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Federal Communications Commission.

Ruth Milkman,

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 172, 173, 175, and 178

[Docket No. PHMSA-2011-0158 (HM-233C)]

RIN 2137-AE82

Hazardous Materials: Incorporation of Certain Special Permits and Competent Authorities 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 special permits and certain competent authority approvals ("approvals") that have established safety records. 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. An approval is a written consent (document) required under an international standard (i.e., International Maritime Dangerous Goods (IMDG) Code, International Civil Aviation Organization (ICAO)), or is specifically provided for in the HMR, and is issued by the Associate Administrator for Hazardous Materials Safety. These proposed revisions are intended to provide wider access to the regulatory flexibility offered in special permits and approvals and eliminate the need for numerous renewal requests, reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Additionally, this rulemaking will address three petitions for rulemaking regarding the continued use of renewal applications for long standing special permits.

DATES: Written comments should be submitted on or before December 21, 2012.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA-2011-0158; HM-233C) 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: Steven Andrews, Office of Hazardous Materials Safety, Standards and Rulemaking Division, (202) 366-8553, or, Diane LaValle, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366-4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

- I. Executive Summary
- II. Background
- III. Overview of Proposed Amendments
- IV. Summary Review of Amendments
- V. Regulatory Analyses and Notices

I. Executive Summary

PHMSA is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to incorporate several long standing special permit and competent authorities into the HMR. The identified special permits and competent authorities have a long history of safety. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the hazardous materials regulations (HMR) provided an equivalent level of safety is maintained. A competent authority (CA) approval is a written consent (document) required under an international standard (i.e., International Maritime Dangerous Goods (IMDG) code or International Civil Aviation Organization (ICAO)) and is issued by the Associate Administrator for Hazardous Materials Safety.

In 2009, an audit of the Special Permits program by the Office of the Inspector General identified a need for an ongoing review of all open special permits with an outlook towards identifying those that should be made part of the HMR to reduce the overall economic burden to both affected industry and the government. Four rulemakings, HM-233A (75 FR 27205), HM-245 (76 FR 5483), and HM-216B (77 FR 37962) have successfully codified certain special permits into the HMR. These revisions provided wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

This notice of proposed rulemaking (NPRM), HM-233C, continues this

initiative by proposing to incorporate several additional long-standing special permits and competent authority approvals with proven safety records into the HMR. The special permits affected by the proposed rule represent variances from current regulations on topics categorized as follows:

- Limited quantities of liquids and solids containing ethyl alcohol.
- Transportation of solid coal tar pitch compounds.
- Transportation of certain ammonia solutions in UN1H1 and UN6HA1 drums.
- Transportation of spent bleaching earth.
- Requalification of non-DOT specification cylinders in life-saving appliances.
- Use of regulated medical waste containers displaying alternative markings.
- Incorporation of Oxygen Generator special permits to harmonize with FAA Modernization and Reform Act of 2012.

The economic impact of the proposed rule can thus be summarized as follows: NET Cost: \$0. Currently, industry must apply for a special permit in order to ship materials as described in this NPRM. Incorporation of these special permits into the HMR will reduce the burden on industry by no longer requiring industry to apply for a special permit to ship these materials. Therefore, this proposed rule does not impose any new costs to industry.

NET Benefits: \$4,539 per year. (Averaged over 10 years, at a 7% annual discount rate.)

In addition to general positive economic impacts noted above, there are known benefits by the elimination of the need for numerous party-to-applications and renewal requests. PHMSA estimates that the incorporation of these special permits and competent authority approvals will result in 140 fewer responses per year.

II. Background

PHMSA is proposing to amend the HMR to incorporate certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127) and certain approvals issued under 49 CFR Part 107, Subpart D (§§ 107.401 to 107.405). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations or that is consistent with the public interest. See 49 CFR 107.105(d). Congress expressly authorized DOT to issue these variances in the Hazardous

Materials Transportation Act (US Code: 49 USC 5109–5127) as amended. An approval is a written consent (document) required under an international standard (i.e., IMDG Code, ICAO), or is authorized in a specific section of the HMR and is issued by the Associate Administrator for Hazardous Materials Safety.

