into two sections. The select agents and toxins listed in § 73.3 (HHS select agents and toxins) are those regulated only by HHS under the authority of the Bioterrorism Act. The select agents and toxins listed in § 73.4 (Overlap select agents and toxins) are those regulated by HHS under the authority of the Bioterrorism Act and regulated by Secretary of Agriculture (USDA) under the authority of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

To fulfill this statutory mandate, CDC's Division of Select Agents and Toxins (DSAT) has initiated its biennial review process which will include consultation with subject matter experts including the Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government employees from the CDC, the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the USDA/Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), USDA/Center for Veterinary Biologics (CVB), the Department of Homeland Security (DHS), and the Department of Defense (DOD).

The purpose of this advanced notice of proposed rulemaking is to seek public comment on (1) the appropriateness of the current HHS list of select agents and toxins, (2) whether there are other agents or toxins that should be added to the HHS list, (3) whether agents or toxins currently on the HHS list should be deleted from the list, (4) whether the HHS select agent list should be tiered based on the relative bioterrorism risk of each agent or toxin, and (5) whether the security requirements for agents in the highest tier should be further stratified based on type of use or other factors.

A recent report by the National Research Council recommended that the select agent list should be ordered based on the potential of an agent to be used as a biothreat, and a graded series of security procedures should be applied so that the greatest resources and scrutiny go to securing agents that pose a maximum risk (*http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12774*). As noted above, we are also seeking public comment on whether the HHS list should be tiered based on the relative bioterrorism risk of each agent or toxin and whether the security requirements for agents in the highest tier should be further stratified based on type of use or other factors. If a commenter believes that the HHS list should be tiered and/or stratified, we would also be interested in what criteria should be used to designate higher-risk agents, and what, if any, changes we should make in security requirements for what would be determined to be higher-risk agents.

If implemented, tiering of the HHS select agent list could allow for the application of more stringent security measures for those select agents or toxins which pose a higher risk to public health and safety if stolen or misused. If implemented, stratification of the HHS select agent list could allow for varying levels of security requirements for entities that possess the highest tier agents, based on use of the agent or other factors. If a commenter believes that tiering and/or stratification of the HHS select agent list is advisable, we would be interested in comments as to what criteria should be used to designate which agents and toxins pose a higher bioterrorism risk and what criteria should be used for stratifying the highest risk agents. For example, the tiering and/or stratification of the HHS select agent list might consider the relative ease with which a particular agent or toxin might be disseminated or transmitted between humans or throughout the environment; the potential for high mortality rates; the potential for a major public health impact; whether misuse of an agent or toxin might result in public panic or other social or economic disruption; and whether the agent or toxin requires Federal, State and local officials to take special action in planning for major public health disasters (quarantine needs, eradicated agent or toxin). Additionally, we would also be interested in what corresponding changes should be made to the security requirements found in 42 CFR 73.11 to increase protection for higher tier agents or toxins; whether those security requirements should be stratified based on the use of the agent or other factors; and whether such changes should be prescriptive (the imposition of specific restraints, restrictions, or requirements) or risk-based (security requirement based on a security risk assessment), or a combination of prescriptive and risk-based.

Following the conclusion of CDC review, we will publish another notice in the **Federal Register** either proposing that the select agent and toxin list remain the same, or that specific biological agents or toxins be added to or deleted from the list. If appropriate, we will also propose any changes to the Select Agent regulations (42 CFR Part 73) to implement a tiering and/or stratification schema along with any corresponding amendments to the current security requirements in the Select Agent regulations that might be required for higher-risk agents and toxins.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 42 U.S.C. 262a.

Dated: January 8, 2010.

Kathleen Sebelius,

Secretary.

Editorial Note: This document was received in the Office of the Federal Register on July 15, 2010.

[FR Doc. 2010–17728 Filed 7–20–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA–2010–0017 (HM–245)]

RIN 2137–AE56

Hazardous Materials: Incorporation of Certain Cargo Tank Special Permits Into Regulations

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is proposing to amend the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding cargo tank special permits that are granted to multiple parties and have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in the special permits and eliminate the need for numerous renewal requests, thereby, facilitating commerce activity and reducing paperwork burdens while maintaining an appropriate level of safety.

DATES: Comments must be received by August 20, 2010. A 30 day comment period is appropriate for this rulemaking because it proposes to incorporate long-standing, widely used special permits into the HMR. These

special permits have well-established safety records. Incorporation of these special permits would reduce the compliance burden and cost on both industry and government by removing the need to apply for special permits.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2010–0017 (HM–245)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**).

