

making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143-02), Research Triangle Park, NC 27711; telephone number: (919) 541-1158; fax number: (919) 541-0516; email address: [garnett.kim@epa.gov](mailto:garnett.kim@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency (EPA) is proposing revisions to a procedure in the New Source Performance Standards (NSPS). We also propose to correct a typographical error in the introduction to Paragraph (6) of section 10.4 of Procedure 2. Without this revision, paragraph (6)(iii) would remain unused in Procedure 2. This typographical correction is necessary to fulfill the intent of Procedure 2, section 10.4(6), when promulgated. See 69 FR 1786.

### I. Why is the EPA issuing this proposed rule?

The EPA proposes a revision to Procedure 2, sections 10.4(5) and (6), to allow facilities that have reduced their emissions since completing their PM CEMS correlation testing to extend their correlation regression line to the point corresponding to the lowest PM CEMS response obtained during the RCA or RRA. This extended correlation regression line will be used to determine if results of this RCA or RRA meet the criteria specified in Section 10.4, paragraphs (5) and (6) of Procedure 2, respectively. This change will ensure that facilities that have reduced their emissions since completing their correlation testing will no longer be penalized because their lower emissions fall outside their initial response range. This action also proposes to correct a typographical error in the introduction to section 10.4, paragraph (6) of Procedure 2. Paragraph (6), which originally read, "To pass an RRA, you must meet the criteria specified in paragraphs (6)(i) and (ii) . . .", is being corrected to read: "To pass an RRA, you must meet the criteria specified in paragraphs (6)(i) through (iii) . . ." Without this revision, paragraph (6)(iii) would remain unused in Procedure 2. This typographical correction is necessary to fulfill the intent of Procedure 2, section 10.4(6), when promulgated in 69 FR 1786. We have published a direct final rule approving the revisions to Procedure 2 in the "Rules and Regulations" section of this **Federal Register** publication because we view this as a non-controversial action

and anticipate no adverse comment. We have explained our reasons for this action in the preamble of the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, please see the information provided in the **ADDRESSES** section of this document.

The regulatory text for the proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register** publication. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register** publication.

### II. Does this action apply to me?

The entities potentially affected by this rule include any facility that is required to install and operate a PM CEMS under any provision of title 40 of the CFR. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

#### List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitoring systems, Particulate matter, Procedures.

Dated: November 8, 2016.

**Gina McCarthy**,  
Administrator.

[FR Doc. 2016-27847 Filed 11-18-16; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[Docket No. PHMSA-2016-0079 (HM-213E)]

RIN 2137-AF25

### Hazardous Materials: PIPES Act Requirements for Identification Numbers on Cargo Tanks Containing Petroleum Based Fuel

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** PHMSA is publishing this advance notice of proposed rulemaking (ANPRM) in response to the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, which reauthorizes the pipeline safety program and requires a number of reports and mandates. The PIPES Act requires PHMSA to take regulatory actions to establish minimum safety standards for underground natural gas storage facilities; to update the minimum safety standards for permanent, small scale liquefied natural gas pipeline facilities; and to publish an ANPRM to address a petition for rulemaking proposing hazardous materials regulations related to the marking of identification numbers on cargo tanks. This ANPRM specifically addresses the PIPES Act requirement applicable to the petition for rulemaking related to the marking of identification numbers on cargo tanks. PHMSA will consider the comments, data, and information received in any future action related to the petition.

**DATES:** Comments must be received by February 21, 2017.

**ADDRESSES:** You may submit comments identified by the Docket Number PHMSA-2016-0079 (HM-213E) through 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 Management System, U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, Ground Floor, Room W12-140 in 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 (PHMSA–2016–0079) or RIN (2137–AF25) for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

**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 [45 FR 19477] or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Steven Andrews, (202) 366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

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#### I. Executive Summary

On November 12, 2015, PHMSA received a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) proposing amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the marking of cargo tanks transporting petroleum distillates. In an acknowledgment letter dated November 10, 2015, PHMSA assigned the CVSA petition to Petition Number P–1667<sup>1</sup> (P–1667 or the petition; Docket No: PHMSA–2015–0219). Subsequently, on November 24, 2015, PHMSA received another petition for rulemaking from the American Trucking Association (ATA) proposing amendments to the HMR; this petition is also applicable to the marking of cargo tanks transporting petroleum distillates. In an acknowledgment letter dated November 25, 2015, PHMSA assigned the ATA petition to Petition Number P–1668<sup>2</sup> (P–1668 or the petition; Docket No: PHMSA–2015–0251).