Special Permits

The HMR generally are performance-oriented regulations, which provide the regulated community with some flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is the strength of our economy and the hazardous materials community is a leader in 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 production and the transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Hazardous materials transported under the terms of a special permit must achieve a level of safety at least equal to the level of safety achieved when transported under the HMR or that is consistent with the public interest. Implementation of new technologies and operational techniques may enhance safety. 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 established safety records for conversion into regulations of 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 or not a specific special permit is a candidate for regulatory action include: the safety record for hazardous materials transported or operations conducted under a special permit; potential 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.

The special permits addressed in this NPRM have hundreds of party status holders. Party status is granted to a person who intends to offer for transportation or transport a hazardous material or perform an activity subject to the HMR in the same manner as the original applicant.

The proposed amendments will eliminate the need for approximately 464 current holders to reapply for renewal of 20 special permits. This will also reduce the burden on PHMSA to process renewal applications. These proposals will also apply to any special permits this agency issues during the development of this rulemaking whose provisions are identical in every respect to those described in the rulemakings issued under this docket. To emphasize this, we preface the description of the affected special permits with the wording “include” or “includes” to clarify that additional special permits issued after the publication of this NPRM that are identical in every aspect as those specifically listed in this NPRM may be incorporated under these amendments.

Incorporation of the special permits into the HMR eliminates significant paperwork burdens. As a condition of a special permit issued by PHMSA and depending on the provisions of the special permit, a copy of each special permit must be: (1) Maintained at each facility where an operation is conducted or a packaging is manufactured under a special permit; (2) maintained at each facility where a package is offered or re-offered for transportation under a special permit; and (3) in some cases, carried aboard each transport vehicle used to transport a hazardous material under a special permit.

Competent Authority Approvals

The HMR also allows for PHMSA to grant approvals to companies or organizations for the manufacturing of packages in accordance with the HMR. PHMSA has identified approvals that have an established safety record to incorporate into the HMR. The approvals PHMSA identified for conversion into the HMR have an established safety record and warrant incorporation into regulations of broader applicability. Converting these approvals into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. A copy of each approval must be maintained at each facility where a packaging is

manufactured under this approval. The incorporation of component authority approval eliminates the renewal and maintenance requirements that were previously required. Additionally, adoption of approvals as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the approvals. Factors that influence whether a specific approval is a candidate for regulatory action include: the safety record, whether broadly applicable, related rulemakings, and agency priorities.

III. Overview of Proposed Amendments

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

Special Permits

- DOT-SP 9275—Authorization for the transportation in commerce of certain limited quantities of liquids and solids containing ethyl alcohol and exempt these shipments from the provisions of the HMR.

- DOT-SP 11263—Authorization for the transportation of Class 9 solid coal pitch compounds in non-specification open-top or closed-top sift proof metal cans or fiber drums.

- DOT-SP 11836—Authorization for the transportation in commerce of UN1H1 and UN6HA1 drums containing ammonia solutions that do not meet certain requirements contained in §§ 173.24 and 173.24a.

- DOT-SP 13124—Authorizations for the transportation of ammonia solutions in UN1H1 and UN6HA1 drums by private or contract carrier.

- DOT-SP 12134—Authorization of exceptions for spent bleaching earth (Division 4.2 PG III).

- DOT-SP 12825—Authorization for the transportation of Life-saving appliances, self inflating, that contain non-specification steel cylinders between a vessel and an authorized facility for servicing.

- DOT-SP 14479—Authorization for the use of alternative shipping names and marking requirements for regulated medical wastes.

- Special Permits for Harmonization with the “FAA Modernization and Reform Act of 2012”—PHMSA is adding an exception to the HMR for Oxygen cylinders and other Oxidizing cylinders transported aboard aircraft within the state of Alaska. This language will make several existing special permits no longer necessary. This includes the following special permits: 14903, 14908, 15062, 15075, 15076, 15077, 15078, 15079, 15092, 15094, 15095, and 15143.

Approvals

- CA2005120010—Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have basis weights that vary by not more than plus or minus 5% from the measured basis weight in the initial design qualification test report.