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 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Joan McIntyre or Matthew Nickels, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), or John Van Steenburg, Office of Enforcement and Compliance, (202) 366–5125, Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements (variances) to the requirements in the HMR by means that achieve a safety level that at the least corresponds to the safety level required under the regulations and that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which provides the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness.

A special permit must achieve at least an equivalent level of safety to that specified in the HMR. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers. PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for adoption into regulations for broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether a specific special permit is a candidate for regulatory action include: the safety record for hazardous materials transported; transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Although PHMSA does not issue a special permit to an industry association, PHMSA may issue a special permit to members of an industry association when many of its members have a common interest in obtaining authority to perform a specific transportation activity, there is no large business entity to take the lead in seeking such authority, and the association has the resources to gather the necessary information and perform any necessary research. Special permits issued to the members of associations are potentially among the most suitable types of special permit for later adoption into the HMR. Such special permits have broad applicability; moreover, many of them have been in effect for a number of years and have demonstrated safety records.

The six special permits addressed in this notice of proposed rulemaking (NPRM), which authorize cargo tank transportation operations not specifically permitted under the HMR, were initially issued to members of industry associations or similar organizations. They have well-established safety records and, thus, are candidates for incorporation into the HMR. Incorporating these special permits into the HMR would eliminate the need for over 10,000 current grantees to reapply for the renewal of six special permits every four years and for PHMSA to process the renewal applications.

Incorporation of these special permits into the HMR also eliminates a significant paperwork burden. Unless otherwise excepted by this agency, a copy of each special permit must be maintained at each facility where a packaging is manufactured under a special permit, at each facility where a package is offered or re-offered for transportation under a special permit carried on board each cargo vessel or aircraft, and in some cases must be carried aboard each transport vehicle used to transport a hazardous material under a special permit.

II. Overview of Proposed Amendments

In this NPRM, PHMSA is proposing to revise the HMR by providing:

- Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes.
- Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT Specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks, used exclusively for agricultural purposes.
- Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks.
- Authorization for private motor carriers to transport LPG in consumer storage containers with quantities greater than 5 percent of the container's water capacity.
- Authorization to transport nurse tanks securely mounted on field trucks.
- Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions.

III. Summary Review of Amendments

A. Moveable Fuel Storage Tenders

Special permit SP 11209 authorizes the transportation of LPG in non-DOT specification cargo tank motor vehicles, commonly known as moveable fuel storage tenders, used exclusively for agricultural purposes. Moveable fuel storage tenders are used to supply LPG fuel to farmers for crop drying, crop irrigation, flame weeding, plant defoliation prior to harvest, and other agricultural operations.

The special permit has been in effect since 1994 and has been utilized by upwards of 3,400 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit over, at least, the past ten years. Each vehicle operated under this special permit conforms to the ASME Code in effect at the time of its manufacture. The design and use of these vehicles is included in the provisions of the National Fire Protection Association pamphlet no. 58, *Storage and Handling of Liquefied Petroleum Gases.*

PHMSA proposes to incorporate the terms of special permit SP 11209 into the HMR by amending § 173.5 to authorize the transportation of LPG in moveable fuel storage tenders used exclusively for agricultural purposes and operated by a private motor carrier. (A "private motor carrier," as defined in interpretation letters issued by PHMSA, is a carrier who transports the business's own products and does not provide such transportation service to other businesses). As proposed, a non-DOT specification cargo tank motor vehicle used as a moveable fuel storage tender must: (1) Have a minimum design pressure of 250 psig; (2) conform to the requirements of the ASME Code in effect at the time the cargo tank was manufactured and marked accordingly; (3) have a water capacity of 1,200 gallons or less; (4) conform to applicable requirements in National Fire Protection Association (NFPA) Pamphlet No. 58; and (5) be mounted securely on a motor vehicle. In addition, the cargo tank must be filled as prescribed in § 173.315(b). When filled, transportation of a moveable fuel storage tender would be limited to movements over local roads between fields using the shortest practical distance. In addition, transportation of a moveable storage fuel tender to an LPG distribution facility for re-filling would be permitted only if it contains no more than 5 percent of its water capacity.

