnical Commission (IEC)—IEC/PAS 62282-6-1:2006(E), First Edition 2006-02, with Corrigendum 1, First Edition 2007-04. We also proposed in the NPRM, in response to petitions for rulemaking, numbered P-1475 and P-1483, to permit fuel cell cartridges and systems that contain certain Class 8 (corrosive) borohydride materials to be transported in carry-on baggage on board passenger-carrying aircraft. We agreed with the petitioners that fuel cell cartridges and systems containing these materials pose

similar safety risks and will operate in a similar manner as those containing formic acid. We also proposed to require that fuel cell cartridges and systems containing certain borohydride materials conform to the same IEC technical specification described earlier.

The IEC specification contains detailed manufacturing, safety, and testing requirements to address conditions that may be encountered during use, misuse, and consumer transportation. One design requirement of the IEC specification is that the fuel cell systems' outputs do not exceed 60 volts and 240 watts. To ensure the capability of the fuel cell and cartridge to withstand normal conditions of consumer handling and transportation, the specification requires various design-type tests such as pressure differential, vibration, temperature cycling, high temperature exposure, drop, compressive loading, connection cycling, external short circuit, and long-term storage.

Under the NPRM, we proposed to limit the amount of fuel per cartridge to a maximum quantity of 200 mL (6.76 ounces) for liquids, 200 mL (6.76 ounces) for metal fuel cell cartridges containing butane, 120 mL (4.0 ounces) for non-metallic fuel cell cartridges containing butane, and 200 g (7 ounces) for solids. Because the IEC specification states Class 8 borohydride fuels may be liquid or solid (see Figure E1.4 and Sections E1.3.5.1, E1.3.7.1, and E1.3.46), and establishes a 200 g limit for solid fuel per fuel cell cartridge (see Sections E1.4.12.1.3 and E2.4.12.1.3), we proposed this same limit for solid fuel in the NPRM. We also proposed to limit aircraft passengers to two spare fuel cell cartridges per person.

We proposed in the NPRM to permit fuel cells containing the following types of materials to be transported in carry-on baggage on passenger aircraft: (1) Gases meeting the criteria for classification as Division 2.1 (flammable gases), (2) solids meeting the criteria for classification as Division 4.3 (dangerous when wet), and (3) liquids meeting the criteria for classification as Class 3 (flammable) or Class 8 (corrosive) material. We unintentionally omitted from the NPRM's preamble text that the proposed rulemaking also considered solid fuels meeting the criteria for classification as Class 8 material. PHMSA worked closely with FAA to evaluate the transportation safety risks presented by these fuel cell cartridges and systems and determined that they may be transported safely in the cabin of a passenger-carrying aircraft.

##### **II. Comments on the NPRM**

PHMSA received comments from the Methanol Institute, MTI MicroFuel Cells, Inc., the U.S. Fuel Cell Council, and Lilliputian Systems. The commenters unanimously support adoption of the proposed rule. Several offered more specific comments on particular aspects of the proposal, as addressed in detail below.

###### *A. Limitation on Fuel Cells Used To Charge Batteries or Devices*

In the NPRM, we proposed to limit fuel cell cartridges and systems carried by passengers and crew members to a type and design that will not continue to charge batteries when the device being powered is not in use. This proposed limitation is consistent with restrictions adopted by ICAO.

The Methanol Institute and MTI MicroFuel Cells, Inc., suggest that this restriction is inconsistent with HMR requirements applicable to other energy producing devices such as lithium metal or lithium ion batteries, which are not subject to operating limitations when carried in the passenger cabin of an aircraft. Although the function of fuel cell cartridges and devices may be similar to those of other energy producing devices permitted in transportation under the HMR, we disagree with the commenters that the risks posed by these devices are similar. We determined through our technical review that fuel cell cartridges and systems designed solely to energize devices or that energize devices that are not in use have the potential to overwhelm the safety systems contained in the device, posing a risk of overheating, electric shock, or fuel product release. We will continue to work with the industry and international agencies to evaluate the safety of these fuel cell cartridges and systems as the technology evolves and to consider whether additional rulemaking may be appropriate.

###### *B. Use of the Term "Fuel Cell Cartridge"*

The U.S. Fuel Cell Council objects to PHMSA's use of the wording "fuel cell cartridge." It states one company, ReliOn, has used the term since the year 2000 to refer to its patented fuel cell system, composed of multiple "hot-swappable" fuel cell cartridges, and to refer to a cartridge that holds a fuel cell but not fuel. The commenter states the use of this wording will cause confusion in the marketplace and requests that we replace it with the wording "fuel cartridges for fuel cell devices."