- CA20060660005—Authorization to manufacture, mark, and sell UN5M1 and UN5M2 multi-wall paper bags with individual paper wall basis weights that vary by plus or minus 5% from the nominal basis weights reported in the initial design qualification test report.

- CA2006060006—Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard components that have individual containerboard basis weights that vary by plus or minus 5% from the nominal basis weight reported in the initial design.

- CA2006010012—Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual containerboard basis weight that vary by plus or minus 5% from the nominal basis weight reported in the initial design qualification test report.

Revision to Approvals Renewals

- PHMSA is proposing to revise this section to allow for approval holders applying for a timely renewal to continue using their approval after the expiration date if they apply within 60 days of the expiration dates.

IV. Summary Review of Amendments

A. Limited Quantities of Liquids and Solids Containing Ethyl Alcohol

DOT-SP 9275 authorized the transportation in commerce of certain limited quantities of liquids and solids containing ethyl alcohol and exempts these shipments from the provisions of HMR. This special permit has been in effect since at least 1985 and had been utilized by hundreds of companies. However, on August 18, 2011 PHMSA found that SP 9275 did not provide a level of safety at least equivalent to the HMR due to the lack of hazard communication markings. PHMSA issued a revised version of SP 9275 to address the lack of hazard communication markings on August 18, 2011.

This rulemaking also will address two petitions for rulemaking related to SP 9275. A petition from the Association of Hazmat Shippers (AHS) (P-1574) requests PHMSA to incorporate the

provisions of SP 9275. A petition for rulemaking was also received from the Council on Safe Transportation of Hazardous Articles (COSTHA) (P-1585) to incorporate SP 9275. COSTHA and the AHS noted that SP 9275 has been in existence for 30 years with little evidence of incidents involving the packaging, shipment, or operations conducted under the SP. Both of these petitions were supportive of incorporating the provisions of SP 9275 into the HMR.

Therefore, PHMSA is proposing to incorporate the terms of SP 9275 as revised on August 18, 2011. PHMSA is proposing to allow certain limited quantities of ethyl alcohol to be exempted from the applicable provisions of the HMR provided that the outer packagings are marked with hazard communication information identifying the company name and the words “Contains Ethyl Alcohol.” PHMSA is proposing to add § 173.151(g) to allow for the shipment of limited quantities of ethyl alcohol provided they meet the prescribed conditions.

B. Transportation of Solid Coal Tar Pitch Compounds

DOT-SP 11263 authorizes the transportation of solid coal tar pitch compounds, Class 9, in open-top and closed-top sift-proof metal cans or fiber drums. The special permit has been in effect since 1994 and has been utilized by 5 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this special permit.

PHMSA proposes to incorporate the terms of DOT-SP 11263 into the HMR by amending the entry in § 172.101, The Hazardous Materials Table (HMT), for Environmentally hazardous substances, solids, n.o.s., UN 3077, by adding a new Special Provision N91 in Column 7. In addition, in § 172.102 new Special Provision N91 would be added in appropriate sequence specifically authorizing the use of a non-DOT specification sift-proof, non-bulk, metal can with or without lid, or a non-DOT specification sift-proof, non-bulk fiber drum, with or without lid. The fiber drum would be required to be fabricated with a three ply wall, as a minimum. The coal tar pitch compound must remain in a solid mass during transportation.

C. Transportation of Certain Ammonia Solutions in UN1H1 Drums, UN3H1 Jerricans, and UN6HA1 Composite Packagings

DOT-SP 11836 authorizes the transportation of specific ammonia solutions in specification UN1H1

drums, UN3H1 jerricans, and UN6HA1 composite packagings that do not meet the provisions in §§ 173.24 and 173.24a. Specific operational controls are required in lieu of compliance with these two requirements. This special permit has been in effect since 1997 and has been utilized by at least 61 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this special permit.