B. Liquid Soil Pesticide Fumigants

Special permit SP 13113 authorizes the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used exclusively for agricultural purposes. Transportation of these materials is limited to private motor carriage and must be between a bulk loading facility and farms (including between farms) not exceeding 150 miles from one another. Liquid soil pesticide fumigants are used by farmers as an alternative to the agricultural use of methyl bromide to ensure the adequate protection of crops from pesticide infestation, and consequently, to preserve agricultural productivity.

This special permit has been in effect since 2002 and has been utilized by hundreds of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 2002, when this material was classed as Dichloropropenes, 6.1, UN2047, PG III, it was routinely shipped, according to 49 CFR 173.242 in MC 306 and DOT 406 cargo tanks and DOT 57 portable tanks. The same tanks have been widely used to transport gasoline, a low flashpoint PGII liquid. The pressure relief systems and bottom discharge equipment on the cargo tanks offer equivalent safety in terms of containment and operation of pressure relief systems. Also, stainless steel DOT 57 portable tanks provide comparable containment to metal, rigid plastic, and composite Intermediate Bulk Containers (IBCs), which are authorized for transport of Division 6.1 liquid soil pesticide fumigants under § 173.202.

PHMSA proposes to incorporate the terms of special permit SP 13113 into the HMR by also amending § 173.5 to authorize the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks by a private motor carrier, exclusively for agricultural purposes. As proposed, MC 306 and DOT 406 cargo tank motor vehicles used for the transportation of these fumigants must: (1) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180; and (2) conform to the pressure relief system requirements specified in § 173.243(b)(1). In addition, MC 306 cargo tank motor vehicles must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and DOT 406 cargo tanks must conform to the bottom outlet requirements specified in § 173.243(b)(2). Also as proposed, DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be constructed of stainless steel. Finally, MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be used exclusively for agricultural purposes, operated by a private motor carrier; and limited to transport between a bulk loading facility and farms (including between farms) not to exceed 150 miles from one another.

C. Non-DOT Specification Cargo Tanks Used for Roadway Striping

Special permit SP 12284 authorizes the transportation in commerce of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks. These non-DOT specification cargo tanks are used for the low hazard job of applying roadway striping to paved roads throughout the United States.

The special permit has been in effect since 1999 and has been utilized by over 100 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Based on the safety record, PHMSA is proposing to incorporate the provisions of special permit SP 12284 into the HMR by adding a new paragraph (c) to § 173.5a to authorize the transportation of certain hazardous

materials used for roadway striping to be transported in non-DOT specification cargo tanks provided the conditions specified in the new paragraph are met. The new paragraph (c) would specify conditions that include packaging specifications, inspection and testing requirements, requirements for maintaining records, and operational controls. Consistent with the special permit, paragraph (c) also would include marking requirements in addition to applicable marking and placarding requirements in subparts D and F. The section title heading would also be revised to reflect the addition of non-DOT specification cargo tanks used for roadway striping into this section. Finally, § 173.242(b) would be revised to include the authorization to use non-DOT specification cargo tanks used for roadway striping.

D. LPG Storage Containers

Currently, in accordance with § 173.315(j)(4), LPG may not be transported in consumer storage containers that contain greater than 5 percent of the container's water capacity. Special permit SP 13341 authorizes the transportation by private motor carrier of LPG in consumer storage containers in quantities greater than 5 percent of the container's water capacity. The storage containers are designed for permanent installation on consumer premises. The special permit authorizes the transportation of a storage container from the consumer location to the container owner's nearest LPG plant.

The special permit has been in effect since 2004 and has been utilized by several thousand grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 1998, consumer storage containers containing greater than 5 percent water capacity were routinely transported without any known incidents. The prohibition of transporting containers with more than 5 percent water capacity resulted from concern of the potential for confusion between ASME and DOT tanks, as ASME tanks are not designed to be lifted by the lugs with product inside. This proposal requires lifting with slings, not by the lugs. Also, transporting a tank with some product is sometimes preferable from a safety standpoint than removing LPG from a tank at a residence.

PHMSA proposes to incorporate the terms of special permit SP 13341 into the HMR by revising § 173.315(j) to authorize the transportation of LPG in consumer storage containers containing greater than 5 percent of the container's water capacity. As proposed, the storage container must have a water capacity not exceeding 500 gallons and be ASME "U" stamped to indicate that it was designed and constructed in accordance with ASME Code requirements. In addition, the container must be inspected for leaks, corroded or abraded areas, dents, weld distortions, or any other conditions that could make the container unsafe for transportation. PHMSA also proposes to require that: (1) Only one storage container may be transported at one time on a motor vehicle; (2) the storage container must be lifted by slings, not lifting lugs; and (3) the storage container must be loaded and secured on the motor vehicle so that the container is well-secured against movement and completely within the envelope of the vehicle. Finally, PHMSA proposes to limit transportation to one-way movement from the consumer's premises to the container owner's nearest facility.