We do not agree that our use of the term "fuel cell cartridge" will cause

confusion in the regulated community. We note that the terms “fuel cell cartridge” and “fuel cell system” are used extensively in the IEC Specification No. IEC/PAS 62282–6–1 and the U.S. Fuel Council’s Special Permit request, dated November 28, 2006, submitted by Dangerous Goods Transport Consulting, Inc., on its behalf. The term “fuel cell cartridge” has a well-established meaning in the industry and is not generally used as a specific reference to the system developed by the ReliOn Company.

### III. Provisions of This Final Rule

In this final rule, PHMSA is amending the HMR to permit the transportation in carry-on baggage on passenger-carrying aircraft of fuel cell cartridges and systems containing Class 3 flammable liquids, including methanol; formic acid and borohydride materials meeting the definition for a Class 8 material; and butane, a Division 2.1 gas.

PHMSA is also requiring fuel cells to conform to certain rigorous performance criteria, which are consistent with the passenger authorizations adopted for the 2007–2008 edition of the ICAO Technical Instructions. As stated earlier in this preamble, these criteria include compliance with the industry technical specification and addendum developed by the IEC governing the design and consumer use of fuel cell cartridges, power units, and power systems (IEC Specification No. IEC/PAS 62282–6–1:2006(E), First Edition 2006, with Corrigendum 1, First Edition 2007). PHMSA finds the IEC technical specification comprehensive in that it addresses design, manufacturing, testing, and transportation specific to micro-fuel cells, as well as requirements for valves, filling, packaging performance, failure mode analysis, consumer refilling, materials of construction, exterior and exhaust temperature limits, warnings, certification, markings, and manufacturers’ instructions. PHMSA and FAA also strongly support the recent addendum to the IEC specification mandating a zero-leak standard as a basis for successfully passing the design-type tests, which we find is equivalent to the safety standard established for certain non-bulk gas packagings in the HMR. Fuel cell cartridges and systems carried by airline passengers and crew must be marked “APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY” by the manufacturer. This marking is the manufacturer’s certification that the fuel cell cartridges and systems conform to the performance standard established in the revised IEC technical specification

and all other applicable requirements prescribed in the HMR.

In addition, consistent with the standard adopted for the ICAO Technical Instructions, in this final rule PHMSA is limiting the amount of hazardous material that may be contained in each individual fuel cell authorized for transportation in carry-on baggage on board passenger-carrying aircraft to 200 mL (6.76 ounces) of liquid fuel per cartridge, 200 mL (6.76 ounces) of liquefied gas fuel per metal cartridge, 120 mL (4 fluid ounces) of liquefied gas fuel per non-metallic fuel cartridge, and 200 g (7 ounces) of solid material fuel per cartridge. Also consistent with the ICAO Technical Instructions, each passenger or crew member will be permitted to carry up to two spare cartridges.

To reduce possible releases, passengers and crew members are prohibited from refilling fuel cell cartridges and systems, except to install a spare cartridge. In addition, fuel cell cartridges and systems carried by passengers and crew members are limited to a type and design that will not solely charge batteries or continue to charge batteries when the device being powered is not in use. Again, these prohibitions are consistent with the passenger authorizations for fuel cells adopted under the ICAO Technical Instructions.

PHMSA and FAA are confident that fuel cells containing flammable liquids, including methanol; formic acid; certain borohydride materials; or butane that are manufactured in accordance with the IEC specification may safely be transported in the passenger cabin of an aircraft under the conditions established in this final rule. However, as indicated above, fuel cells are an evolving technology. PHMSA will continue to work with the FAA’s William J. Hughes Technical Center to evaluate the safety risks posed by various types of fuel cell cartridges and systems. We also intend to work closely with the ICAO and other international standards-setting organizations to identify and address safety issues associated with the transportation of fuel cells by all modes of transportation.

### VII. Transportation Security Administration

The Department of Homeland Security’s Transportation Security Administration (TSA) is authorized to prescribe security standards for all modes of transportation, including aviation (49 U.S.C. 114(d)). Under this authority, TSA prohibits airline passengers from carrying weapons, explosives, or incendiary devices and

has published several interpretative rules to provide guidance on the types of property TSA considers subject to the prohibition (68 FR 7444; 68 FR 9902; 70 FR 9877).