In this ANPRM, PHMSA outlines issues raised by these two petitions and discusses the background relevant to the marking of cargo tanks containing petroleum distillates. PHMSA further poses a series of questions and solicits public comment to determine the best practice for addressing the issues outlined in these two petitions.

#### II. Objective of This ANPRM

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) authorizes the Secretary of Transportation to “prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” See 49 U.S.C. 5103(b)(1). The Secretary has delegated this authority to PHMSA in 49 CFR 1.97(b). The HMR are designed to achieve three primary goals:

- (1) To help ensure that hazardous materials are packaged and handled safely and securely during transportation;
- (2) to provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and
- (3) to minimize the consequences of an incident should one occur.

<sup>1</sup> See P–1667 docket at the following URL: <https://www.regulations.gov/docket?D=PHMSA-2015-0219>.

<sup>2</sup> See P–1668 docket at the following URL: <https://www.regulations.gov/docket?D=PHMSA-2015-0251>.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety or security hazard and reducing the probability and quantity of a hazardous material release.

Under the HMR, hazardous materials are categorized into hazard classes and packing groups based on analysis of and experience with the risks they present during transportation. The HMR do the following:

(1) Specify appropriate packaging and handling requirements for hazardous materials based on this classification, and require a shipper to communicate the material's hazards through the use of shipping papers, package marking and labeling, and vehicle placarding;

(2) require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported; and

(3) mandate training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials in commerce.

The HMR also include operational requirements applicable to each mode of transportation.

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule. See 5 U.S.C. 553(e). In accordance with PHMSA's rulemaking procedure regulations in 49 CFR part 106, interested persons may ask PHMSA to add, amend, or repeal a regulation by filing a petition for rulemaking along with information and arguments that support the requested action. See 49 CFR 106.95. The issues being considered under this ANPRM are derived specifically from petitions submitted to PHMSA by CVSA and ATA regarding the marking of cargo tanks transporting distillate fuels.

On June 22, 2016, President Barack Obama signed the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act, which in part requires PHMSA to publish an ANPRM to address P–1667 related to the marking of identification numbers on cargo tanks. See Public Law 114–183. Section 15 of the PIPES Act reads as follows:

*EC. 15. HAZARDOUS MATERIALS IDENTIFICATION NUMBERS.*

*Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall issue an advanced notice of proposed rulemaking to take public comment on the petition for rulemaking dated October 28, 2015, titled “Corrections to Title 49 CFR 172.336 Identification numbers; special provisions” (P–1667).*

As mandated by section 15 of the PIPES Act, the objective of this ANPRM is to solicit comments on P-1667. It further solicits comments on the related petition for rulemaking, P-1668.

### III. Petitions Being Addressed (P-1667 and P-1668)

Through P-1667 and P-1668, the CVSA and ATA, respectively, asked PHMSA to revise § 172.336(c) of the HMR. In P-1667, CVSA proposed that PHMSA reinstate language that existed in § 172.336(c)(4) and (5) prior to the publication of the HM-219 final rule [78 FR 14702] on March 7, 2013. Prior to HM-219, the paragraphs in § 172.336(c)(4) and (5) read as follows:

(4) For each of the different liquid petroleum distillate fuels, including gasoline, in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point. After October 1, 2000, if a compartmented cargo tank or tank car contains such fuels together with a gasoline and alcohol fuel blend containing more than ten percent ethanol, the identification number “3475” or “1987” must also be displayed as appropriate in addition to the identification number for the liquid petroleum distillate fuel having the lowest flash point.

(5) For each of the different liquid petroleum distillate fuels, including gasoline transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point.

CVSA indicated in its petition that the current regulations, as revised by the HM-219 final rule, are inconsistent with the previous requirements. CVSA further noted that the table in § 172.336 has created confusion and lack of uniformity for industry, enforcement, and first responders in regard to the display of identification numbers on multi-compartmented cargo tanks containing different petroleum distillate fuels.