PHMSA proposes to incorporate the terms of DOT-SP 11836 into the HMR by amending the entry in the HMT for Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*, UN 2672, by adding a new Special Provision 336 in Column 7. In addition, in § 172.102 new Special Provision 336 would be added in appropriate sequence specifically authorizing the use of DOT UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings which meet the requirements of Part 178 of the HMR at the Packing Group I or II performance level except that the packagings do not meet the venting requirements in § 173.24(g) and the hydrostatic pressure test marking specified in § 173.24a(b)(4). Transportation of these packages would also require the door of each van trailer to be marked with "Warning trailer may contain chemical vapor. Do not enter until vapors have dissipated." The driver of the transport vehicle and the consignee(s) must be trained not to enter the transport vehicle until the ammonia vapors have dissipated, and the emergency response paper must indicate that the vehicle may contain ammonia vapors.

D. Transportation of Spent Bleaching Earth

DOT-SP 12134 authorizes the transportation of spent bleaching earth as a Division 4.2, solid, PG III, exempt from the provisions of the HMR, except as specifically required by the special permit. Packagings authorized under the special permit are non-specification, sift-proof dump or hopper type vehicles, and sift-proof roll-on/roll-off bulk bins. All authorized packaging must be covered by a tarpaulin, metal cover, or equivalent means during transportation. The special permit also includes specific operational controls, including: The temperature of the spent bleaching earth may not exceed 55 °C at the time it is offered for transportation and any time during transportation; drivers must be specifically trained in handling and responding to emergency incidents involving the spent bleaching earth; and

transport vehicles must be marked in accordance with § 172.302(a). This special permit has been in effect since 1999 and has been utilized by at least 27 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this special permit.

PHMSA proposes to incorporate the terms of DOT-SP 12134 into the HMR by amending the entry in the HMT for self-heating solid, organic, n.o.s. (spent bleaching earth), UN 3088, by adding a new Special Provision, B116 in Column 7. In addition, in § 172.102 new Special Provision B116 would be added in appropriate sequence specifically authorizing the use of non specification, sift-proof dump or hopper type motor vehicles, and sift-proof roll-on/roll-off bulk bins, which must be covered by a tarpaulin, metal cover, or equivalent means. The material would also be subject to operational controls including not exceeding a temperature of 55 °C (130 °F) during transportation, not exceeding a transportation time of 24 hours, and drivers transporting spent bleaching earth must be trained in the properties and hazards of the spent bleaching earth and the actions required to mitigate the self-heating properties of the material that may occur during the transportation.

E. Requalification of Non-DOT Specification Cylinders in Life-Saving Appliances

DOT-SP 12825 authorizes the transportation of life-saving appliances, self inflating, that contain non-DOT specification steel cylinders for the purpose of movement between a vessel and a U.S. Coast Guard approved inflatable life raft servicing facility in conjunction with the servicing of such life-saving appliances. Specific operational controls are specified. This special permit has been in effect since 2001 and has been utilized by at least 54 holders with acceptable safety performance. In addition, PHMSA has no reported incidents since 2001 involving this special permit.

PHMSA proposes to incorporate the terms of DOT-SP 12825 into the HMR by revising the entry in the HMT for Life-saving appliances, self inflating, UN 2990, by adding a new Special Provision 338 in Column 7. In addition, in § 172.102, new Special Provision 338 would be added in appropriate sequence requiring that Life-saving appliances, self inflating, UN 2990 being shipped between a vessel and a U.S. Coast Guard approved life raft servicing facility only be subject to the requirements of this special provision. A material meeting the requirements of

the special provision would not otherwise be subject to the HMR.

F. Use of Regulated Medical Waste Containers Displaying Alternative Markings

DOT-SP 14479 authorizes the continued use of regulated medical waste containers manufactured before October 1, 2006 and marked with an alternative shipping name for UN 3291 and orientation arrows that deviate from prescribed specifications. This special permit has been in effect since 2007 and has been utilized by at least 22 holders. In addition, PHMSA has no reported incidents since 2007 involving this special permit.

PHMSA proposes to incorporate the terms of DOT-SP 14479 into the HMR by amending the entry in the HMT for Regulated Medical Waste, n.o.s., UN 3088, by adding a new Special Provision, 337 in Column 7. Special Provision 337 would allow for the use of regulated waste containers marked with the alternative shipping name of Regulated medical waste, UN 3291 and orientation arrows that deviate from the prescribed specifications in § 172.312(a)(2).

