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49 CFR Parts 107, 171, 172, *et al.*
Hazardous Materials; Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 174, 177, 178 and 180

[Docket No. PHMSA–2009–0151 (HM–218F)]

RIN 2137–AE46

Hazardous Materials; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to make miscellaneous amendments to update and clarify certain regulatory requirements. These amendments are intended to: promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and simplify the regulations. PHMSA anticipates that the amendments contained in this rule will generate economic benefits to the regulated community.

DATES: *Effective Date:* This final rule is effective on August 19, 2011.

Voluntary Compliance Date: Voluntary compliance with all these amendments, including those with delayed mandatory compliance, is authorized as of July 20, 2011.

Incorporation by Reference Date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of August 19, 2011.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Notice of Proposed Rulemaking (NPRM)

On September 29, 2010, PHMSA published a Notice of Proposed Rulemaking (NPRM) under this docket HM–218F. (74 FR 16135). The NPRM proposed amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) based on PHMSA initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. Most of the amendments proposed in the NPRM were intended to provide relief to industry by eliminating, revising, clarifying, or relaxing regulatory requirements. Below we summarize the changes proposed in the September 29, 2010 NPRM:

- Update incorporations by reference of industry consensus standards issued by: the Aluminum Association; the American Society for Testing and Materials; and the Institute of Makers of Explosives (*see* §§ 173.63 and 177.835).
- Add a requirement for each applicant to a special permit under §§ 107.105, 107.107, and 107.109 to identify their role as a shipper (offeror), carrier, or both.
- Revise the definition of ''person'' to include those who manufacture, test, repair, and recondition packages (*see* § 171.8).
- Revise the Hazardous Materials Table (HMT) to harmonize certain entries with international standards (*see* § 172.101) by adding and revising certain proper shipping names. Most significantly, we proposed to add a new entry ''Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde)'' to clarify requirements applicable to formaldehyde and formalin with less than 10% formaldehyde; revise the entry for ''Environmentally hazardous substances, liquid, n.o.s.'' to provide packaging exceptions for certain materials that are assigned to UN3082; and adding a new special provision 176 to § 172.102 to clarify the differences between Class 3 and Class 9 formaldehyde solutions.
- Add a new italicized entry to the HMT for ''Permeation devices'' referencing a new § 173.175 applicable to permeation devices to provide an exception for permeation devices containing hazardous materials. Permeation devices are used for calibrating air quality monitoring devices for consistency. This proposed change would harmonize the HMR with the current exception in the international regulations for these devices.
- Update and clarify various hazard communication requirements including: Class 9 label specifications; placard size; IBC markings; and Division 6.2 labels.
- Authorize the use of an alternative bend test for DOT 3AA and DOT 3AAX steelcylinders.
- Revise § 178.71 to authorize the use of either a proof pressure test or volumetric expansion test as described in the ISO 7866 and 9809 standards.
- Revise § 171.14 transitional provisions to remove expired transitional provisions and incorporate certain transitional provisions into the specific sections of the HMR.
- Revise provisions in § 173.56(j) to further clarify the use of the American Pyrotechnics Association (APA) standard for classifying and approving fireworks.
- Revise § 172.404 to provide a labeling exception for consolidation bins used to transport hazardous materials by motor carrier.
- Revise § 178.345.1 to allow vapors to escape through a vent or drain.
- Revise § 178.320 cargo tank wall definition.
- Revise § 178.347–1 to clarify that a cargo tank motor vehicle with a Maximum Allowable Working Pressure (MAWP) greater than 35 psig or designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code.
- Revise § 178.347–4 to make a clear distinction between ''designed to be loaded by vacuum'' and ''built to withstand full vacuum.''

B. Commenters

The comment period for the NPRM closed on November 29, 2010. Eleven different commenters provided comments in response to the NPRM. PHMSA received comments from the following companies, and organizations:

- United Parcel Service (UPS)
- Worthington Cylinder Corporation (Worthington)
- Veolia Environmental Services
- Institute of Makers of Explosives (IME)
- PPG Industries, Inc.
- Barlen and Associates, Inc.
- Arrowhead Industrial Services USA, Inc.
- New England Fuel Institute
- Stericycle, Inc.
- Truck Trailer Manufacturers Association (TTMA)
- American Trucking Associations (ATA)

II. Provisions Adopted in This Final Rule and Discussion of Comments

In this section, PHMSA discusses the changes proposed in the NPRM and the comments received in response to the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA identifies the provisions that are adopted in this final rule. Also, to clearly identify the issues addressed in this final rule, PHMSA provides the following list of contents for this section:

A. Updated Incorporations by Reference
B. Definition of ''Person''
C. Consolidation Bins
D. Transitional Provisions
E. Reporting Infectious Substances Incidents

F. Hazard Communication for IBCs
G. HMT Revisions
H. Hazard Communication
I. Exclusive Use Vehicles for Regulated Medical Waste (RMW)
J. Fireworks
K. Explosives
L. Rail Transloading Operations
M. Cylinders
N. Cargo Tanks
O. Permeation Devices
P. Alcoholic Beverage Exception
Q. Special Permits
R. Lab Packs
S. Batteries Containing Sodium or Cells Containing Sodium
T. Additional Issues Addressed in This Rule

A. Updated Incorporations by Reference

Generally, PHMSA strives to promote consistency by incorporating existing consensus standards into the HMR. Through the ''National Technology Transfer and Advancement Act of 1996,'' government agencies are directed to use voluntary consensus standards. According to the Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' government agencies must use voluntary consensus standards whenever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health and safety, and protects the environment.

PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 consensus standard bodies. Section 171.7 lists the matters incorporated by reference into the HMR. PHMSA regularly reviews updated consensus standards and considers their merit for inclusion into the HMR. Below we discuss the consensus standards being considered for adoption in this final rule.

In response to a petition for rulemaking (petition number P–1495; Docket Number PHMSA–2007–28054) submitted by IME, PHMSA reviewed the updated American Society for Testing and Materials Standard pertaining to the use of an alternate bend test for DOT 3AA and 3AAX cylinders in accordance with (ASTM E290–97a (2004), ''Standard Test Methods for Bend Testing for Material for Ductility''). PHMSA also reviewed the updated Association of American Railroads' (AAR) pamphlet pertaining to the Intermodal Loading of Products in Closed Trailers and Containers (AAR Pamphlet 6C); and the updated IME's Standard pertaining to the Safe Transportation of Detonators (IME SLP–22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, dated February 2007).

Currently, we reference Bureau of Explosives (BOE) Pamphlets in several sections of the HMR that establish general handling and loading requirements for the transportation of hazardous materials by rail (*e.g.,* §§ 174.55(a); 174.101(o)(2)(3); 174.112(c)(3), and 174.115(b)(3)) (see § 171.7). The BOE, part of the AAR, was founded in 1907 by the railroad industry to serve as a self-policing agency to promote the safe transportation of explosives and other hazardous materials. The BOE wrote some of the first hazardous materials regulations which were subsequently adopted and expanded upon by the Interstate Commerce Commission (ICC) and later the U.S. Department of Transportation.

A number of BOE publications are referenced in the HMR for bulk and non-bulk shipments of hazardous materials. Several of the BOE publications focus on the safe transportation of non-bulk packages of hazardous materials in trailer-on-flatcar service, including: BOE Pamphlet No. 6, *Approved Methods for Loading and Bracing Carload and Less Than Carload Shipments of Explosives and Other Hazardous Materials;* Pamphlet No. 6A, *Approved Methods for Loading and Bracing Carload Shipments of Military Ammunition and Explosives; and* BOE Pamphlet 6C, *Approved Methods for Loading and Bracing Trailers and Less-Than-Trailer Shipments of Explosives and Other Dangerous Articles Via Trailer-on-Flat-Car and Container-on-Flat-Car.* Pamphlets 6 and 6A were last updated in 1976.

With the increasing use of intermodal methods as the preferred means of shipping non-bulk packages of hazardous materials, the AAR subsequently issued the *Intermodal Loading Guide for Products in Closed Trailers and Containers* (Guide), replacing BOE Pamphlet 6C, Pamphlet No. 45, and Circular No. 43–C. This Guide was issued in 1995. Despite the industry change, BOE Pamphlets 6 and 6A remain in effect and are referenced in the HMR.

The Guide is intended to be a comprehensive manual for loading commodities in trailers and containers for shipment by rail. Incorporated into this Guide are AAR Circular 43–D, *Rules for Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service,* the approved loading and bracing information contained in AAR Bureau of Explosives Pamphlet 6C, and AAR Pamphlet No. 45 on general loading in closed trailers and containers.

The ''General Rules'' as contained in Circular 43–D are issued by the AAR, and have been formulated for the purpose of providing safe methods of loading in closed trailers or containers. During normal transportation, trailers and containers may move various directions during transport (*e.g.*, forward, backward, side-to-side, *etc.*). Dynamic forces may shift an unsecured load or cause lading to exert excessive pressure against the front, rear doors, or sides of the trailer or container. Lading that is improperly blocked and braced can shift and cause the vehicle to lean on the flatcar. A leaning vehicle can cause a sideswipe or contribute to a derailment. The loading methods, as described in the Guide, are approved by the Damage Prevention and Freight Claim Committee and are minimum industry acceptance standards that have been evaluated and approved by the member railroad carriers serving on the committee.

In the NPRM, PHMSA clearly indicated that updating the incorporation by adding reference to these standards promotes safety without imposing significant compliance burdens. The standards have a well established and documented safety history. Further, adopting the standards will enhance the current level of safety achieved under the HMR.