In P-1668, ATA proposed removing the requirement to display the identification number of the petroleum distillate with the lowest flashpoint, in addition to the identification number for the fuel blend as “3475” or “1987,” on a multi-compartmented cargo tank carrying an alcohol fuel blend with more than 10 percent ethanol. ATA further noted that its comments to the HM-218D final rule [73 FR 4699] that was published on January 28, 2008, suggested a uniform marking for all gasoline and gasoline/alcohol fuel blends, as well as an update to the Emergency Response Guide (ERG) requiring alcohol-resistant foam for all releases. ATA noted that PHMSA disagreed with this statement at the time

because “the new shipping description for gasoline/ethanol fuel blends would enhance emergency responders’ ability to respond effectively to incidents involving these materials.

ATA identified several variations between Guide 127 and 128 in the ERG, used in the event of an unintentional release by emergency responders. The fuel blend identification numbers UN 1987 and 3475 are attributed to Guide 127 and Guide 128 as appropriate for several liquid petroleum distillates including UN 1203, 1270, and 1993. As noted by ATA, Guides 127 and 128 differ in the use of “alcohol-resistant foam” versus “regular foam” in the event of small and large fires. PHMSA has indicated that alcohol-resistant foam is necessary for emergency response involving polar/water-miscible flammable liquids, such as ethanol and gasoline fuel blends. In its petition, ATA reiterated the National Tank Truck Carriers’ (NTTC) comments to HM-218D, suggesting that rather than displaying the identification number of the petroleum distillate and the alcohol/ethanol fuel blend, PHMSA should instead require the use of alcohol-resistant foam for both fuels in emergency response situations. Furthermore, ATA cited that emergency responders currently use alcohol-resistant foam to treat both types of fuel in the event of an unintentional release, recognizing that the identification number marking for fuel blends with greater than 10 percent ethanol is not needed for emergency response purposes.

### IV. Background

#### A. Rulemakings

The rulemaking history pertaining to the marking of cargo tanks containing fuel oil and petroleum distillates, as applicable to P-1667, is complex. On June 6, 1979, the Research and Special Programs Administration (RSPA), PHMSA’s predecessor agency, published a notice of proposed rulemaking (NPRM) (HM-126A) associated with the use of identification numbers on packages. See 44 FR 32972. In the NPRM, RSPA proposed to require that an identification number be displayed on orange panels affixed to portable tanks, cargo tanks, and tank cars. RSPA proposed a set of standards in § 172.328 that would require cargo tanks to be marked on each side with the identification numbers specified for the material in the Hazardous Materials Table (HMT), which is found in § 172.101. RSPA further proposed to add § 172.328(e) stating that a cargo tank marked with the identification number

or name of a specific hazardous material may not be used to transport any other material unless the marking is removed or changed to identify the hazardous material the cargo tank contains.

RSPA received numerous comments to the HM-126A NPRM expressing concern that the identification number requirements for cargo tanks proposed and codified in § 172.328(e) would limit a carrier’s ability to transport fuel oils and distillate fuels in multi-compartmented cargo tanks and tank cars. As a result, in May 22, 1980, RSPA published a final rule titled, “Identification Numbers, Hazardous Substances, International Descriptions, Improved Descriptions, Forbidden Materials, and Organic Peroxides,” which amended the HMR and codified language in § 172.336(c)(3) stating that identification markings are not required for different distillate fuels in the same cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point. See 45 FR 34560.

The May 22, 1980 final rule generated a number of appeals. On November 10, 1980 [45 FR 74640], RSPA published a response to appeals to the May 22, 1980 final rule. In the response, RSPA noted that the provisions for allowing cargo tanks and multi-compartment cargo tanks to only display the identification number of the distillate fuel with lowest flash point were intended to eliminate the need for continuous changes in identification numbers for operations where gasoline and fuel oil are transported in the same cargo tank for different trips that occur on the same day. However, in response to these appeals, RSPA revised the HMR. To address compartmented cargo tanks, RSPA moved regulatory text initially found in § 172.336 from paragraph (c)(3) to (c)(4); and to address cargo tanks and tank cars, RSPA moved regulatory text initially found in § 172.336(c)(3) to (c)(5). These two provisions allowed for the display of the identification number of the liquid distillate fuel having the lowest flash point carried in a cargo tank; however, as noted above, RSPA intended for this exception to be allowed for different trips that occurred on the same day.

In an April 20, 1987 final rule (HM-166) [52 FR 13034], RSPA revised the HMR and added the term “Gasohol” to § 172.336(c)(4) and (5). This term accounted for new formulations of gasoline mixed with ethyl alcohol (*i.e.*, ethanol) shipped under § 172.336 of the HMR.