G. Incorporation of Oxygen Generator Special Permits To Harmonize With FAA Modernization and Reform Act of 2012

Section 824 of the FAA Modernization and Reform Act of 2012 includes a provision that allows for exceptions for cylinders of compressed oxygen or other oxidizing gases transported in the State of Alaska aboard aircraft. By incorporating this statutory exception into the HMR, PHMSA believes that following special permits will no longer be necessary: 14903, 14908, 15062, 15075, 15076, 15077, 15078, 15079, 15092, 15094, 15095, and 15143. These special permits all provided exceptions for the transportation of Oxygen and other Division 2.2 Oxidizing gases for transportation aboard aircraft in the state of Alaska. PHMSA proposes to incorporate the terms of these special permits in § 175.34.

H. Competent Authority CA2005120010 for Approval of Equivalent Packagings

This approval authorizes the manufacturing, marking, and selling of UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have basis weights that vary by not more than plus or minus 5% from the measured basis weight in the initial design qualification test report. This approval was issued in 2009 and has demonstrated an

acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA proposes to incorporate the terms of CA2005120010 into the HMR in § 178.516(b)(7).

I. Competent Authority CA2006060005 for Approval of Equivalent Packagings

This approval authorizes the manufacture, mark, and sale of UN5M1 and UN5M2 multi-wall paper bags with individual paper wall basis weights that vary by not more than plus or minus 5% from the nominal basis weights reported in the initial design qualification test report. This approval was issued in 2009 and has demonstrated an acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA proposes to incorporate the terms of CA2006060005 in § 178.521(b)(4).

J. Competent Authority CA2006060006 for Approval of Equivalent Packagings

This approval authorizes the manufacture, mark, and sale of UN4G combination packagings with outer fiberboard components that have individual containerboard basis weights that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design. This approval was issued in 2009 and has demonstrated an acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA proposes to incorporate the terms of CA2006060006 in § 178.516(b)(7).

K. Competent Authority CA2006010012 for Approval of Equivalent Packagings

This competent authority authorizes the manufacture, mark, and sale of UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual containerboard basis weight that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design qualification test report. This approval was issued in 2006 and has demonstrated an acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA proposes to incorporate the terms of CA2006010012 in § 178.516(b)(7).

L. Revision of § 107.709 for Renewing Approvals

PHMSA is proposing to revise this section to allow approval holders applying for a renewal to continue using their approval after the expiration date if they apply at least 60 days before the expiration date. PHMSA received a

petition (P-1571) from Lawrence Bierlein that requested this change. This petition was accepted and HMR language is being proposed.

V. 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. The proposed rule would amend the regulations by 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, 13563, and DOT Regulatory Policies and Procedures

This proposed rule is considered a non-significant regulatory action under section 3(f) and was reviewed by the Office of Management and Budget (OMB). The proposed rule is considered a non-significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. By building off of each other, these two Executive Orders 12866 and 13563 require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.”

In this notice, PHMSA proposes to amend the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits and approvals with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits and approvals 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 proposed rule would reduce the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this proposed rule would promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

The impact of this proposed rule is presumed to be minor as no new costs will be imposed upon any stakeholders and those that currently hold special permits and CAs will find some relief from regulatory review for current practices. This proposed rule would make provisions that are currently approved in certain special permits available to all businesses operating in the U.S. without needing to submit party-to special permit applications to PHMSA, and current permit holders will no longer need renewals. Over the past decade, approximately 464 companies have applied for and/or renewed the special permits included in this proposal. Many of these special permits have had positive economic impacts by allowing companies to be exempted from requirements in the HMR when shipping certain quantities/types of materials or by allowing the use of less expensive non-specification packages when certain provisions are met. It is difficult to quantify the savings these special permits have allowed, but it should be noted that these savings would be extended to other firms that would make use of the provisions once adopted into regulations. PHMSA calculates that this rulemaking would result in a paperwork reduction that, on average, saves each applicant \$39.50. PHMSA estimates that over a 10-year period there will be an estimated benefit total totaling \$18,328 affecting approximately 140 entities. In accordance with the Federal hazardous materials law (49 U.S.C. 5101 *et seq.*), initial issuances of special permits are for two years and can be renewed for four years thereafter. Thus, over 10 years, a special permit would on average be renewed twice for a total benefit of between \$43,000 and \$47,000. These figures are discounted annually by 3 and 7 percent to reflect the time value of money.