PHMSA received mostly supportive comments. However, PHMSA received one comment from the ATA opposing the incorporation by reference of AAR Pamphlet 6C into the HMR. ATA stated, ''ATA opposes the incorporation by reference of industry standards where such standards are developed without the benefit of formal rulemaking and where such standards are not provided to the public free of charge. We note that Pamphlet 6C is not available to the public but may be ordered from the Association of American Railroads for $120.'' ATA further stated that ''PHMSA should first publish the text of the standard in the **Federal Register** and solicit comments on it prior to its incorporation into the HMR. In addition, PHMSA should ensure that the specific industry standard incorporated into the HMR remains available to the regulated community free of charge.'' ATA suggested PHMSA make a copy of the standards available on its Web site.

PHMSA agrees with the commenter that it would be useful for everyone to be able to access these documents. To this end, PHMSA continues to research appropriate methods to provide matters incorporated by reference to the regulated community. For example, on March 1, 2011, PHMSA published an advance notice of proposed rulemaking (ANPRM) under Docket No. PHMSA–2005–0019 (HM–241), entitled ''Hazardous Materials: Adoption of ASME Code Section XII and the National Board Inspection Code.'' The ANPRM considers incorporation by reference of the ASME's ''Boiler and Pressure Vessel Code, Section XII'' for the design, construction, and certification of cargo tank motor vehicles, cryogenic portable tanks and multi-unit-tank car tanks (ton tanks) and the National Board of Boiler and Pressure Vessel Inspector's (National Board) ''National Board Inspection Code'' as it applies to the continuing qualification and maintenance of ASME stamped cargo tank motor vehicles, portable tanks, and multi-unit-tank car tanks (ton tanks) constructed to standards in ASME Section VII or ASME Section XII (76 FR 11191). In the ANPRM, PHMSA notified the public of the electronic availability of the ASME ''Boiler and Pressure Vessel Code, Section XII'' (2010 Edition) and the National Board's ''National Board Inspection Code'' (2007 Edition). Further, PHMSA extended the comment period for the ANPRM published on December 23, 2010 (75 FR 80765). Moving forward, PHMSA will work to make matters incorporated by reference available to the public for review, free of charge, during open comment periods.

As for AAR Pamphlet 6C, PHMSA believes that we can and should adopt the standard since the standard provides an enhanced level of safety without imposing significant compliance burdens. These materials have a well-established and documented safety history. As in the case of ASTM E290–97a, this is an alternative and this final rule does not mandate the use of this standard. Therefore, at this time, we are adopting all of the incorporation by references, including the AAR Pamphlet 6C, as proposed.

B. Definition of ''Person''

Section 171.8 lists definitions for commonly used terms in the HMR. The current definition of ''person'' is inconsistent with the definition in the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in that it does not include persons who manufacture, repair, or test packaging authorized for the transportation of hazardous materials. For consistency with the statutory definition, PHMSA proposed to revise the definition of ''person'' in § 171.8 to include packaging manufacturers as well as repairers and testers of packaging used for the transportation of hazardous materials.

PHMSA did not receive any comments regarding this amendment; therefore, PHMSA adopts this amendment as proposed.

C. Consolidation Bins

Consolidation bins are commonly used by motor carriers to consolidate and transport hazardous materials packages. Consolidation bins are not offered by a shipper, rather, they are used by a motor carrier to consolidate, secure against movement, and provide additional protection for small packages. Currently, under the provisions of § 172.404(b), a consolidation bin is an outside container and must be labeled as required for each of the hazardous materials it contains. The ATA petitioned PHMSA (petition number P–1545; Docket Number PHMSA–2009–0236) to allow motor carriers to use consolidation bins to transport packages of hazardous materials without having to affix labels to the consolidation bin for each class of hazardous material contained within the bin.

In its petition, ATA suggested that consolidation bins promote safety by reducing damage to packages of hazardous materials, improve regulatory compliance by ensuring that packages are effectively blocked and braced on a vehicle, improve transportation efficiency by minimizing handling of numerous small packages, and allow packages moving to a specific terminal to be grouped together and to be transferred more efficiently from one motor vehicle to another. However, according to ATA, motor carriers are foregoing the use of consolidation bins because the dynamic nature of motor carrier operations makes the labeling and unlabeling of the bins impracticable. ATA gives the following reasons:

- Drivers would have to be trained on when to affix and remove labels as freight is picked up and dropped off.
- Each motor vehicle would have to be equipped with multiple sets of all labels, as drivers do not know the hazard classes of freight they will pick up prior to arriving at the consignor's facility.
- It is physically difficult to properly affix labels on a reusable consolidation bin in a manner that ensures they do not come off while in transportation and then remove those labels as packages within the bins are delivered.

ATA states: ''The use of unlabeled consolidation bins will not compromise the safe transportation of hazardous materials. Hazardous materials packaging loaded into the consolidation bin will be marked, labeled, and manifested on a hazardous material shipping paper. While some of these package labels may not be visible within the consolidation bin, this situation is identical to the current transportation of packaging where labels may be obscured by the position of the package or its placement in the vehicle.* * * '' In its petition, ATA proposes a new paragraph (c) to § 172.404 to allow a motor carrier to use an unlabeled consolidation bin for its own convenience, to include trailer-on-flatcar service, and proposes a specific definition in § 171.8 for the term ''consolidation bin.''

In addition to the petition for rulemaking by ATA, PHMSA issued special permit, DOT–SP 14881, authorizing the use of consolidation bins without hazard warning labels on the outside of the bins. This special permit was issued on December 3, 2009, and has been routinely used with no reported incidents. The special permit requires the consolidation bin be marked with an indication of each hazard class or division within it; that packages be secured within the bin by other packages or other suitable means to prevent shifting or significant relative motion between the packages; that the consolidation bins be otherwise properly blocked and braced within the transport vehicle; and that the packages be loaded only by employees of the motor carrier.

PHMSA agrees that there are safety benefits to using consolidation bins and that it may be impractical for a motor carrier to label and remove labels for packages transported in consolidation bins. Therefore, we proposed to allow an exception from labeling for consolidation bins used for the convenience of a motor carrier. However, PHMSA was concerned that, in the absence of any marking or label on the consolidation bin, a person other than the person who had placed packages in the bin may have no indication the bin contains a hazardous material. To address this concern, and consistent with the terms of the special permit, we proposed in the NPRM to require the bin to be marked in a manner that indicates it contains a hazardous material. We also proposed to incorporate several provisions of the special permit, including limiting the size of a consolidation bin to less than

64 cubic feet capacity, so as not to conflict with hazard communication requirements for freight containers. We also proposed that the consolidation bin must be reusable, made of materials such as plastic, wood, or metal. PHMSA was concerned that consolidation bins made of cardboard are not of sufficient strength to meet the requirements in this proposal. Accordingly, PHMSA requested comments on the use of cardboard and what standards should be established if cardboard would be authorized for use, *i.e.*, thickness, wall type, burst strength, *etc.*

We also proposed in the NPRM that packages may only be placed within the consolidation bin and the bin be loaded on a motor vehicle by an employee of a single motor carrier. Additionally, we proposed that consolidation bins may only be transported by a single motor carrier, or on railcars transporting such vehicles. We believe the proposed language in § 172.404(c) obviates the need for a separate definition for ''consolidation bin'' in § 171.8.

In addition to the proposal to address the ATA petition, we proposed to revise paragraph (b) of § 172.404, to clarify that an outside container or overpack need not be labeled, if labels on the packages contained therein are visible, for consistency with the overpack provisions of § 173.25(a)(2).

PHMSA received comments, from ATA, the UPS, and PPG Industries, Inc. regarding this proposed amendment. UPS supports the proposed labeling exception for consolidation bins. UPS indicated their experience using consolidation bins has been very successful. According to UPS, terminals using the bins have experienced zero damage to packages contained in the bins, a great improvement compared to UPS's efforts to secure these types of packages without consolidations bins. UPS supports, and ATA does not object to, proposals that would permit marking the bin or using a tag to indicate each hazard class or division contained therein, in place of requiring the application of individual hazard labels. According to UPS, ''the ability to use such consolidation bins without the labeling requirement greatly improves and simplifies the processes involved in using the bins.'' However, UPS and ATA do not support the proposal to limit the use of consolidation bins to a single motor carrier. UPS states '' * * * that this proposed limitation potentially removes the safe and beneficial handling practices it experiences from application in networks involving motor carriers utilizing contracts with other motor carriers to extend coverage.''

UPS indicates that when used for small, unpalletized packages of hazardous materials, the consolidation bins significantly reduce damages. In light of these benefits, UPS respectfully requests that PHMSA reconsider its proposed limitation restricting use of the bins to a single motor carrier. UPS states, ''These bins should be available to move among motor carriers that collectively, and through contracts, make up a comprehensive operating network * * *'' UPS believes that ''as long as the motor carriers in the network are operating under contract to the main motor carrier company, the drivers working for the vendor carriers are fully informed about bins being used, and are advised on how to identify the contents in the bins, interlining can successfully be used across the network.'' In addition, ATA commented that PHMSA could permit interlining and transfers of consolidation bins between carriers by including a requirement to inform the subsequent carrier on the use of the consolidation bin and its contents.

PPG Industries supports the use of consolidation bins by motor carriers to consolidate small packages of hazardous materials as proposed. PPG states, ''The benefits of package consolidation and reduced damage would seem to outweigh the lack of display of hazard labels on the outside of consolidation bins containing small packages.''