In a January 28, 2008 final rule (HM-218D) [73 FR 4699], PHMSA revised the HMR and added “UN 3475, Ethanol and

gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol” to the HMT to address gasoline and ethanol mixtures such as E85.<sup>3</sup> PHMSA further identified that emergency response techniques between petroleum distillates and gasoline and ethanol fuel blends differ. Specifically, gasoline and ethanol fuel blends with more than 10 percent ethanol are polar/water-miscible flammable liquids and decrease the effectiveness of alcohol-resistant fire-fighting foam. Due to these differences in fire-fighting methods, PHMSA revised the HMR and adopted language in § 172.336(c)(4) and (5) to clarify that when a petroleum distillate fuel and a gasoline/ethanol fuel blend with more than 10 percent ethanol are both carried on a multi-compartment cargo tank or tank car, the UN identification number “3475” or “1987” must be displayed in addition to the identification number of the petroleum distillate fuel with the lowest flash point. PHMSA notes that both NTTC and the Petroleum Marketers and Convenience Stores of Iowa (PMCI) suggested in their comments to the HM-218D NPRM that revising the Emergency Response Guidebook (ERG) to require alcohol-resistant foam for all flammable liquids (Class 3), rather than adopting a new shipping description for gasoline and ethanol fuel blends, would have made the requirement to display the identification number for the alcohol fuel blend unnecessary.

In a March 7, 2013 final rule (HM-219) [78 FR 14702], based on a petition for rulemaking (P-1522) from Shell Chemicals,<sup>4</sup> PHMSA removed all references to “gasohol” and codified a table to more clearly indicate hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels. The revised text indicates that when a cargo tank contains more than one petroleum distillate fuel, it may be marked with the identification number for the liquid petroleum distillate fuel having the lowest flash point.

#### B. Letters of Interpretation

On October 16, 2000, RSPA issued an interpretation letter (Ref. No. 00-0208<sup>5</sup>) to the Florida Department of Environmental Protection concerning the identification number markings on

cargo tanks containing diesel fuel and gasoline. In this interpretation letter, RSPA stated that if a cargo tank containing gasoline is marked with the identification number for gasoline, “1203,” it may remain so marked on a subsequent trip when the cargo tank contains diesel fuel; however, the letter did not further clarify that this exception only applies to transportation occurring on the same day. Thus, it appears that industry uses this interpretation letter as standard practice to leave the “1203” identification number marking for gasoline on cargo tanks even if the cargo tank is not used for gasoline on any particular day or on a subsequent trip.

On June 26, 2015, PHMSA issued an interpretation letter (Ref. No. 14-0178<sup>6</sup>) to the South Carolina State Police concerning the placement of identification numbers on multi-compartmented cargo tanks containing petroleum distillates. In the example provided in the interpretation letter, all of the compartments in the multi-compartmented cargo tank were loaded with only diesel fuel, but displayed “1203,” the identification number for gasoline. PHMSA’s response determined that if a multi-compartmented cargo tank contains the same petroleum distillate fuel (other than gasoline) in each compartment, then it must be marked with the correct identification number for that material—not with “1203.”

#### V. Comments and Questions

The PIPES Act specifically requires PHMSA to issue an ANPRM to solicit public comment on P-1667. In addition, PHMSA is considering the regulatory changes proposed in P-1668. We invite comment on the following key issues and request that commenters provide data sources to support their positions. If commenters suggest modification to the existing regulatory requirements, PHMSA requests that comments provided be as specific as possible.

##### A. General Questions

1. Are carriers currently marking cargo tanks with the identification number of a petroleum distillate fuel, including gasoline and gasohol, when that material is not present in that cargo tank? If so, why are carriers undertaking this practice? When and where does this practice occur? How prevalent is this practice?

2. If the answer to question 1 above is yes, how is this being done without violating the prohibitive marking requirements in § 172.303 of the HMR?

##### B. Safety Questions

1. Would marking a cargo tank with the identification number for the liquid petroleum distillate fuel having the lowest flash point, rather than with the identification numbers representing each of the different liquid petroleum distillate fuels including gasoline and gasohol, create concerns for emergency responders?

2. Does responding to an incident involving diesel fuel differ from responding to an incident involving gasoline—if so, how?

##### C. Policy Analysis Questions

1. How many entities and shipments would be affected by modifying the existing regulatory requirements related to the hazard communication standards for cargo tanks transporting petroleum distillate fuels? In addition, how many of the effected entities would be considered small businesses?