PHMSA consulted with TSA during the development of this final rule concerning current security limitations applicable to the carriage of fuel cells by aircraft passengers and crewmembers and shared with TSA our technical analysis supporting this rulemaking. We understand that TSA is continuing to consider whether or not any additional security measures for fuel cells or fuel cell systems may be appropriate. This final rule does not limit TSA’s authority to address security concerns related to the transportation of fuel cells or fuel cell systems.

On September 26, 2006, TSA imposed a strict limit on liquids, gels, and aerosols an aircraft passenger is permitted to take through a security checkpoint in carry-on baggage. TSA limits these materials to 3-ounce (100 mL) or smaller containers placed in a clear quart-size, zip-top plastic bag. Fuel cell cartridges and systems will be subject to this limitation, notwithstanding the provisions adopted in this final rule.

### VIII. Rulemaking Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule amends the HMR to promote the safe transportation of fuel cells carried by airline passengers and crew members. To this end, as detailed above, PHMSA is amending the HMR to limit the types and quantities of fuel cell cartridges and fuel cell systems permitted in carry-on baggage on passenger aircraft, prescribe specific performance-based design and packaging criteria for these articles, and limit the manner in which they may be used during air transportation.

2. Section 5120 of Federal hazardous materials transportation law (49 U.S.C. 5120), authorizes the Secretary of Transportation to participate in the development of international standards for the transportation of hazardous materials and grants the Secretary broad discretion to harmonize the HMR with international standards. Section 5120(c) permits the Secretary to establish more stringent standards for transportation in the United States as necessary in the

public interest. The amendments in this final rule will harmonize the HMR with international requirements for fuel cell systems and cartridges to the extent these are consistent with PHMSA's safety objectives.

#### *B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

Fuel cells are an emerging technology designed to meet the growing demand for alternative energy sources. Fuel cell technology has not yet achieved widespread commercialization, but is being developed for use in mobile phones, laptop computers, and, to a lesser extent, camcorders, digital cameras, and personal digital assistants ("PDAs"). In 2006, the U.S. Fuel Cell Council conducted an industry survey and received comments from 181 respondents. The respondents reported that sales from 2005 to 2006 of all fuel cell and fuel cell-based systems increased by 7 percent to \$353 million, and research and development expenditures and industry employment over the same period increased by 11 and 12 percent to \$796 million and 7,074 employees, respectively. Fuel cell cartridges and systems designed for portable electronic devices are a small part of these reported results. The industry projects fuel cells for portable electronic devices will achieve significant market penetration by 2009.

By authorizing their carriage by airline passengers and crew, the regulatory changes addressed in this rulemaking will lift barriers to the commercialization and distribution of fuel cell cartridges for use in personal electronic equipment. The costs associated with this rulemaking proposal primarily relate to the costs for testing fuel cell designs in accordance with the IEC consensus specification. We expect most fuel cell manufacturers will voluntarily comply with the IEC specification as a positive marketing tool because it addresses broad consumer safety issues and provides independent assurance that fuel cells will meet a rigorous safety standard. Thus, the incremental costs imposed by this final rule are expected to be minimal.

#### *C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 ("Federalism"). The requirements that result from this final rule will preempt State, local, and Indian tribe requirements but will not have 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.

Federal hazardous materials transportation law (49 U.S.C. 5125(b)) expressly preempts State, local, and Indian tribe requirements on certain covered subjects, as follows:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials, and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and
- (5) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and will preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Pursuant to 49 U.S.C. 5125(b)(2), we will deem federal preemption effective upon the effective date of the final rule. We are making the final rule effective on October 1, 2008.

#### *D. Executive Order 13175*

This final rule was analyzed in accordance with the principles and criteria set forth in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because it does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply to this final rule.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to

review regulations to assess their impact on small entities, unless the agency determines the final rule is not expected to have a significant impact on a substantial number of small entities. This final rule will relax regulatory barriers to the transportation of fuel cells used in personal electronic devices and, accordingly, is expected to have a positive impact on small businesses that manufacture, distribute, transport, or use such items. As indicated above, we expect the incremental costs imposed by this final rule to be minimal. Therefore, PHMSA certifies that the amendments prescribed in this final rule will not have a significant impact on a substantial number of small entities.

This final 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 final rules on small entities are properly considered.