PHMSA agrees with the important safety benefits of providing for the use of consolidation bins when transporting hazardous materials by motor vehicle. However, we do not agree with commenters who requested that the proposed limitation for the use of consolidation bins by a single motor carrier be removed. The use of consolidation bins is a carrier function. Each carrier operation is unique to that particular carrier, as well as their consolidation bins they use for consolidating and securing freight. Limiting the use of the consolidation bins to a single motor carrier actually enhances safety in handling and transporting hazardous materials. In addition, freight transferred between carriers may be overpacked to provide the same safety and handling benefits. Therefore, we are adopting this amendment as proposed.

PHMSA requested comments on the use of cardboard and what standards should be established if cardboard would be authorized for use, *i.e.,* thickness, wall type, burst strength, *etc.* We received no comments on the use of cardboard and what standards should be established if cardboard would be authorized. PHMSA is concerned that consolidation bins made of cardboard are not of sufficient strength to meet the requirements in this proposal. Therefore, PHMSA is not authorizing the use of cardboard consolidation bins. The consolidation bin requirements are adopted as proposed.

D. Transitional Provisions

Section 171.14 provides transitional provisions for recently adopted regulatory changes. Most of the provisions in this section are outdated. Therefore, for better understanding of the transitional provisions, we proposed in the NPRM to remove this section and outdated provisions from the HMR and add the remaining provisions to the appropriate sections in the HMR to which they apply, as follows:

- *Shipping description sequence.* Section 171.14(e) permits the shipping description sequences in effect on December 31, 2006, to be used until January 1, 2013. PHMSA proposed to relocate this transitional provision to § 172.202(b).
- *Division 5.2 labels and placards.* Section 171.14(f) authorizes the use of a Division 5.2 label and a Division 5.2 placard that conform to the label and placard specifications in effect on December 31, 2006, until January 1, 2011, except for transportation by highway. For transportation by highway, a Division 5.2 placard conforming to the specifications in § 172.552 of this subchapter in effect on December 31, 2006 may be used until January 1, 2014. PHMSA proposed to relocate this transitional provision to § 172.552.
- *Class 3 and Division 6.1 definitions.* Section 171.14(g) authorizes the use of the Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, until January 1, 2012. PHMSA proposed to relocate these transitional provisions to §§ 173.120 and 173.121 for Class 3 materials and to §§ 173.132 and 173.133 for Division 6.1 materials.
- *Gasohol.* The transitional provision for gasohol in § 171.14(h) would be relocated to a new Special Provision 178 to specify that effective October 1, 2010, the proper shipping name ''Ethanol and gasoline mixture or ethanol and motor spirit mixture or ethanol and petrol mixture,'' and the revised proper shipping name ''Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol'' must be used, as appropriate when describing gasoline and ethanol mixtures.

PHMSA did not receive any comments opposing these amendments. However, PHMSA received comments from PPG Industries and New England

Fuel Institute (NEFI) supporting these amendments.

PHMSA's proposal to move the provision for use of the 5.2 label and 5.2 placard, conforming to the label and placard specifications in effect on December 31, 2006, with a January 1, 2011 transition date, except for highway transportation, is now outdated. Therefore, PHMSA is removing the provision authorizing use of the 5.2 label and 5.2 placard in effect on December 31, 2006 for all modes except highway until January 1, 2011 since the date has now passed. The use of the 5.2 placard in effect on December 31, 2006, is authorized for use by highway until January 1, 2014. With the exception of the transitional provision regarding the 5.2 label with the January 1, 2011 transition date discussed above, PHMSA is adopting this amendment as proposed.

Additionally, PHMSA's proposal to move the provision to a Special Provision 178 for the use of proper shipping name ''Gasohol gasoline mixed with ethyl alcohol, with no more than 20 percent alcohol'' which went into effect on January 28, 2008, may continue to be used until October 1, 2010. This provision authorizing the use of the proper shipping name ''Gasohol gasoline mixed with ethyl alcohol, with no more than 20 percent alcohol'' is now out dated since the October 1, 2010 transition date has passed. Therefore, we are not adopting this amendment as proposed. As of October 1, 2010, the new proper shipping name ''Ethanol and gasoline mixture or ethanol and motor spirit mixture or ethanol and petrol mixture'' and the revised proper shipping name ''Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol'' must be used as appropriate.

E. Reporting Infectious Substances Incidents

Section 171.15 establishes requirements for immediate notice of incidents involving certain hazardous materials. The Centers for Disease Control and Prevention is no longer accepting calls providing notice of incidents involving an infectious substance (etiologic agent). In the NPRM, PHMSA proposed to remove the alternative to provide notice to the Centers for Disease Control and Prevention of incidents involving an infectious substance (etiologic agent). Specifically, we proposed to remove the following text from paragraph (a) referencing the Centers for Disease Control and Prevention which states: ''Notice involving an infectious substance (etiologic agent) may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta, GA, 800–232–0124 (toll free), in place of notice to the NRC.''

PHMSA did not receive any comments opposing this amendment; therefore, this deletion is adopted as proposed.

F. Hazard Communication for Intermediate Bulk Containers (IBCs)

Section 172.336 requires identification numbers to be displayed on either orange panels or a plain white square-on-point display configuration having the same outside dimensions as a placard. Section 172.514 provides an exception to placarding for IBCs that authorizes IBCs to be labeled rather than placarded. However, there is no provision in the HMR that allows the proper shipping name and UN number to be displayed in lieu of displaying the UN number on a placard, orange panel, or white square-on-point configuration. 49 CFR 172.332(a). For international transport in accordance with the IMDG Code, IBCs are not required to display a UN number on a placard or orange panel. They are, however, required to be marked and labeled. To comply with both the HMR and IMDG Code, some shippers are having difficulty fitting all of the various markings, labels, placards on a steel cage IBC. These IBCs are constructed with a metal plate and all of the required markings, labels, placards do not fit in the allowed space on the metal plate; some must be affixed to the metal boards with clips or other holding devices which, although secured, run the risk of becoming dislodged during transportation. To meet all of the necessary requirements, a shipper may place all of the following items on the IBC: a placard with the UN number; a hazard label; the proper shipping name and UN number; and the GHS product labeling requirements. Shippers generally do not use the UN number on the orange panel because this configuration is too large for the metal plate.

For international harmonization, PHMSA proposed in the NPRM to revise § 172.336 by adding a new paragraph (d) to indicate that when a bulk packaging is labeled instead of placarded in accordance with § 172.514(c), identification numbers may be displayed in accordance with § 172.301(a)(1). Additionally, we proposed to revise § 172.514(c)(4) to indicate that IBCs that are labeled on two opposite sides rather than placarded, are authorized to display the proper shipping name and UN number in lieu of displaying the UN number on a placard, orange panel, or white square-on-point configuration.

In a petition for rulemaking (P–1392), Vinings Industries, Inc., has noted that given the size of bulk packaging covered by the placard-to-label exception and the fact that these packaging are generally transported in closed vehicles, the same logic used to justify a small display of the hazard identity (*e.g.* labels instead of placards) would support a small, more flexible, display of the identification number. PHMSA agrees that the petition has merit. Therefore, in the NPRM, PHMSA proposed to revise § 172.336 by adding new paragraph (d) to allow the use of smaller identification markings when a bulk packaging is labeled instead of placarded.

PHMSA did not receive any comments opposing these amendments. However, PPG Industries suggested that it would be clearer to have the IBC marking options displayed in one section within Subpart D of Part 172. They believed having the marking reference within the placarding section is confusing.

PHMSA disagrees with PPG Industries' suggestion. The placarding exception in § 172.514(c) is the impetus of this regulatory change. The link between the placarding and marking exceptions is essential to provide consistency and eliminate confusion. We are adopting these amendments as proposed.

G. HMT Revisions

PHMSA proposed a number of revisions to the Hazardous Materials Table (HMT; § 172.101), for the purpose of harmonizing with international standards. These proposed revisions included the following:

- Section 172.101(c) provides instruction on the use of the Column (2) list of hazardous materials descriptions and proper shipping names in the HMT. Included in paragraph (c)(2) is instruction on use of the word ''or.'' The word ''or'' in italics indicates that there is a choice of terms in the sequence that may be used as the proper shipping name or as part of the proper shipping name. PHMSA proposed to clarify this provision by including further instruction on the use of the word ''or.'' We proposed to include examples to indicate that the term ''or'' authorizes the use of either the first or the second term in the description of the hazardous materials in the proper shipping name. For example, the entry ''Carbon dioxide, solid *or* Dry ice'' means that either ''Carbon dioxide, solid'' or ''Dry ice'' may be used as the proper shipping name; and, the entry ''Articles, pressurized pneumatic *or* hydraulic''

means that either ''Articles, pressurized pneumatic'' or ''Articles, pressurized hydraulic'' may be used as the proper shipping name.

• The entries for ''Formaldehyde, solutions'' and ''Formalin'' are sometimes used incorrectly. Formalin is specifically defined as a 37% aqueous solution of formaldehyde. A 10% formalin solution and 10% formaldehyde solution are not the same materials for transport purposes. Many diagnostic and biological samples are transported by commercial aircraft in formaldehyde solutions of various concentrations. Some samples transported in 10% or greater formaldehyde solutions are incorrectly shipped as unregulated materials. Other samples transported in 3.7% formaldehyde (10% formalin) solutions are incorrectly shipped as fully regulated hazardous materials. A formaldehyde solution, with less than 25% but not less than 10% formaldehyde is a Class 9 material. PHMSA proposed to include a new italicized entry in Column (2) of the HMT for 10%–25% formaldehyde solutions to enhance understanding of the entries in the HMT. This new entry would reference the proper shipping names ''Aviation regulated liquid, n.o.s'' and ''Other regulated substances, liquid, n.o.s.''