2. What are the potential costs of modifying the existing regulatory requirements related to hazardous materials communication on cargo tanks pursuant to the petitioners’ suggestions? If no specific quantitative data is available, what types of costs would be reasonable to anticipate (e.g., training cost, equipment replacement, etc.)?

3. What consequences would be mitigated or prevented by modifying the hazard communication requirements for cargo tanks transporting petroleum distillate fuels? Have there been instances in the U.S. safety record when the current requirements and industry practices related to the identification number markings have resulted in emergency response complications, injury, or death?

4. What are the potential quantifiable safety and societal benefits of modifying the existing regulatory requirements related to hazardous materials communication for cargo tanks?

5. What are the potential environmental impacts and human health effects of modifying the existing regulatory requirements?

#### VI. Regulatory Analysis

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This ANPRM has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866, “Regulatory Planning and Review.” 58 FR 51735 (Oct. 4, 1993). Accordingly,

<sup>3</sup> E85 is an abbreviation for an ethanol fuel blend of 85% denatured ethanol fuel and 15% gasoline or other hydrocarbon by volume.

<sup>4</sup> See P-1522 docket at the following URL: <https://www.regulations.gov/searchResults?rpp=10&po=0&s=PHMSA-2008-0171>.

<sup>5</sup> See Reference Number 00-0208 letter of interpretation at: <http://docketsinfo.dot.gov/reports/rspa/2000-10/000208.pdf>.

<sup>6</sup> See Reference Number 14-0178 letter of interpretation at: <http://phmsa.dot.gov/portal/site/PHMSA/menuitem.6f23687cf7b00b0f22e4c6962d9c8789/?vgnxtoid=2bd1d740bd03e410VgnVCM100000d2c97898RCRD&vgnxtfmt=default>.

this ANPRM has not been reviewed by the Office of Management and Budget (OMB) and is not considered to be a significant regulatory action under the DOT Regulatory Policies and Procedures of February 26, 1979. *See* 44 FR 11034.

Executive Order 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (Jan. 21, 2011), supplements and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866. Together, 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."

Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Therefore, PHMSA solicits comment on the key issues addressed in this ANPRM.

#### B. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." We invite State and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR relative to identification numbers displayed on cargo tanks may cause.

#### C. Executive Order 13175

Executive Order 13175, "Consultation and Coordination and Indian Tribal Governments," 65 FR 67249 (Nov. 9, 2000), requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that "significantly or uniquely affect" Indian communities and impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comments on the costs and effects that this or a future rulemaking could potentially have on them.

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

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to

consider whether a rulemaking would have a "significant economic impact on a substantial number of small entities." Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

As such, PHMSA solicits input from small entities on the issues presented in this ANPRM. If you believe that revisions to the HMR relative to identification numbers on cargo tanks would have a significant economic impact on a substantial number of small entities, please submit a comment to PHMSA. In your comment, please explain how and to what extent your business or organization could be affected, and whether there are alternative approaches to this regulation the agency should consider that would minimize any significant impact on small business while still meeting the agency's statutory objectives

Any future proposed rule would be developed in accordance with Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), as well as DOT's procedures and policies, so as to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities of a regulatory action are properly considered.

#### E. Paperwork Reduction Act

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 collection and recordkeeping requests. It is possible that new or revised information collection requirements could occur as a result of any future rulemaking action. We invite comment on the need for any collection of information and paperwork burdens that may apply as result of a future rulemaking.

#### F. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations require 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. *See* 40 CFR 1508.9(b). PHMSA welcomes any data or information related to environmental impacts that may result from this ANPRM.

#### G. 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** at 65 FR 19477 (April 11, 2000), or you may visit <http://www.dot.gov/privacy.html>.

#### H. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, "Promoting International Regulatory Cooperation," 77 FR 26413 (May 4, 2012), 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, Public Law 96–39, as amended by the Uruguay Round Agreements Act, Public Law 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 this ANPRM to ensure that

it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

*I. Statutory/Legal Authority for This Rulemaking*

Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign

commerce. The Secretary has delegated this authorization to the Administrator for PHMSA. *See* 49 CFR 1.97. PHMSA is issuing this ANPRM to gather the necessary information to determine a course of action for clarifying issues pertaining to the display of identification numbers related to the transportation of fuel oils and petroleum distillates.

*J. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information

Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on November 15, 2016, under authority delegated in 49 CFR 1.97.

**William Schoonover,**

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

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