E. Nurse Tanks

Nurse tanks are non-DOT specification cargo tanks used to transport and apply anhydrous ammonia fertilizers. The HMR authorize the use of nurse tanks operated by private motor carriers exclusively for agricultural purposes provided that the nurse tank: (1) Has a minimum design pressure of 250 psig and meets the requirements of Section VIII of the ASME code in effect at the time the nurse tank was manufactured; (2) is equipped with pressure relief valves; (3) has a capacity of 3,000 gallons or less; (4) is loaded to a filling density no greater than 56 percent; and (5) is securely mounted on a farm wagon. Because they are non-DOT specification containers, currently nurse tanks are not subject to periodic inspection, testing, or requalification requirements.

Nurse tanks mounted on field trucks. Special permit SP 10950 authorizes the use of a nurse tank securely mounted on a field truck. Field trucks are specifically designed and equipped to improve safety and efficiency by being more maneuverable and more stable than a farm wagon when moving over hilly terrain. These trucks are operated in remote rural areas in eastern Washington, Oregon, and northern Idaho within a short distance of the fertilizer distribution point. The special permit has been in effect since 1993 and has been utilized by over a hundred grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Tanks operated under this special permit are subject to the periodic testing requirements under Subpart E of Part 180.

Based on the safety record, PHMSA is proposing to incorporate the provisions of SP 10950 into the HMR by adding a new paragraph (m)(2) to § 173.315. As proposed, nurse tanks mounted on field trucks would be required to be inspected and tested in accordance with Subpart E of Part 180 as specified for MC 331 cargo tanks. Operations would be restricted to rural roads within 50 miles of the distribution site where the nurse tank is loaded.

Nurse tanks with missing or illegible ASME plates. As indicated above, nurse tanks must be manufactured in accordance with the applicable ASME Code requirements in effect at the time of manufacture. The ASME Code requires tanks built to its specifications to have an attached plate that lists the manufacturer, maximum allowable working pressure, minimum design metal temperature, and the year of manufacture. A number of nurse tanks are missing the required ASME plates or have illegible ASME plates. Special permit SP 13554 permits the continued use in anhydrous ammonia service of nurse tanks with missing or illegible ASME plates provided the tanks are inspected and tested. Specifically, the tanks must undergo an external visual inspection and testing using the procedures specified in § 180.407(d), thickness tested using the procedures specified in § 180.407(i), and pressure tested using the procedures specified in § 180.407(g). The special permit also establishes minimum head and shell thickness, below which the nurse tank must be removed from service.

The special permit has been in effect since 2004 and has been utilized by thousands of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Although 49 CFR 173.315(m) requires that a nurse tank "meet the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured and is marked accordingly," if the plate is missing or illegible the nurse tank can not be used. Therefore, these additional requirements that nurse tanks operating under the special permit must follow (*i.e.* the thickness testing, the pressure testing, and the external visual inspection), safely provides for the continued use of these tanks.

In this NPRM, PHMSA is proposing to incorporate the terms of special permit SP 13554 into the HMR by adding a new paragraph (m)(3) in § 173.315. As proposed, existing nurse tanks with

missing or illegible ASME plates that successfully pass the required inspections and tests and are marked with a unique identifier would be authorized to remain in service.

Finally, in § 171.7, we are proposing to revise the entries, American Society of Mechanical Engineers (ASME), National Board of Boiler and Pressure Vessel Inspectors (NBIC) and the National Fire Protection Association (NFPA) to reflect the addition of the incorporated by reference materials to the applicable newly proposed regulatory text.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations incorporating provisions from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and 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 Department of Transportation [44 FR 11034].

In this notice, PHMSA proposes to amend the HMR by incorporating alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the proposals in this NPRM will reduce the paperwork burden on industry and this agency caused by continued renewals of special permits. The provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

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 governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, 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:

(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; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials.

This proposed rule addresses covered subject items 2, 3, and 5 and would preempt any State, local, or Indian Tribe requirements not meeting the "substantively the same" standard. 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. The 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 was 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 and does not impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

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 incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, I certify this rule will 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 new information collection requirements. PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements," currently being reviewed for renewal by OMB. This NPRM may result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to

proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the information collection and recordkeeping burden as proposed in this rule would be decreased as follows:

OMB Control No. 2137–0051

Decrease in Annual Number of Respondents: 185.