Formalin is an aqueous solution of formaldehyde and methanol and is a Class 3 flammable liquid material. The entry ''Formaldehyde solutions, flammable, UN1198'' is intended for use as a hazardous materials description for formalin. Note that the less common ''methanol-free'' formalin is not a Class 3 material. Therefore, for further clarification, we proposed to revise the ''Formaldehyde, solutions, flammable'' entry by adding a new special provision 176 to specify that the entry is intended for use as proper shipping name for formaldehyde solutions containing methanol.

PHMSA became aware of a typographical error in the entry ''Formaldehyde solutions'' which has an extra comma between ''Formaldehyde'' and ''solutions.'' Therefore, PHMSA proposed to correct this error by removing the comma between ''Formaldehyde'' and ''solutions'' in the proper shipping name for UN1198.

PHMSA received no comments on these proposed changes to the HMT. Therefore, we are adopting these amendments, with an edit to ''Formaldehyde solutions, UN1198,'' entry as proposed.

• In a final rule, under Docket HM–215I, PHMSA revised the proper shipping name for ''Regulated medical waste, n.o.s, UN3291'' to include ''Clinical waste unspecified, n.o.s.'' and ''(BIO) Medical waste, n.o.s.'' under a combined proper shipping name entry. It has come to our attention that combining all the proper shipping names under the one entry makes it difficult to know the other proper shipping names exist. In the NPRM, PHMSA proposed to give each proper shipping name its own entry in the HMT with a cross reference to the others.

• For the entry ''Battery-powered vehicle or Battery-powered equipment, UN3171,'' the stowage category ''A'' entry in Column (10A) was inadvertently omitted. PHMSA proposed to reinstate in Column (10A) of the HMT stowage category ''A.''

• A new italicized entry ''Permeation devices, containing dangerous goods, for calibrating air quality monitoring equipment'' would be added referencing § 173.175 to indicate that permeation devices that contain dangerous goods and are used for calibrating air quality monitoring devices are not subject to the HMR requirements provided the conditions of § 173.175 are met. This proposed revision was submitted to PHMSA as a petition for rulemaking (petition number P–1493; Docket Number PHMSA–2007–27318) from the URS Corp. requesting harmonization with the international regulations on the exception for permeation devices in Special Provision A41 of the ICAO Technical Instructions.

PHMSA received no comments concerning these proposed amendments. Therefore, we are adopting these amendments as proposed.

• Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. For consistency with international regulations, PHMSA proposed in the NPRM to add a new Special Provision 173 to provide a specification package exception for certain adhesives, printing inks, printing ink-related materials, paints, paint-related materials, and resin solution which are assigned to ''Environmentally hazardous substances, liquid, n.o.s., UN3082.''

The proposed change is consistent with an exception recently adopted within the United Nations Model Regulations on the Transport of Dangerous Goods (UN Model Regulations). The exception adopted into the UN Model Regulations expands packing provision PP1 of Packing Instruction P001 and provides that metal or plastic packaging for substances of Packing Groups II and III in quantities of 5 liters or less per packaging are not required to be packed in specification packaging when transported under specific conditions. In the HM–215J final rule published January 4, 2010, PHMSA indicated that it was evaluating the adoption of these provisions. (75 FR 63). PHMSA has completed this review and proposed to adopt this provision on the basis that environmentally hazardous paints, adhesives, printing inks, *etc.* pose a lesser hazard than flammable and corrosive paints which are already provided this exception in the HMR.

PHMSA received one comment from PPG Industries supporting the proposal to add Special Provision 173. PHMSA did not receive any comments opposing the HMT changes discussed above. Therefore, we are adopting this amendment as proposed.

H. Hazard Communication

1. Section 172.203(c) provides additional shipping paper description requirements. PHMSA received a petition for rulemaking (petition number P–1456; Docket Number PHMSA–2005–21198) from the AAR to suggest that we require shipping papers to include a notation for shipments of non-odorized liquefied petroleum gas (LPG). Most LPG shipments contain an odorant. Thus, in the event of an accident involving LPG, emergency responders may assume that no LPG is leaking if they cannot detect an odor. To ensure that emergency responders are made aware that a shipment of LPG is not odorized, PHMSA proposed to revise § 172.203(c) to require a notation that the LPG shipment does not contain an odorant.

We received one comment from New England Fuel Institute (NEFI) supporting this proposed amendment. NEFI supports adding the words ''non-odorized'' to the proper shipping name on shipping papers for non-odorized LPG, and believes it will aid emergency responders.

We received no comments opposing this amendment. Therefore, we are adopting this amendment as proposed.

2. *Section 172.324* provides additional marking requirements for hazardous substances in non-bulk packaging. For clarification purposes, PHMSA proposed to amend this section to require a package containing a limited quantity that also meets the definition for a hazardous substance to be marked with the name of the hazardous substance on the package, in

parentheses, in association with the proper shipping name or the identification number, as applicable.

PHMSA received one comment from PPG Industries noting that PHMSA adopted this marking requirement under Docket HM–215K (76 FR 3308). The commenter is correct, the new limited quantity marking amendment was adopted in the Docket HM–215K, final rule, published on January 19, 2011. Therefore, PHMSA is not adopting the proposed amendment in this final rule.

3. *Section 172.432* describes the Infectious Substance label size and color and provides an illustration of how it must appear. References to the Centers for Disease Control (CDC) are no longer required on this label. Therefore, we proposed to remove the text that refers to the CDC on the label. The text states ''In U.S.A. Notify Director—CDC, Atlanta, GA 1–800–232–0124''. PHMSA proposed to allow three years from the effective date of the final rule to use up existing stocks.

PHMSA received no comments on this proposed amendment. Therefore, we are adopting this amendment as proposed.

4. *Section 172.446* describes the Class 9 label specifications, including size, color, and an illustration of how it must appear. The Class 9 label specifications illustrated in the HMR is different from international regulations in that it features a thin, horizontal line running across the label at its midpoint (just at the bottom of the vertical black bars). There is no similar line in the international standards such as the International Civil Aviation Organization (ICAO) Technical Instructions and the International Maritime Dangerous Good (IMDG) Code. Some shipments are being delayed and required to be relabeled by international carriers due to this difference in the Class 9 label specifications. In an effort to avoid continued frustrated or delayed shipments, PHMSA proposed in the NPRM to revise the Class 9 label specifications by removing the horizontal line running across the label at its midpoint. We also proposed a three year transition from the effective date of the final rule to deplete existing stocks.

PHMSA received one comment from the UPS on this proposal to revise the Class 9 label. UPS supports this proposed change for its potential to eliminate shipment delays.

PHMSA received no comments opposing this amendment. Therefore, PHMSA is adopting this amendment as proposed.

5. *Section 172.519* establishes general specifications for placards. Paragraph (c)(1) states that each placard must measure at least 273 mm (10.8 inches) on each side and must have a solid line inner border approximately 12.7 mm (0.5 inches) from each edge.

For international harmonization, PHMSA proposed in the NPRM to authorize the use of placards measuring from 250 mm (9.84 inches) on each side and having a solid line inner border approximately 12.7 mm (0.5 inches) from each edge.

PHMSA received one comment from the New England Fuel Institute supporting this proposed amendment, as long as the current placard size and design is maintained and authorized, in addition to the harmonized placards. PHMSA is adopting this amendment as proposed. However, the HMR will continue to permit the use of the larger placard sizes.

I. Exclusive Use Vehicles for Regulated Medical Waste (RMW)

Section 173.134 establishes definitions and exceptions for infectious substances. Paragraph (c)(2) requires RMW that contains Category B cultures and stocks to be transported on a vehicle ''used exclusively'' to transport RMW. In the NPRM, PHMSA proposed to revise § 173.134(c)(2) to incorporate the clarifications from a March 19, 2007 letter of interpretation (Ref. No. 07–0057). Specifically, PHMSA proposed to clarify that the following materials may be transported on a vehicle used exclusively to transport RMW: (1) Plant and animal waste regulated by the Animal and Plant Health Inspection Service (APHIS); (2) waste pharmaceutical materials; (3) laboratory and recyclable wastes; (4) infectious substances that have been treated to eliminate or neutralize pathogens; (5) forensic materials being transported for final destruction; (6) rejected or recalled health care products; and (7) documents intended for destruction in accordance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements.

PHMSA received one comment from Stericycle, Inc. (Stericycle) supporting this amendment. Stericycle also commented that the rationale underlying PHMSA's decision to authorize the transportation of multiple waste streams from medical facilities should also apply to other regulated activities, specifically to Special Permit 13556, which authorizes the transportation of sharps in specialized containers.

PHMSA has determined that incorporating Special Permit 13556 into the HMR is beyond the scope of this rulemaking. Therefore, PHMSA is adopting this amendment as proposed.

J. Fireworks

Section 173.56 specifies the requirements for classification and approval of new explosives, including fireworks in § 173.56(j). The section incorporates by reference the APA Standard 87–1 for classifying and approving fireworks. The text of § 173.56(j) permits the use of APA Standard 87–1 for determining fireworks classification as Division 1.3 or 1.4 explosive materials. The APA standard is also used to classify a pyrotechnic device as 1.1G. Therefore, in the NPRM, PHMSA proposed to delete the words ''Division 1.3 and 1.4'' in the introductory paragraph so that the sentence reads, ''Fireworks may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:''

PHMSA did not receive any comments regarding this amendment. However, PHMSA is developing a more comprehensive rulemaking to address this issue, as well as other issues involving fireworks. Therefore, in this final rule, PHMSA is not adopting any requirements specific to fireworks.