#### *F. Paperwork Reduction Act*

Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This final rule does not include new information collection or recordkeeping 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 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 final 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 (NEPA), §§ 4321–4375, requires that federal agencies analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on

Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

We have reviewed the risks associated with transporting fuel cell systems and cartridges. The amount of hazardous material contained within the fuel cells or cartridges to which this final rule applies is minimal, limited to 200 mL or 200 g. Even if a large number of these devices were compromised and their hazardous materials contents released, the environmental impact of the release will not be significant. We have determined there will be no significant environmental impacts associated with this final rule.

**Consultation and Public Comment**

As discussed above, PHMSA consulted with the IEC and many companies representing the fuel cell industry here and abroad to prepare for U.N. Dangerous Goods Council meetings on these devices. PHMSA also participated in the technical review of papers prepared by these companies

explaining the potential risks and measures taken in the IEC specification to reduce risks for each fuel the IEC specification states may be present in a fuel cell. As discussed earlier, PHMSA also has consulted extensively with the U.S. Fuel Council, Medis Technologies, Ltd., and Millenium Cell, Inc., in response to their petitions for rulemaking, P-1475 and P-1483, respectively, to permit passengers and crew to transport in carry-on baggage on board passenger aircraft fuel cells containing flammable liquid, formic acid, butane, and Class 8 borohydride materials for use in portable electronic devices. PHMSA has also received one letter signed by approximately 18 companies and 4 letters from commenters that support amending the HMR to permit fuel cells to be transported in personal electronic devices in carry-on luggage on board passenger-carrying aircraft.

**List of Subjects**

*49 CFR Part 171*

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

*49 CFR Part 173*

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

*49 CFR Part 175*

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended 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; Public Law 101–410 section 4 (28 U.S.C. 2461 Note); Public Law 104–134 section 31001.

■ 2. In § 171.7, amend paragraph (a)(3), in the Table, by adding a new entry for the International Electrotechnical Commission in appropriate alphabetical order to read as follows:

**§ 171.7 Reference material.**

- \* \* \* \* \*
- (a) \* \* \*
- (3) \* \* \*

Source and name of material	49 CFR Reference
* * * * *	
International Electrotechnical Commission (IEC) 3, rue de Varembe, P.O. Box 131, CH—1211, GENEVA 20, Switzerland: Fuel cell technologies—Part 6–1: Micro fuel cell power systems—Safety, IEC/PAS 62282–6–1:2006(E), First Edition 2006–02, with Corrigendum 1, First Edition 2007–04 .....	§ 175.10
* * * * *	

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■ 3. § 171.8, three new definitions for “fuel cell,” “fuel cell cartridge,” and “fuel cell system” are added in alphabetical order to read as follows:

**§ 171.8 Definitions and abbreviations.**

\* \* \* \* \*

*Fuel cell* means an electrochemical device that converts the energy of the chemical reaction between a fuel, such as hydrogen or hydrogen rich gases, alcohols, or hydrocarbons, and an oxidant, such as air or oxygen, to direct current (d.c.) power, heat, and other reaction products.

*Fuel cell cartridge* or *Fuel cartridge* means a removable article that contains and supplies fuel to the micro fuel cell power unit or internal reservoir, not to be refilled by the user.

*Fuel cell system* means a fuel cell with an installed fuel cell cartridge together with wiring, valves, and other attachments that connect the fuel cell or cartridge to the device it powers. The fuel cell or cartridge may be so constructed that it forms an integral part of the device or may be removed and connected manually to the device.

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

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

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

■ 5. In § 173.230, paragraph (a) is revised and new paragraph (d) is added, to read as follows:

**§ 173.230 Fuel cell cartridges containing flammable liquids.**

(a) A fuel cell cartridge must be designed and constructed to prevent the fuel it contains from leaking during normal conditions of transportation and be free of electric charge generating components.

(d) Fuel cells intended for transportation in carry-on baggage on board passenger aircraft must also meet the applicable provisions prescribed in § 175.10 of this subchapter.