Decrease in Annual Responses: 185.

Decrease in Annual Burden Hours: 185.

Decrease in Annual Burden Costs: $7,400.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395–6974.

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 may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 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 that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene. In this NPRM, we are requesting comments on the potential environmental impacts of the proposals.

In this NPRM, PHMSA proposes to incorporate the terms of six special permits into the HMR. Several of the proposals in this NPRM involve the transportation of LPG. LPG is a Division 2.1 (flammable gas) material that poses an explosive, fire, blast, or projection hazard. If released, LPG may cause eye or skin irritation and, if inhaled, it may irritate the respiratory tract. Moderate exposure may cause headache or dizziness. Elevated exposure may cause unconsciousness or respiratory arrest. Further, by diluting the oxygen concentration in air below the level necessary to support life, LPG can act as an asphyxiant. LPG is not known to cause long-term ecological damage. The proposals in this NPRM are intended to ensure that LPG will be transported in a variety of applications with no release from its packaging and, thus, no adverse safety or environmental impacts.

One of the proposals in this NPRM involves Division 6.1 liquid soil pesticide fumigants. Soil fumigation is a chemical control strategy used independently or in conjunction with cultural and physical control methods to reduce populations of soil organisms. Soil fumigants can effectively control soil-borne organisms, such as nematodes, fungi, bacteria, insects, weed seeds, and weeds. Different fumigants have varying effects on the control of these pests. Some are pest specific, while others are broad spectrum biocides that kill most soil organisms. Soil fumigants are used in agriculture, nurseries, ornamental beddings, forest systems, and other areas where soil-borne pests can harm or devastate desirable plants. Because of treatment costs, applicators use soil fumigants primarily on high value

crops, such as vegetables, fruits, and ornamentals. Control of soil-borne pests increases plant aesthetics, plant quality and vigor, crop yields, and ultimately profitability. Soil fumigants are closely regulated by the Environmental Protection Agency to prevent adverse health impacts to agricultural workers or bystanders (people who live, work, or otherwise spend time near fields that are fumigated). The proposals in this NPRM will help to ensure that liquid soil pesticide fumigants are transported without incident on or between farms and the bulk loading facility.

Several proposals in this NPRM address the transportation of anhydrous ammonia. Anhydrous ammonia is a poisonous by inhalation (PIH) material. When anhydrous ammonia is released into water, it floats on the surface, rapidly dissolving into the water as ammonium hydroxide while simultaneously boiling into the atmosphere as gaseous ammonia. High concentrations of ammonia (greater than 1700 parts per million (ppm)) in the atmosphere cause compulsive coughing and death, while lower concentrations (lower than 700 ppm) cause eye and throat irritation. Ammonia is lighter than air so that it dissipates in the atmosphere, the rate of dissipation depending on weather.

In an aquatic or wetland environment, ammonium hydroxide would cause fish, planktonic, and benthic organism mortality in the vicinity of the release—the size depending on the volume of anhydrous ammonia released. The chemical would also strip protective oils from the feathers of shore birds, causing drowning or infection. Such die-offs could spur high nutrient levels that could stimulate noxious blooms of algae. Terrestrial vegetation would also be either damaged or killed, depending on atmospheric concentrations.

The cleanup effort from a release of anhydrous ammonia would require the removal of soil containing anhydrous ammonia quickly to avoid contamination of the water table. Ammonia emissions would be released during the cleanup effort as contaminated soil is disturbed.

The proposals in this NPRM will require certain nurse tanks used to transport anhydrous ammonia to, from, and between farm fields to be inspected and tested periodically to identify problems that would result in a leak or release.

There are no significant environmental impacts associated with the proposals in this NPRM, although PHMSA solicits comments on the potential environmental impacts of the proposals in this NPRM. The process through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of special permits as regulations of generally applicability maintains the existing environmental protections built into the HMR. In addition, the proposals applicable to nurse tanks will enhance the integrity of those tanks, thereby reducing the possibility of an anhydrous ammonia release.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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 (Volume 65, Number 70, pages 19477–78), or at *http://www.regulations.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 173

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

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.