K. Explosives

Section 173.60 provides general packaging requirements for shipping Class 1 (explosive) materials. In a petition for rulemaking (petition number P–1527; Docket Number PHMSA–2008–0195), Mr. Alexander Fucito, the petitioner, asks PHMSA to revise the HMR to allow flexibility in testing and preparation of unpackaged shipments consisting of large and robust explosive articles. The petitioner contends that the current thermal stability and drop test requirements provided by Test Series 4 of the UN Manual of Tests and Criteria are unsafe and pose an unrealistic burden for persons who transport these articles. The petitioner asks PHMSA to revise § 173.60(b) to allow large and robust foreign munitions to be transported in the original, manufacturer provided, shipping configuration.

Section 173.60(b)(14) contains the same language as the footnote in Packaging Instruction 130 for named UN numbers in the UN Recommendations, Paragraph 4.1.5.15. However, there is a second paragraph to Paragraph 4.1.5.15 that has not yet been incorporated into the HMR. That paragraph reads: ''Where such large explosive articles are as part of their operational safety and suitability tests are subjected to test

regimes that meet the intentions of these Regulations and such tests have been successfully undertaken, the competent authority may approve such articles to be transported under these Regulations.'' In the NPRM, PHMSA proposed to add modified text of this paragraph from the 15th Edition of the UN Recommendations to §§ 173.60(b)(14) and 173.62(c) Packing Instruction 130 in the Table of Packing Methods to provide greater harmonization and account for the concerns expressed by Mr. Fucito in Petition P–1527.

PHMSA did not receive any comments regarding this amendment; therefore, we are adopting this amendment as proposed.

L. Rail Transloading Operations

Section 174.67 provides general requirements for rail tank car transloading operations for hazardous materials. In a petition for rulemaking (petition number P–1481; Docket Number PHMSA–2006–25900), Musket Corporation requests several revisions to this section. Specifically, the petitioner asks for clarification of manhole opening requirements, suggesting that the requirement for manhole covers to be opened during transloading operations conflicts with procedures to contain or control vapors during transloading or unloading operations where venting is accomplished through vapor valves rather than manhole openings. Additionally, certain companies pneumatically unload tank cars, and this process cannot be accomplished with the manhole cover open. In addition, the petitioner notes that the language requiring manhole covers to be opened during this process conflicts with regulations from other regulatory bodies, such as the Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart PP. Finally, the petitioner suggests that this requirement conflicts with a number of air quality control permits that restrict the amount of emissions companies can vent into the atmosphere.

In response to this petition, PHMSA proposed to revise § 174.67 in the NPRM to clarify and further address closed systems in transloading operations. PHMSA proposed that for closed systems, before a manhole cover or outlet valve cap is removed from a tank car, the car must be relieved of all interior pressure by cooling the tank with water or by venting the tank by raising the safety valve or opening the dome vent at short intervals. However, if venting to relieve pressure will cause a dangerous amount of vapor to collect outside the car, venting and unloading must be deferred until the pressure is reduced by allowing the car to stand overnight, otherwise cooling the contents, or allow venting to a closed collection system. These precautions are not necessary when the car is equipped with a manhole cover that hinges inward or with an inner manhole cover that does not have to be removed to unload the car, and when pressure is relieved by piping vapor into a condenser or storage tank.

PHMSA received no comments regarding this amendment; therefore, we are adopting this amendment as proposed.

M. Cylinders

1. *Section 173.302* provides the requirements for filling cylinders with non-liquefied (permanent) compressed gases. Section 173.304 provides the requirements for filling cylinders with liquefied compressed gases. In a final rule under Docket HM–224B [72 FR 55091], PHMSA added DOT 39 cylinders to the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft in §§ 173.302 and 173.304. It has come to our attention that when we included DOT 39 cylinders with the other types of cylinders, we did not recognize that DOT 39 cylinders have a different pressure relief device (PRD) setting tolerance than the other authorized cylinders. Therefore, in the NPRM, we proposed to revise paragraph (f)(2) of § 173.302 and paragraph (f)(2) of § 173.304 to prescribe the PRD setting tolerance for DOT 39 cylinders. In the NPRM, PHMSA proposed to revise these sections to prescribe the PRD setting tolerance for DOT 39 cylinders.

Worthington Cylinder Corporation (Worthington) supports the proposal but stated it creates a major conflict with CGA Publication S–1.1 and completely eliminates shipping DOT 39 cylinders by air where the rupture disk is welded to the cylinder. Worthington agrees that a proposed change can be submitted to CGA and CGA Publication S–1.1 in order to ''catch-up'' to 49 CFR requirements. Worthington also stated that oxygen can be shipped in low-pressure cylinders and that PHMSA only considered high pressure DOT 39 cylinders that contain a valve with a rupture disk. Worthington suggested adding the alternative use of a CG–2 or CG–3 device as defined in CGA Publication S–1.1 to our proposal to maintain an acceptable level of safety. Worthington stated, ''Adding the alternative use of a CG–2 or CG–3 device would maintain the level of safety by having maximum containment of the oxygen or oxygen mixture in the cylinder. Like the CG–1 device, the CG–2 or CG–3 device will empty the contents of the cylinder.''

Barlen and Associates (Barlen) did not support our proposal stating it effectively bans air shipment of oxygen and its mixtures in DOT 39-cylinders. Barlen stated that ''even if the DOT at some point again allowed air shipment of oxygen, this proposed change would still for all practicable purposes ban air shipments of oxygen and oxygen-rich mixtures in DOT–39 cylinders.'' Barlen also suggested that a ''different solution might be for DOT to totally ignore the CGA S–1.1 and change all DOT–39 cylinders to its 'shipped by air only' setting. However, that solution would involve changing the settings on millions of DOT–39 cylinders (all those 1 pound Bernzomatic type cylinders, etc.)''

PHMSA has considered Worthington and Barlen's comments and suggestions. Further, PHMSA recently received a petition for rulemaking (P–1580) highlighting additional concerns regarding the PRD setting for DOT 39 cylinders. To fully consider both the comments and the petition PHMSA has elected not to adopt the proposed amendment to the PRD setting for DOT–39 cylinders in this final rule. PHMSA plans to address the issue in a future rulemaking.

2. *Section 178.35* contains general requirements for specification cylinders. Paragraphs (c)(4) and (g) require the inspector to complete certain reports containing the applicable information listed in the Compressed Gas Association publication, CGA C–11 ''Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture'' and any additional information or markings required by the applicable specification. These documents must be provided to the cylinder manufacturer and, upon request, to the purchaser. PHMSA compliance inspections reveal sometimes these reports are completed several months after the cylinders are sold. In the NPRM, PHMSA proposed to consolidate the inspectors' reports requirements into paragraph (c)(4). A new paragraph (g) would be added to clarify the cylinder manufacturer must have all completed test and certification reports available at or before the time of delivering the cylinders to the purchaser. In addition, the manufacturer's report retention requirement in paragraph (h) would be relocated to paragraph (g) and paragraph (h) would be removed.

Worthington opposed the proposed amendments in § 178.35 to require certification reports available at or before the time of delivering the cylinders to the purchaser. Worthington indicates that the proposal should consider that a single manufacturing facility can produce tens of thousands of cylinders daily. Depending on the cylinder design, this could require 50–75 reports daily. To comply with the required proposal for reports before shipment arrives at the customers, Worthington stated that, ''cylinder manufacturers and independent inspection agencies will have to add personnel which increases customer costs for no value added or safety benefit.''

PHMSA does not agree with the commenter. This documentation is necessary to understand and evaluate cylinder related failures (*e.g.,* as cylinder burst) and to promote safety. The certification reports from the inspector and given to the manufacturer must be available at or before the time of delivering the cylinders to the purchaser. PHMSA compliance inspectors revealed that sometimes these reports are completed several months after the cylinders are sold.

PHMSA is adopting the revisions to test reports in § 178.35 as proposed. This change will clarify that a cylinder manufacturer must have all completed test and certification reports available at or before the time of delivering the cylinders to the purchaser.

3. *Section 178.37* sets forth manufacturing specifications for DOT 3AA and 3AAX seamless steel cylinders, in addition to requirements set forth in § 173.35. Paragraphs (j) and (l) specify the flatting test procedures and rejection criteria respectively. PHMSA received a petition (petition number P–1513; Docket Number PHMSA–2008–0065) from Worthington requesting a revision to § 178.37 to authorize the use of an alternate bend test conducted in accordance with the procedures in ASTM E 290–97a (2004) for DOT 3AA and 3AAX cylinders. The petitioner states that the proposed bend test demonstrates ductility of the cylinder with the same accuracy as the flattening test at a lower cost to cylinder manufacturers. We agree with the petitioner that the use of the bend test is acceptable for cylinders. Therefore, in the NPRM, PHMSA proposed to revise paragraphs (j) and (l) in § 178.37 to authorize the use of the bend test.

PHMSA received no comments regarding this proposed amendment to allow the use of the bend test on cylinders. Therefore, PHMSA is adopting this amendment as proposed.

4. *Section 178.71* contains design and manufacturing specifications for UN pressure receptacles, including the specification marking requirements. In the NPRM, PHMSA proposed to relax the requirements in paragraph (o)(6) of the HMR to allow the use of a proof pressure test. The ISO 7866 and 9809 standards permit either the proof pressure test or volumetric expansion test to be used. The volumetric expansion test measures the cylinder's elastic expansion and assures the cylinder received a proper heat treatment. However, the ISO standards also require each cylinder be subjected to a hardness test and a comprehensive shear wave ultrasonic examination (UE). PHMSA indicated in the NPRM that the combination of the proof pressure test, hardness test, and UE should provide adequate assurance that each cylinder received a proper heat treatment.