This Notice also proposes to incorporate four approvals into the HMR. This would allow manufacturers

of affected hazardous materials packaging to continue manufacturing packages without the need to renew their approvals. Incorporation of the four approvals would result in a one-time total economic benefit of \$158. The renewal cycle for approvals can vary based on the applicant needs and regulatory authority, but are typically renewed every five years. At both 3 and 7 percent annual discount, this yields over \$270 in benefits. Total benefits represent a small but positive sum (between \$46,000 and \$52,000) over 10 years affecting approximately 140 entities.

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 designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

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 will be 90 days from publication of the 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. Entities affected by the proposed rule conceivably include all persons—shippers, carriers, and others—who offer and/or transport in commerce hazardous materials. The specific focus of the rule is on the incorporation of special permits into the HMR. In a review of the companies using the identified special permits, PHMSA identified a combination of small and large businesses that would be affected positively by this rulemaking. For example, the proposed rulemaking exempts certain shipments from the specific documentation requirements of the HMR; these exceptions will increase shipping options and reduce shipment costs. Overall, this proposed rule should reduce the compliance burden on the regulated industries, such as small businesses that dispose of medical

waste, transporters of limited quantities of ethyl alcohol, and airlines transporting oxygen generators, without compromising transportation safety and should provide a slight positive economic benefit (i.e., reduced compliance burden) for those small entities. Therefore, we certify that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. For example, special permit 9275 will no longer require businesses to apply for a special permit in order to ship common retail items such as cosmetics that would normally be shipped as a class 3 material.

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

PHMSA has an approved information collection under OMB Control Number 2137–0051, “Rulemaking, Special Permits, and Preemption Requirements.” This NPRM may result in a decrease in the annual burden and costs under this information collection 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 proposed rule 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 of this proposed rule is as follows:

OMB Control No. 2137–0051:
Net Decrease in Annual Number of Respondents: 434.

Net Decrease in Annual Responses: 434.

Net Decrease in Annual Burden Hours: 434.

Net Decrease in Annual Burden Costs: \$17,143.

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, 42 U.S.C. 4321-4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations requires federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during

the consideration process. 40 CFR 1508.9(b).

The Need for the Proposed Action

This Notice proposes to allow transportation of the following hazardous materials and packages in ways that vary from certain other provisions in the HMR: UN 3291 medical waste, non-DOT specification steel cylinders for use in life-saving appliances, limited quantities of liquids and solids containing ethyl alcohol, UN3077 coal tar pitch compounds, UN 3088 spent bleaching earth, UN 2672 ammonia solutions, and compressed gases with a subsidiary hazard of 5.1. These hazardous materials are capable of affecting human health and the environment if a release were to occur. However, incorporation of these special permits maintains an equivalent level of safety as provided in the special permits. These special permits have a long history of transporting the above mentioned hazardous materials safely and without any effects on the environment. Therefore, we do not anticipate any significant positive or negative impacts on the environment by incorporating these special permits into the HMR.

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 also 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 all modes of transport, the potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The special permits and approvals being proposed for incorporating into the HMR have consistently demonstrated a long history of safe use. In its review of these special permits and approval, PHMSA did not identify any incidents that had a significant effect on the environment.

Alternatives to the Proposed Action

The purpose and need of this rulemaking is to incorporate widely

used special permits or those with an established safety record into the HMR for universal use. More information about benefits of this final rulemaking action can be found in the preamble (i.e., "Overview of Proposed Amendments") to this rulemaking. The alternatives considered in the analysis include (1) the proposed action, that is, incorporation of the proposed special permits as amendments to the HMR; (2) incorporation of some subset of the proposed special permits (i.e., only some of the proposed special permits) as amendments to the HMR; and (3) the "no action" alternative, meaning that none of the proposed special permits would be incorporated into the HMR.