§ 171.7 [Amended]

2. In § 171.7, in the paragraph (a)(3) table, in the second column, "49 CFR reference," the following changes are made:

a. Under the entry, *American Society of Mechanical Engineers,* the entry "'ASME Code'; ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code" is amended by adding sections "173.5" and "173.5a" in appropriate numerical order;

b. Under the entry, *National Board of Boiler and Pressure Vessel Inspectors,* the entry "National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, NB–23, 1992 Edition" is amended by adding section "173.315" in appropriate alphabetical order; and

c. Under the entry, *National Fire Protection Association,* the entry "NFPA 58—Liquefied Petroleum Gas Code, 2001 Edition" is amended by adding the sections "173.5" and "173.315" in appropriate alphabetical order.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. 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.

4. In § 173.5, redesignate paragraphs (d), (e), and (f) as paragraphs (f), (g) and (h), respectively, and add new paragraphs (d) and (e) to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(d) *Moveable fuel storage tenders.* A non-DOT specification cargo tank motor vehicle may be used to transport Liquefied petroleum gas, UN1075, including Propane, UN1978, as moveable fuel storage tender used exclusively for agricultural purposes when operated by a private carrier under the following conditions:

(1) The cargo tank must have a minimum design pressure of 250 psig.

(2) The cargo tank must meet the requirements of the ASME Code in effect at the time of its manufacture and must be marked accordingly.

(3) The cargo tank must have a water capacity of 1,200 gallons or less.

(4) The cargo tank must conform to applicable requirements in National Fire Protection Association (NFPA) Pamphlet No. 58 (IBR, *see* § 171.7 of this subchapter).

(5) The cargo tank must be securely mounted on a motor vehicle.

(6) The cargo tank must be filled in accordance with § 173.315(b) for liquefied petroleum gas.

(7) The cargo tank must be painted white, aluminum, or other light reflecting color.

(8) Transportation of the filled moveable fuel storage tender is limited to movements over local roads between fields using the shortest practical distance.

(9) Transportation of the moveable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized only if the cargo tank contains no more than 5 percent of its water capacity.

(e) *Liquid soil pesticide fumigants.* MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks may be used to transport liquid soil pesticide fumigants, Pesticides, liquid, toxic, flammable, n.o.s., flash point not less than 23 degrees C, 6.1, UN2903, PG II, exclusively for agricultural operations by a private motor carrier between a bulk loading facility and a farm (including between farms). However, transportation is not to exceed 150 miles between the loading facility and the farm, and not more than five days are permitted for intermediate stops for temporary storage. Additionally, transport is permitted only under the following conditions:

(1) *Cargo tanks.* MC 306 and DOT 406 cargo tank motor vehicles must:

(i) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180 of this subchapter;

(ii) Conform to the pressure relief system requirements specified in § 173.243(b)(1);

(iii) MC 306 cargo tanks must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and

(iv) For DOT 406 cargo tanks, must conform to the bottom outlet requirements specified in § 173.243(b)(2).

(2) *Portable tanks.* DOT 57 portable tanks must—

(i) Be constructed of stainless steel; and

(ii) Meet qualification and maintenance requirements of Subpart G of Part 180 of this subchapter.

* * * * *

5. In § 173.5a, revise the section heading and add new paragraph (c) to read as follows:

§ 173.5a Oilfield service vehicles, mechanical displacement meter provers, and roadway striping vehicles exceptions.

* * * * *

(c) *Roadway striping.* In addition to conformance with all other applicable requirements of this subchapter, non-DOT specification cargo tanks used for roadway striping are authorized provided all the following conditions in this paragraph (c) are met.

(1) *Authorized materials.* Only the hazardous materials listed in the table below may be transported in roadway striping vehicles. The cargo tank may not be filled to be liquid full at less than or equal to 130° F.