Arrowhead opposed the proposal in § 178.71 to allow the use of proof pressure testing versus the current mandatory volumetric expansion testing on all cylinders. The ISO 7866 and 9809 standards currently permit the use of either the proof pressure test or volumetric expansion test. The commenter recommends that the current language in the HMR remain unchanged requiring the mandatory volumetric expansion testing of all cylinders.

PHMSA does not agree with Arrowhead's comments. Arrowhead did not provide any evidence of cylinder failure due to lack of volumetric expansion testing or technical rational in support of its comments. PHSMA is not eliminating the current volumetric expansion test for cylinders. ISO Standards 9809–1, 2, 3 and 7866 provides alternative volumetric expansion test to proof pressure testing. Based on extensive technical work of ISO/TC58/SC3/WG14 which was completed by the U.S. experts and major U.S. cylinder manufacturers, we have concluded the testing methods as described in ISO 9809(s) and ISO 7866 standards provide adequate and safe methods of ensuring proper heat treatment. Additionally, many of these cylinders have been manufactured under these standards and safely used for over 15 years.

PHMSA does not agree with Arrowhead's comments as stated above. Therefore, we are adopting this amendment as proposed.

N. Cargo Tanks

1. *Section 178.345–1(i)(2)* establishes general design and construction requirements for DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348) cargo tank motor vehicles. Cargo tank motor vehicles composed of more than one cargo tank may be constructed with the individual cargo tanks manufactured to a single specification or to different specifications. Each cargo tank must conform in all respects with the specification for which it is constructed and certified.

The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be vented to the atmosphere and have a drain located on the bottom centerline. Each drain must be accessible and must be kept open at all times. The drain in any void within the connecting structure of a carbon steel, self-supporting cargo tank may be either a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inch diameter, 6.0 inches apart, one of which is located on the bottom centerline.

Previous interpretations indicate that a vent must be located as close to the top centerline of the tank as practicable and the drain as close to the bottom centerline of the tank as practicable. Through discussions with industry and enforcement personnel, PHMSA determined that requiring an opening on top of a cargo tank to vent vapors that accumulate in the void space may not be the best practice. In many instances, such as with gasoline, the vapors are heavier than air and it is not necessary to require cargo tanks to be vented to the atmosphere through a vent located near the top centerline. Vapors heavier than air escape through the drain opening. In addition, venting voids through the top of a cargo tank may cause premature corrosion of the void space as a result of water penetration. Allowing the vent to be plugged will also make it easier to identify when there is actually a leak in the bulkhead. Hazardous materials leaking from the drain will cause an obvious stain/dirt buildup that, with the top vent plugged, cannot be a result of water draining from the top vent and must be a leaking bulkhead.

To address this problem, in the NPRM, PHMSA proposed to revise § 178.345–1 to clearly indicate that any void area within the connecting structure of a cargo tank between double bulk heads must be vented to the atmosphere through the required drain or through a separate vent. The proposed revision will ensure that void spaces in the connecting structure of DOT 406, 407, and 412 cargo tank motor vehicles are properly vented to allow for the escape of product vapors. This

change also promotes the longevity of the tanks by clarifying that it is not necessary to place a vent in the top of a void space where rain water can easily infiltrate the void space and cause corrosion if the product vapors are heavier than air and will vent through the drain. This clarification ensures that the vent is located in the most appropriate location for the material being transported. However, we urge manufacturers to continue allowing for access to the void space through the top of the tank. In addition, we suggest the continued placement of inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure.

PHMSA received two comments from New England Fuel Institute (NEFI) and Truck Trailer Manufacturers Association (TTMA) on the proposal to clarify that it is no longer necessary to place a vent on the top of the center line of a cargo tank vehicle and that venting the void space through the existing required drain or other separate vent. NEFI supports this clarification, provided it is only a clarification, and will not require that the top vent be plugged or that a new vent other than the currently required drain be installed in existing specification and non specification cargo tanks. NEFI stated, ''Requiring a new vent or a vent plug would create significant compliance costs for small business petroleum suppliers that are not currently accounted for under the NPRM.''

TTMA supports the clarification regarding vents in the void for cargo tank trailers. TTMA indicated that the original language in the regulations required numerous letters of interpretation and developed problems in the application of the regulations. TTMA stated, ''The new language reflects the industry input over the last few years and achieves the goal of a common sense solution to the venting problem.''

PHMSA's proposal is to clarify that it is not necessary to place a vent on top of the center line of a cargo tank vehicle and that venting the void space through the existing required drain or other separate vent is authorized. Therefore, we are adopting this amendment as proposed.

Section 178.320 includes a definition for ''cargo tank wall.'' The cargo tank wall includes those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of the cargo tank assembly. Confusion has resulted from the use of ''cargo tank assembly'' in the definition. The term ''cargo tank assembly'' as used in that definition, is simply referring to the completed cargo tank motor vehicle. Since ''cargo tank assembly'' is synonymous with ''cargo tank motor vehicle,'' a term that is defined in § 178.320, we proposed to replace the term ''cargo tank assembly'' with ''completed cargo tank motor vehicle.''

PHMSA received no comments on these proposed amendments. Therefore, PHMSA is adopting these amendments as proposed.

2. *Section 178.347–1(c)* requires a cargo tank with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum to be constructed and certified in accordance with the ASME Code. The wording used for this requirement has resulted in some confusion. Generally, the ''and'' would mean that a tank would need to be both designed to be loaded by vacuum and have a MAWP greater than 35 psig to be subject to the construction and certification requirements of the ASME Code. This is not the intent of the current requirement. Therefore, we proposed to clarify the requirement to clearly state that a cargo tank motor vehicle with a MAWP greater than 35 psig or a cargo tank designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code, in line with our original intent.

The introductory text to § 178.347–1(d) requires tanks with a MAWP of 35 psig or less to be constructed in accordance with the ASME Code. We are clarifying this requirement to indicate, in line with § 178.347–1(b), cargo tanks that are designed to withstand full vacuum but have a MAWP of 35 psig or less and are not designed to be loaded by vacuum are only required to be constructed in accordance with the ASME Code. They do not require certification under the ASME Code.

PHMSA received no comments on this proposed amendment. Therefore, PHMSA is adopting this amendment as proposed.

3. *Section 178.347–4(b)* states that vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum or built to withstand full vacuum. In the NPRM, we proposed revisions to this section to make a clear distinction between the phrase ''designed to be loaded by vacuum'' and ''built to withstand full vacuum.'' Basically, if a cargo tank manufacturer designs a cargo tank ''to withstand full vacuum,'' it is only required to be constructed in accordance with the ASME Code but not certified under the ASME Code. However, a cargo tank that is loaded by vacuum is required to be constructed and certified in accordance with the ASME Code. The intent of the final user of the equipment will determine whether a tank will be vacuum loaded and required to be a certified (''U'' stamped) vessel. A manufacturer may design a tank to withstand full vacuum to ensure that it is sufficiently robust to endure the stresses associated with transportation of hazardous materials, including changes in product temperatures and the vacuum created during unloading. Designing a tank to withstand full vacuum does not mean that the tank is actually equipped to or used in vacuum service.

PHMSA received no comments on this proposed amendment. Therefore, PHMSA is adopting this amendment as proposed.

4. *Section 180.417(b)(1)(v)* requires the minimum thickness of the cargo tank shell and heads to be noted on inspection and test reports when the cargo tank thickness is tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i). The reference to § 180.407(d)(4), which addresses thickness testing of ring stiffeners or other appurtenances, is incorrect. After reviewing the final rule to Docket HM–213 (68 FR 19257; April 18, 2003) and the response to appeals (68 FR 52363; September 3, 2003), the rules that established current paragraph (b)(1), it is apparent that the correct reference for this section should be § 180.407(d)(5), which refers to thickness testing of corroded or abraded areas of the cargo tank wall. In the NPRM, PHMSA proposed to remove the reference to § 180.407(d)(4) in § 180.417(b)(1)(v) and replace it with the reference to § 180.407(d)(5).

PHMSA received no comments on this amendment. Therefore, we are adopting it as proposed.

O. Permeation Devices

Permeation devices are used to calibrate air quality monitoring equipment. These devices may contain extremely small quantities of hazardous materials and are subject to Special Provision A41 when transported by air in accordance with the International Civil Aviation Organization's (ICAO TI) Technical Instructions for the Safe Transport of Dangerous Goods by Air. Special Provision A41 authorizes the transportation of permeation devices on aircraft provided stringent safety requirements are met. International shippers of these devices are able to take advantage of this special provision. However, no similar provision exists in

the HMR. Therefore, in response to a petition (petition number P–1493; Docket Number PHMSA–2007–27318) from the URS Corporation, and to facilitate domestic and international transportation, in the NPRM, PHMSA proposed to add a new § 173.175 on permeation devices in Part 173 that would authorize the transportation of permeation devices in the same manner as is provided in Special Provision A41 of the ICAO T1.

PHMSA received no comments regarding this amendment; therefore, we are adopting this amendment as proposed.