**PART 175—CARRIAGE BY AIRCRAFT**

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

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

■ 7. In § 175.10, new paragraph (a)(18) is added to read as follows:

**§ 175.10 Exceptions for passengers, crew members, and air operators.**

(a) \* \* \*

(18) Portable electronic devices (for example, cameras, cellular phones, laptop computers, and camcorders) powered by fuel cell systems, and not more than two spare fuel cell cartridges per passenger or crew member, when transported in carry-on baggage by aircraft under the following conditions:

(i) Fuel cell cartridges may contain only Class 3 flammable liquids (including methanol), Class 8 formic acid, Class 8 borohydride materials, or Division 2.1 butane;

(ii) The maximum quantity of fuel in any fuel cell cartridge may not exceed:

(A) 200 mL (6.76 ounces) for liquids,  
(B) 120 mL (4 fluid ounces) for liquefied gases in non-metallic fuel cell cartridges, or 200 mL for liquefied gases in metal fuel cell cartridges;

(C) 200 g (7 ounces) for solids;

(iii) No more than two spare fuel cell cartridges may be carried by a passenger;

(iv) Fuel cell systems containing fuel and fuel cell cartridges including spare cartridges are permitted in carry-on baggage only;

(v) Fuel cell cartridges may not be refillable by the user. Refueling of fuel cell systems is not permitted except that the installation of a spare cartridge is allowed. Fuel cell cartridges that are used to refill fuel cell systems but that are not designed or intended to remain installed (fuel cell refills) in a portable electronic device are not permitted;

(vi) Fuel cell systems and fuel cell cartridges must conform to IEC/PAS 62282–6–1 (IBR; see § 171.7 of this subchapter);

(vii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–1. Fuel cell systems for which the sole function is to charge a battery in the device are not permitted;

(viii) Fuel cell systems must be of a type that will not charge batteries when the portable electronic device is not in use; and

(ix) Each fuel cell cartridge and system that conforms to the requirements in this paragraph (a)(18) must be durably marked by the manufacturer with the wording:

“APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY” to certify that the fuel cell cartridge or system meets the specifications in IEC/PAS 62282–6–1 and all other applicable requirements of this subchapter.

\* \* \* \* \*

Issued in Washington, DC, on April 22, 2008, under the authority delegated in 49 CFR part 1.

**Carl T. Johnson,**

*Administrator.*

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 565**

[Docket No. NHTSA 2008–0022]

**RIN 2127–AJ99**

**Vehicle Identification Number Requirements**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document amends 49 CFR Part 565, Vehicle Identification Number Requirements, to make certain changes in the 17-character vehicle identification number (VIN) system so that the system will remain viable for at least another 30 years. This rule was initiated by a petition from SAE International (formerly known as the Society of Automotive Engineers), which was concerned that the available supply of VINs, and particularly the manufacturer identifier part of the VIN, might run out. This final rule will ensure that there will be a sufficient number of unique manufacturer identifiers and VINs to use for at least another 30 years.

**DATES:** *Effective Date:* October 27, 2008.

*Compliance Dates:* Amendments made in this rule apply to motor vehicles manufactured on or after October 27, 2008 whose VINs have a letter “A” or “B” in the 10th position of the VIN, and to all motor vehicles manufactured on or after April 30, 2009.

*Petitions for Reconsideration:* Petitions for reconsideration of this rule must be received by June 16, 2008.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and notice number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section IV, Rulemaking Analyses and Notices) for DOT’s Privacy Act Statement regarding documents submitted to the agency’s dockets.

**FOR FURTHER INFORMATION CONTACT:** *For non-legal issues,* you may contact Mr. Kenneth O. Hardie, Office of Crash Avoidance Standards (NVS–120), NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–6987) (FAX: 202–366–7002).

*For legal issues,* you may contact Ms. Rebecca Schade, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–2992) (FAX: 202–366–3820).

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**I. Executive Summary**

In response to a petition for rulemaking, the National Highway Traffic Safety Administration (NHTSA) is amending 49 CFR Part 565, Vehicle Identification Number Requirements (Part 565), so that the supply of manufacturer identifiers and vehicle identification numbers available under this regulation will be sufficient for at least the next 30 years.

To accomplish this, NHTSA is revising the requirements for where certain information must be communicated in a vehicle identification number (VIN) as well as the characters that may be used in some of the 17 positions of the VIN for passenger cars and multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 4536 kg (10,000 lb) or less. These changes will have two primary effects. First, the need to issue new manufacturer identifiers, particularly for large manufacturers, should be drastically reduced, thus preserving for a longer period of time the remaining combinations of characters that are available to be issued. Second, the changes will substantially increase the number of combinations of characters available in positions 4 through 8 of the VIN, as well as combinations of those characters with characters in the other VIN positions, so