HAZARDOUS MATERIALS DESCRIPTION

Proper shipping name	Hazard class/ division	Identification number	Packing group
Adhesives, containing a flammable liquid	3	UN1133	II
Paint including paint, lacquer, enamel, stain, shellac solution, varnish, polish, liquid filler, and liquid lacquer base.	3	UN1263	II
Paint related material including paint thinning drying, removing, or reducing compound	3	UN1263	II
Flammable liquids, n.o.s.[a]	3	UN1993	II
Gasoline	3	UN1203	II
Acetone[b]	3	UN1090	II
Dichloromethane[b]	6.1	UN1593	III
Ethyl methyl ketone or Methyl ethyl ketone[b]	3	UN1193	II
Ethyl acetate[b]	3	UN1173	II
Methanol[b]	3	UN1230	II
Organic peroxide type E, liquid (Dibenzoyl peroxide)[c]	5.2	UN3107	II
Petroleum distillates, n.o.s. or Petroleum products, n.o.s.[b]	3	UN1268	III
1,1,1-Trichloroethane[b]	6.1	UN2831	III
Toluene[b]	3	UN1294	II
Xylenes[b]	3	UN1307	II, III
Environmentally hazardous substance, liquid, n.o.s.[c]	9	UN3082	III
Corrosive liquid, basic, organic, n.o.s.[c]	8	UN3267	III
Corrosive liquids, n.o.s.[c]	8	UN1760	III
Elevated temperature liquid, n.o.s., at or above 100 C and below its flash point (including molten metals, molten salts, etc.).[d]	9	UN3257	III

[a] Adhesive containing ethyl acetate.
[b] Solvent.
[c] Catalyst.
[d] Thermoplastic material non-hazardous at room temperature.

(2) *Cargo tank requirements.* Each non-DOT specification cargo tank used for roadway striping must be securely bolted to a motor vehicle and must—

(i) Be constructed and certified in conformance with the ASME Code in effect at the time of its manufacture;

(ii) Have a minimum design pressure of 100 psig;

(iii) Have a maximum capacity of 500 gallons;

(iv) For solvents and organic peroxides, the cargo tank may not contain more than 50 gallons;

(v) Be given an external visual inspection prior to each use to ensure that it has not been damaged on the previous trip;

(vi) Be retested and reinspected in accordance with § 180.407(c) of this subchapter as specified for an MC 331 cargo tank motor vehicle; and

(vii) Be securely mounted to a motor vehicle in accordance with the securement provisions prescribed in §§ 393.100 through 393.106 of this title.

(3) *Test records.* The owner or operator of the roadway striping vehicle must maintain hydrostatic test records in accordance with § 180.417(b) and must make those records available to any representative of the Department of Transportation upon request.

(4) *Marking.* A non-DOT specification cargo tank used for roadway striping must be plainly marked on both sides near the middle in letters at least two

inches in height on a contrasting background "ROADWAY STRIPING".

(5) *Operational controls.* A non-DOT specification cargo tank used for roadway striping may not be pressurized when the motor vehicle is traveling to and from job sites. Additionally, the distance traveled by a non-DOT specification cargo tank used for roadway striping may not exceed 750 miles.

* * * * *

6. In § 173.242, revise paragraph (b) introductory text to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(b) *Cargo tanks:* Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles; and non-DOT specification cargo tank motor vehicles when in compliance with § 173.5a(c). Cargo tanks used to transport Class 3, Packing Group I or II, or Packing Group III with a flash point of less than 38 °C (100 °F); Class 6, Packing Group I or II; and Class 8, Packing Group I or II materials must conform to the following special requirements:

* * * * *

7. In § 173.315, revise paragraphs (j) and (m) to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) *Consumer storage containers.* (1) Storage containers for liquefied petroleum gas or propane charged to 5 percent of their capacity or less and intended for permanent installation on consumer premises may be shipped by private motor carrier under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code (IBR, *see* § 171.7 of this subchapter) and must be marked to indicate compliance in the manner specified by the respective Code. Containers built in compliance with earlier editions starting with 1943 are authorized.

(ii) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58 (IBR, *see* § 171.7 of this subchapter).

(iii) The containers must be braced or otherwise secured on the vehicle to prevent relative motion while in transit. Valves or other fittings must be adequately protected against damage during transportation. (*See* § 177.834(a) of this subchapter).

(2) Storage containers with a water capacity not exceeding 500 gallons charged with liquefied petroleum gas to more than 5 percent of their capacity and intended for permanent installation on consumer premises may be transported by private motor carrier one-way only from the consumer's premises to the container owner's nearest facility under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code and must be marked to indicate compliance in the manner specified by the respective Code.

(ii) Maximum permitted filling density may not exceed that specified in paragraph (b) of this section.

(iii) Prior to loading on a motor vehicle, the container must be inspected by a trained and qualified person for leaks, corroded or abraded areas, dents, distortions, weld defects, or other condition that may render the container unsafe for transportation. A record of the inspection must be legibly signed and dated by the person performing the inspection and retained by the container owner for two years. The record of inspection must include the date of inspection, inspector's contact information, such as a telephone number, the container's serial number and container size (water capacity), estimated amount of hazardous material, and the origin and destination of shipment.