P. Alcoholic Beverage Exception

Section 173.150 provides exceptions from regulation for Class 3 flammable liquid material. Specifically, § 173.150(d) provides exceptions for alcoholic beverages. An alcoholic beverage (as defined in 27 CFR 4.10 and 5.11) that meets one of three conditions outlined in § 173.150(d) is not subject to the requirements of the HMR for a Class 3 flammable liquid material. One of these conditions states that the alcoholic beverage must be in an inner packaging of 5 L (1.3 gallons) or less, and for transportation on passenger aircraft, must conform to § 175.10(a)(4) of the HMR as checked or carry-on baggage (see § 173.150(d)(2)). This provision for transportation by passenger aircraft was added in a final rule published on June 21, 2001 (HM–215D; 66 FR 33316) to clarify that alcoholic beverages carried by passengers or crewmembers must conform to the air passenger and crewmember exception provided in § 175.10(a)(4). In the final rule, we indicated that PHMSA was revising the exception in § 173.150(d) by clarifying that alcoholic beverages containing over 24% alcohol by volume are not excepted from regulation when transported by a passenger or crewmember on passenger-carrying aircraft except as provided in § 175.10(a)(4).

In the NPRM, PHMSA proposed to clarify § 173.150(d)(2) by specifying that the condition for transportation on passenger aircraft applies to an alcoholic beverage carried by passengers or crewmembers and that an alcoholic beverage (of any concentration of alcohol by volume) in an inner packaging of 5 L (1.3 gallons) or less transported as cargo on a cargo aircraft or a passenger aircraft is not subject to the requirements of the HMR.

PHMSA did not receive any comments regarding this amendment. However, PHMSA is not adopting this amendment as proposed. PHMSA plans to more fully address this issue in a future international harmonization rulemaking.

Q. Special Permits

Procedures for special permit applications are established in 49 CFR Part 107. In a final rule published under Docket HM–233B (76 FR 454; January 5, 2011), PHMSA adopted new requirements for application of a new special permit, party status to a special permit, and renewal of a special permit issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127).

PHMSA conducts a fitness review of each company requesting action on a special permit including applications for a new special permit. In the NPRM, we proposed to incorporate an additional requirement for each applicant to identify whether they are acting as a shipper or a carrier under §§ 107.105, 107.107, and 107.109. We indicated that the added information would assist PHMSA in determining the fitness of the applicant.

PHMSA received comments from Institute of Makers of Explosives (IME) and Veolia Environmental Services (Veolia), regarding the proposed amendment. Both commenters support the proposed amendment, but believe shippers as well as carriers should be included in these proposed procedures for applying for a special permit. Both commenters also indicated the importance of fitness determinations for both shippers and carriers. We appreciate the comments and have adopted the amendment as proposed.

R. Lab Packs

In a final rule under docket HM–233A (75 FR 20275; May 14, 2010), PHMSA incorporated Special Permit 13192 into the HMR. The special permit authorized relief from segregation requirements in Parts 174, 176, and 177 of the HMR provided the materials conform with the packaging and segregation requirements for lab packs in § 173.12(e).

1. *Special Permit 13192—flashpoint.* In the final rule, PHMSA inadvertently left out a proposal to except lab packs from the requirement in § 172.203(i)(2) of the HMR which requires the minimum flashpoint if it is 60 °C (140 °F) or below (in °C closed cup (c.c.)) in association with the basic description when transported by water. This requirement may be overly restrictive for a lab pack which may contain a number of hazardous materials with different flashpoints. Instead, for those materials with a flashpoint of 61 °C or less, Special Permit 13192 authorized the identification of the lowest flashpoint for all hazardous materials in the lab pack as a range of less than 23 °C or 23 °C to 61 °C. In the NPRM, PHMSA proposed to incorporate this exception for lab packs transported by cargo vessel.

PHMSA received one comment from Veolia regarding Special Permit 13192 which authorizes the lowest flashpoint of all hazardous materials contained in the lab pack being transported by cargo vessel to be indicated on the shipping paper as either being ''below 23 °C'' or in a range ''between 23 °C and 60 °C'' in lieu of indicating the exact minimum flashpoint. Veolia is concerned with the use of the word ''must'' in the new regulatory language as amended in § 172.203(i)(2) as being too restrictive. Veolia requested PHMSA replace the word ''must'' with ''may'' to allow the shipper of lab packs to indicate the flashpoint as either a range or as a specific temperature if known.

PHMSA has considered Veolia's comments and disagrees with the suggestion that the word ''must'' in the proposed language be replaced with ''may.'' This change was proposed because the current requirement to provide the minimum flashpoint for each material in a lab pack with a flashpoint of 60 °C (140 °F) or below is overly restrictive. Providing a single flashpoint for the material in the lab pack with the lowest flashpoint is sufficient. However, the commenter's suggested revision would relax current requirements even further and possibly cause confusion. Therefore, we are adopting this amendment as proposed.

2. *Special Permit 13192—segregation.* In this same final rule, PHMSA adopted exceptions from segregation for certain waste hazardous materials in lab packs and non-bulk packaging consistent with the provisions of Special Permit 13192. These exceptions are referenced in the segregation requirements for public highway transport in § 177.848(c). In making the conforming amendment to § 177.848(c), PHMSA inadvertently prohibited all cyanides, cyanide mixtures and solutions from being stored, loaded and transported with acids. The prohibition applies only to those cyanides, cyanide mixtures and solutions that would generate hydrogen cyanide when mixed with acids. Therefore, in the NPRM we proposed to correct this section by clarifying the segregation conditions.

PHMSA received no comments on this proposal on segregation conditions. Therefore, we are adopting this amendment as proposed.

S. Batteries Containing Sodium or Cells Containing Sodium

The HMR currently authorize the transport of sodium cells and batteries

under the descriptions ''Batteries containing sodium'' or ''Cells containing sodium'' (UN3292). Section 173.189 limits the types of hazardous materials which may be contained in such batteries to sodium, sulfur and polysulfides. Over time, other sodium battery chemistries have emerged and become more widely used and commonly transported. For example, some batteries with sodium metal chloride chemistries use sodium tetrachloroaluminate as a secondary electrolyte. In the NPRM, PHMSA proposed to expand the list of authorized chemistries to include all sodium compounds provided they meet the criteria specified in § 173.189. This amendment aligns the HMR with the 17th Edition of the UN Model Regulations effective January 1, 2013.

PHMSA received no comments regarding this amendment; therefore, we are adopting this amendment as proposed.

T. Additional Issues Addressed in This Rule

1. *Section 175.10* prescribes the conditions for which passengers, crew members or an operator may carry hazardous materials aboard an aircraft. In a final rule published under Docket HM–215K (76 FR 3308, January 19, 2011), PHMSA amended the HMR to maintain alignment with international standards by adding a new paragraph (a)(17) to permit a mobility aid such as a wheelchair containing a lithium ion battery to be transported in accordance with the provisions provided in this section.

Since publication of the HM–215K final rule, PHMSA has noted an inconsistency between the requirements of the ICAO Technical Instructions and the requirements of the HMR in relation to the acceptance of lithium battery powered mobility aids for transportation by aircraft. In particular, it has been noted that the HMR require the removal of the battery under certain conditions prior to transportation by aircraft. It is not our intent to be inconsistent with the requirements of the ICAO Technical Instructions in this regard. Thus, in this final rule § 175.10(a)(17) is corrected to clearly indicate that batteries are not required to be removed.

2. *Section 173.3.* In a final rule published in the **Federal Register** on May 14, 2010 under Docket No. PHMSA–2009–0289 (HM–233A; 75 FR 27205), PHMSA revised 173.3(d)(6) to permit damaged or leaking cylinders containing a Division 2.1, 2.2, 2.3 or 6.1, or Class 3 or 8 material to be overpacked in a salvage cylinder and transported by cargo vessel for repair or disposal. Prior to this revision, these cylinders were permitted to be transported for repair or disposal by motor vehicle only and only under the terms of Special Permit DOT–SP 14168. However, when this change was made the language in § 173.3(c)(6) was inadvertently replaced with language prescribed in the rule for § 173.3(d)(6), and paragraph (d)(6) was unchanged. In this final rule, PHMSA is correcting these errors by revising § 173.3(c)(6) to reinstate the language authorized for that paragraph prior to the issuance of the Docket No. HM–233A final rule, and revising § 173.3(d)(6) to reflect the regulatory language change authorized in the final rule issued under Docket HM–233A.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

1. This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

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

This final rule is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

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. As discussed in this rulemaking, PHMSA amends various provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. This final rule also responds to requests from industry associations to update and add references to standards that are incorporated in the HMR. PHMSA anticipates the amendments contained in this rule generate economic benefits to the regulated community. This final rule is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs. This final rule also updates a number of incorporations by reference to permit the industry to utilize the most recent versions of industry consensus standards. Incorporation of material by reference reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus are accepted and followed by the industry; thus, their inclusion in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal.

Further, the addition of an exception for permeation devices containing hazardous materials used for calibrating air quality monitoring devices for consistency with the current exception in the international regulations for these devices, as well as adding a new italicized entry to the HMT for ''Permeation devices'' referencing § 173.175, will result in reduced compliance costs by reducing regulatory compliance. This exception will also promote international harmonization. The amendment to provide an exception to labeling for consolidation bins used to transport hazardous materials by motor carrier will reduce compliance costs.

Additionally, this final rule adds a new Special Provision 173 to provide relief from the specification package requirements for certain adhesives, printing inks, printing ink-related materials, paints, paint-related materials and resin solution assigned to ''Environmentally hazardous substances, liquid, n.o.s., UN 3082.'' Overall, the amendments in this final rule should reduce regulatory burdens on the regulated community while increasing flexibility and transportation options.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final 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 government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), 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:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

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

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. As adopted, this rule preempts any state, local, or Indian Tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d) as the Federal requirements.)

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. That 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. The effective date of Federal preemption will be 90 days from publication of this final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Since this final 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, and a Tribal summary impact statement is not required.