Analysis of the Alternatives

(1) Incorporate All Special Permits

There are no significant environmental impacts associated with the proposals in this NPRM. We are proposing clarifications and changes to certain HMR requirements to include methods for packaging, describing, and transporting hazardous materials that are currently permitted under widely used special permits with established safety records for inclusion in the HMR. The process through which safety 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 the special permits as regulations of general applicability maintain the existing environmental protections built into the HMR.

(2) Incorporation of a Subset of Special Permits

Same as alternative 1.

(3) No Action

If no action is taken then Special Permits will continue to be issued resulting in no change to the current potential affects to the environment.

Comments From Agencies and Public

PHMSA solicits comments about potential environmental impacts associated with this rulemaking from other agencies, stakeholders, and citizens.

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>.

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 172

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

49 CFR Part 173

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

49 CFR Part 175

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

49 CFR Part 178

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

In consideration of the foregoing, we are proposing to amend 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. In § 107.709, paragraph (g) is added to read as follows:

§ 107.709 Processing of an application for approval, including an application for renewal or modification.

* * * * *

(g) If, at least 60 days before an existing approval expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the approval will not expire until final administrative action on the application for renewal has been taken.

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

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

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

4. In § 172.101, in the Hazardous Materials Table, the following entries are revised:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

Regulated medical waste, n.o.s. or Clinical waste, unspec- ified, n.o.s. or (BIO) Medical waste, n.o.s., or Bio- medical waste, n.o.s. or Medical waste, n.o.s..	6.2	UN3291 II	6.2	41, A13, 337	134	197	197	No limit	No limit	B	40
Self-heat- ing solid, organic, n.o.s..	4.2	UN3088 III	4.2	IB6, IP2, B116, N91, T3, TP33.	None	212	241	15kg	50kg	C	

* * * * *

5. In § 172.102:

- a. In paragraph (c)(1), special provisions 336, 337, and 338 are added;
- b. In paragraph (c)(3), special provision B116 is added; and
- c. In paragraph (c)(5), special provision N91 is added.

The additions read as follows:

§ 172.102 Special provisions.

* * * * *

- (c) * * *
- (1) * * *

Code/Special Provisions

* * * * *

336 The use of UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings which meet the requirements of Part 178 of the HMR at the Packing Group I or II performance level except that the packagings are not required to meet the venting requirements in § 173.24(g) and the hydrostatic pressure test marking specified in § 173.24a(b)(4) is required. Shipment of packages under this special provision must be made by private or contract motor carrier. Transportation of these packages also requires the door of each van trailer to be marked with "Warning trailer may contain chemical vapor. Do not enter until vapors have dissipated." The driver of the transport vehicle and the consignee(s) must be trained not to enter the transport vehicle until the ammonia vapors have dissipated, and the emergency response paper must indicate that the vehicle contains ammonia vapors. Transport vehicles must be vented to prevent accumulation of vapors at a poisonous or flammable concentration.

337 Authorizes the use of regulated waste containers marked with the alternative shipping name of Regulated medical waste, UN3291 and orientation arrows that deviate from the prescribed specifications in § 172.312(a)(2).

338 Life Saving appliances, self inflating, transported between a U.S. Coast Guard approved inflatable life raft servicing facility and a vessel are only subject to the following requirements:

- a. Prior to repacking into the life-saving appliance, an installed inflation cylinder must successfully meet and pass all inspection and test criteria and standards of the raft manufacturer and the vessel Flag State requirements for cylinders installed as part of life-saving appliances, self inflation (UN2990) used on marine vessels. Additionally each cylinder must be visually inspected in accordance with CGA pamphlet, CGA C-6. A current copy of CGA pamphlet, CGA C-6 must be available at the

facility servicing the life-saving appliance.

- b. An installed inflation cylinder that requires recharging must be filled in accordance with § 173.301(l).

- c. Every installed inflation cylinder, as associated equipment of the life-saving appliance, must be packed within the protective packaging of the life raft and the life raft itself must otherwise be in compliance with § 173.219.

- d. The serial number for each cylinder must be recorded as part of the life-saving appliance service record by the U.S. Coast Guard-approved servicing facility.