(iv) Only one storage container may be transported on a motor vehicle.

(v) For loading on a motor vehicle, the container must be lifted by slings. Lifting lugs may not be used. The slings must be rated to a weight sufficient to accommodate the container and its lading and shall comply with ASME B30.9 on slings used for lifting purposes, and must be visually inspected prior to each use. A sling showing evidence of tears, fraying, or other signs of excessive wear may not be used.

(vi) The storage container must be secured on a motor vehicle so that the container is completely within the envelope of the vehicle and does not extend beyond the vehicle frame.

(vii) The storage container must be placed on the vehicle in a manner, such as in a cradle, which ensures that no weight is placed on the supporting legs during transportation.

(viii) The storage container must be secured against movement during transportation. Bracing must conform with the requirements of paragraph (j)(1)(iii) of this section and § 177.834(a) of this subchapter and with Section 6–5.2 of the NFPA Pamphlet No. 58. Straps or chains used as tie-downs must be rated to exceed the maximum load to be transported and conform to the requirements in §§ 393.100 through 393.106 of this title.

(ix) Tow trailers used to transport storage containers in accordance with this paragraph (j)(2) must provide rear end protection that conforms to requirements in § 393.86 of this title.

(3) Storage containers of less than 1,042 pounds water capacity (125 gallons) may be shipped when charged with liquefied petroleum gas in compliance with DOT filling density.

* * * * *

(m) *General.* (1) A cargo tank that is commonly known as a nurse tank and considered an implement of husbandry transporting anhydrous ammonia and operated by a private motor carrier exclusively for agricultural purposes is excepted from the specification requirements of Part 178 of this subchapter if it:

(i) Has a minimum design pressure of 250 psig, meets the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured, and is marked with a valid ASME plate.

(ii) Is equipped with pressure relief valves meeting the requirements of CGA Standard S–1.2 (IBR, *see* § 171.7 of this subchapter);

(iii) Is painted white or aluminum;

(iv) Has capacity of 3,000 gallons or less;

(v) Is loaded to a filling density no greater than 56 percent;

(vi) Is securely mounted on a farm wagon or meets paragraph (m)(3) of this section; and

(vii) Is in conformance with the requirements of Part 172 of this subchapter except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

(2) *Nurse tanks with missing or illegible ASME plates.* Nurse tanks with missing or illegible ASME plates may continue to be operated provided they conform to the following requirements:

(i) Each nurse tank must undergo an external visual inspection and testing in accordance with § 180.407(d) of this subchapter.

(ii) Each nurse tank must be thickness tested in accordance with § 180.407(i) of this subchapter. A nurse tank with a capacity of less than 1,500 gallons must

have a minimum head thickness of 0.203 inch and a minimum shell thickness of 0.239 inch. A nurse tank with a capacity of 1,500 gallons or more must have a minimum thickness of 0.250 inch. Any nurse tank with a thickness test reading of less than that specified in this paragraph at any point must be removed from hazardous materials service.

(iii) Each nurse tank must be pressure tested in accordance with § 180.407(g) of this subchapter. The minimum test pressure is 375 psig. Pneumatic testing is not authorized.

(iv) Each nurse tank must be inspected and tested by a person meeting the requirements of § 180.409(d) of this subchapter. Furthermore, each nurse tank must have the tests performed at least once every five years after the completion of the initial tests.

(v) After each nurse tank has successfully passed the visual, thickness, and pressure tests, welded repairs on the tank are prohibited.

(vi) After the nurse tank has successfully passed the visual, thickness, and pressure tests, it must be marked in accordance with § 180.415(b), and permanently marked near the test and inspection markings with a unique owner's identification number in letters and numbers at least ½ inch in height and width.

(vii) Each nurse tank owner must maintain a copy of the test inspection report prepared by the inspector. The test report must contain the results of the test and meet the requirements in § 180.417(b) and be made available to a DOT representative upon request.

(3) *Field truck mounted tanks.* A non-DOT specification cargo tank (nurse tank) securely mounted on a field truck is authorized under the following conditions:

(i) Is in conformance with all the requirements of paragraph (m)(1) of this section, except that the requirement in paragraph (m)(1)(vi) does not apply;

(ii) Is inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for an MC 331 cargo tank; and

(iii) Is restricted to rural roads in areas within 50 miles of the fertilizer distribution point where the nurse tank is loaded.

* * * * *

Issued in Washington, DC on July 14, 2010, under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

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