* * * * *

(3) * * *

B116 The use of non specification, sift-proof dump or hopper type vehicles, and sift-proof roll-on/roll-off bulk bins, which must be covered by a tarpaulin, metal cover, or equivalent means is authorized for the transportation of spent bleaching earth by motor vehicle. The material is also subject to operational controls which include not exceeding a temperature of 55 °C (130 °F) at the time it is offered or during transportation, not exceeding a transportation time of 24 hours, and drivers transporting spent bleaching earth must be trained in the properties and hazards of the spent bleaching earth.

* * * * *

(5) * * *

N91 The use of a non specification sift-proof, non-bulk, metal can with or without lid, or a non specification sift-proof, non-bulk fiber drum, with or without lid is authorized when transporting coal tar pitch compounds by motor vehicle or rail freight. The fiber drum must be fabricated with a three ply wall, as a minimum. The coal tar pitch compound must be in a solid mass during transportation.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. 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.

7. In § 173.151, paragraph (g) is added to read as follows.

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

- (g) *Limited quantities of ethyl alcohol.*
- (1) Consumer products containing not more than 70% ethyl alcohol are excepted from the HMR provided that:

- (i) For non-glass inner packagings the volume cannot exceed 1 gallon in capacity;

- (ii) For glass inner packagings the volume cannot exceed 16 ounces in capacity;

- (iii) The net liquid contents of all inner packagings in any single outer packaging may not exceed 192 fluid ounces. The net solid contents of all inner packagings in any single outer packaging may not exceed 32 pounds. The gross weight of any single outer package shipped may not exceed 65 pounds; and

- (iv) Packages must be marked with the company name and the words "Contains Ethyl Alcohol";

- (2) Consumer products containing more than 70% ethyl alcohol are excepted from the HMR provided that:

- (i) For inner packagings the volume cannot exceed 8 fluid ounces in capacity;

- (ii) Solids are not packed in inner packagings exceeding ½ pound in weight;

- (iii) The net liquid contents of all inner packagings in any single outer packaging may not exceed 192 fluid ounces. The net solid contents of all inner packagings in any single outer packaging may not exceed 32 pounds. The gross weight of any single outer package shipped may not exceed 65 pounds; and

- (iv) Packages must be marked with the company name and the words "Contains Ethyl Alcohol";

- (3) For transportation by passenger or cargo aircraft, no outer package may be transported which contains an inner packaging exceeding:

- (i) 16 fluid ounces of flammable liquid, or

- (ii) 1 pound of solids containing flammable liquid.

PART 175—CARRIAGE BY AIRCRAFT

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

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

9. Add § 175.34 to read as follows:

§ 175.34 Exceptions for cylinders of compressed oxygen or other oxidizing gases transported within the State of Alaska.

(a) When transported in the State of Alaska, cylinders of compressed oxygen or other oxidizing gases aboard aircraft are excepted from all the requirements of § 173.302(f)(3) through (5) and § 173.304(f)(3) through (5) of this subchapter subject to the following conditions:

- (1) Transportation of the cylinders by a ground-based or water-based mode of

transportation is unavailable and transportation by aircraft is the only practical means for transporting the cylinders to their destination;

(2) Each cylinder is fully covered with a fire or flame resistant blanket that is secured in place; and

(3) The operator of the aircraft complies with the applicable notification procedures under § 175.33.

(b) Aircraft restrictions: This exception only applies to the following types of aircraft:

(1) Cargo-only aircraft transporting the cylinders to a delivery destination that receives cargo-only service at least once a week.

(2) Passenger and cargo-only aircraft transporting the cylinders to a delivery destination that does not receive cargo only service once a week.

PART 178—SPECIFICATIONS FOR PACKAGINGS

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

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

11. In § 178.516, add paragraph (b)(7) to read as follows:

§ 178.516 Standards for fiberboard boxes.
* * * *

(b) * * *

(7) Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual containerboard or paper wall basis weights that vary by not more than plus or minus 5% from

the nominal basis weight reported in the initial design qualification test report.

12. In § 178.521, add paragraph (b)(4) to read as follows:

§ 178.521 Standards for paper bags.

* * * *

(b) * * *

(4) UN5M1 and UN5M2 multi wall paper bags that have paper wall basis weights that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design qualification test report.

Magdy El-Sibaie,

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

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