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 unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. This final rule would amend miscellaneous provisions in the HMR to clarify provisions based on PHMSA's own initiatives and also based on petitions for rulemaking. While maintaining safety, the provisions of this final rule would relax certain overly burdensome requirements and would update references to consensus standards that are incorporated in the HMR. The changes are intended to provide relief to shippers, carriers, and packaging manufacturers, including many small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The impact of this final rule is not expected to be significant. The changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers and testers, including small entities. The majority of entities affected by this rule are small entities. Although the rule will create less burden, the overall effect of this positive change is not significant. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

By requiring additional information be included on certain shipping papers, this final rule will result in a minimal increase in annual paperwork burden and costs under OMB Control No. 2137–0034. PHMSA currently has an approved information collection under OMB Control No. 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information'' with 260,000,000 responses and 6,500,834 burden hours. This rule is imposing new requirements pertaining to § 172.203(c), additional shipping paper information requirements. We are requiring non-odorized LPG shipments to indicate ''non-odorized'' on the shipping papers to aid emergency responders in the event of an accident involving non-odorized shipments of LPG. It is estimated that only 5% of LPG shipments are non-odorized, therefore, we anticipate only a minimal increase in burden to include this additional notation on the shipping paper.

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 final rule identifies an information collection request that PHMSA is submitting to OMB for approval based on the amendment in this rule. PHMSA has developed burden estimates based on the amendment in this rule. PHMSA estimates that the net information collection and recordkeeping burden for this proposed requirement would be as follows: OMB Control No. 2137–0034.

Annual Respondents	29,850
Annual Responses	29,850
Annual Burden Hours	12.5
Annual Costs	$312.50

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., East Building, 2nd Floor, PHH–10, Washington, DC 20590–0001, telephone (202) 366–8553.

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 number contained in the heading of this document can be used

to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 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 Federal agencies to analyze actions to determine whether the action will have a significant impact on the human environment. In accordance with the Council on Environmental Quality (CEQ) regulations, Federal agencies must conduct an environmental review considering: (1) The need for the action; (2) alternatives to the action; (3) probable environmental impacts of the action and alternatives; and (4) the agencies and persons consulted during the consideration process. PHMSA is making miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand.

Description of Action

Docket No. PHMSA–2009–0151 (HM–218F), Final Rule

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Amendments to the HMR

In this final rule, key changes include:

Updating § 171.7 incorporations by reference of industry consensus standards issued by the Aluminum Association; the American Society for Testing and Materials; and the Institute of Makers of Explosives.

Adding a requirement for each applicant to a special permit under §§ 107.105, 107.107, and 107.109 to identify their role as a shipper (offeror), carrier, or both.

Revising the definition of ''person'' in § 171.8 to include those who manufacture, test, repair and recondition packages.

Revising the HMT to harmonize certain entries with international standards by adding and revising certain proper shipping names. Most significantly, we are adding a new entry ''Formaldehyde solutions (with not less than 10% and less than 25%) formaldehyde)'' to clarify requirements applicable to formaldehyde and formalin with less than 10% formaldehyde; revising the entry for ''Environmentally hazardous substances, liquid, n.o.s.'' to provide packaging exceptions for certain materials that are assigned to UN3082; and adding a new special provision to clarify the differences between Class 3 and Class 9 formaldehyde solutions.

Adding a new § 173.175 applicable to permeation devices to provide an exception for permeation devices containing hazardous materials that are used for calibrating air quality monitoring devices for consistency with the current exception in the international regulations for these devices; and add a new italicized entry to the HMT for ''Permeation devices'' referencing § 173.175.

Updating and clarifying hazard communication requirements applicable to Class 9 label specifications; placard size; IBCs; and Division 6.2 labels.

In § 178.37, authorizing the use of an alternative bend test for DOT 3AA and 3AAX steel cylinders.

In § 178–347–1, clarifying that cargo tank motor vehicles that have a MAWP greater than 35 psig or are designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code.

Revising § 171.14 transitional provisions to remove expired dates and incorporate certain dates into the specific sections of the HMR.

Revising provisions in § 173.56(j) to further clarify the use of the American Pyrotechnics Association (APA) standard for classifying and approving fireworks.

Revising § 172.404 to provide a labeling exception for consolidation bins used to transport hazardous materials by motor carrier, and clarify labeling requirements for consolidated packages.

Alternatives Considered

Alternative (1): Do nothing

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Go forward with the amendments to the HMR in this final rule.

This is the selected alternative.

Environmental Consequences

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (*e.g.* wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. The adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up/decontamination of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Amending the HMR to clarify requirements and maintain alignment with international standards enhances the safe transportation of hazardous materials in domestic and international commerce.

Conclusion

PHMSA is making miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The amendments are intended to: update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international

commerce; and make these requirements easier to understand. In conclusion, these amendments will likely result in positive environmental effects. Overall, these effects are not significant.

J. 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 (65 FR 19477) or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp*.

K. International Trade Analysis

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. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes 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 notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this rule is not considered as creating an unnecessary obstacle to foreign commerce.

List of Subjects

49 CFR Part 107

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

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

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

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Rail carriers, Reporting and recordkeeping.

49 CFR Part 175

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

49 CFR Part 177

Hazardous materials transportation, Incorporation by reference, Loading and Unloading, Segregation and Separation.

49 CFR Part 178

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

49 CFR Part 180

Hazardous materials transportation, Continuing qualification and maintenance of packaging.

In consideration of the foregoing, we are amending 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 § 107.105, add paragraph (c)(14) to read as follows:

§ 107.105 Application for special permit.

* * * * *

(c) * * *

(14) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

■ 3. In § 107.107, add paragraph (b)(7) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(7) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

■ 4. In § 107.109, add paragraph (a)(9) to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(9) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for Part 171 continues to read as follows:

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

■ 6. In § 171.7, the table in paragraph (a)(3) is amended as follows:

■ a. Under the entry ''The Aluminum Association,'' the organization's mailing address is revised;

■ b. Under the entry ''The American Society for Testing and Materials,'' the entry ASTM E 290–97a, ''Standard Test Methods for Bend Testing of Material for Ductility'' is added in appropriate numerical order;

■ c. Under the entry ''Association of American Railroads,'' the entry ''Intermodal Loading Guide for Products in Closed Trailers and Containers'' is added in appropriate alphabetical order; and

■ d. Under the entry ''Institute of Makers of Explosives,'' the entry ''IME Safety Library Publication No. 22, IME Standard 22, ''Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials'' is revised.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
The Aluminum Association, 1525 Wilson Blvd, Suite 6000, Arlington, VA 22209, telephone 703–358–2960, *http://www.aluminum.org*.	
* * * * * * *	
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428, telephone 610–832–9585, *http://www.astm.org*.	
* * * * * * *	
ASTM E 290–97a Standard Test Methods for Bend Testing of Material for Ductility, published February 1998.	178.37.
* * * * * * *	
Association of American Railroads, 425 Third Street, SW., Suite 1000, Washington, DC 20001, telephone 202–639–2100, *http://www.aar.org*.	
* * * * * * *	
Intermodal Loading Guide for Products in Closed Trailers and Containers, issued June 2001	174.55; 174.101; 174.112; 174.115.
* * * * * * *	
Institute of Makers of Explosives, 1120 19th Street, NW., Suite 310, Washington, DC 20036–3605, telephone 202–429–9280, *http://www.ime.org*.	
IME Safety Library Publication No. 22 (IME Standard 22), Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, February 2007.	173.63; 177.835.
* * * * * * *	

* * * * *

■ 7. In § 171.8, the definition of ''Person'' is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Person means an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian Tribe, or authority of a government or Tribe, that offers a hazardous material for transportation in commerce, transports a hazardous material to support a commercial enterprise, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. 5123 and 5124, a Department, agency, or instrumentality of the government.

* * * * *

§ 171.14 [Removed and Reserved]

■ 8. Section 171.14 is removed and reserved.

■ 9. Section 171.15, paragraph (a) introductory text is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) *General.* As soon as practical but no later than 12 hours after the occurrence of any incident described in paragraph (b) of this section, each person in physical possession of the hazardous material must provide notice by telephone to the National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call) or online at *http://www.nrc.uscg.mil.* Each notice must include the following information:

* * * * *

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

■ 10. The authority citation for Part 172 continues to read as follows:

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

■ 11. In § 172.101, paragraph (c)(2) is revised and the Hazardous Materials Table is amended by adding the entries under ''[ADD]'' and revising entries under [REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(2) Punctuation marks and words in italics are not part of the proper shipping name, but may be used in addition to the proper shipping name. The word ''or'' in italics indicates that there is a choice of terms in the sequence that may alternately be used as the proper shipping name or as part of the proper shipping name, as appropriate. For example, for the hazardous materials description ''Carbon dioxide, solid or Dry ice'' either ''Carbon dioxide, solid'' or ''Dry ice'' may be used as the proper shipping name; and for the hazardous materials description ''Articles, pressurized pneumatic or hydraulic,'' either ''Articles, pressurized pneumatic'' or ''Articles, pressurized hydraulic'' may be used as the proper shipping name.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*		*		*		*
	[ADD]												
	*		*		*		*		*		*		*
	Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde), see Aviation regulated liquid, n.o.s. or Other regulated substances, liquid, n.o.s.												
	*		*		*		*		*		*		*
	Permeation devices for calibrating air quality monitoring equipment See §173.175												
	*		*		*		*		*		*		*
	[REVISE]												
	*		*		*		*		*		*		*
	Battery-powered vehicle or Battery-powered equipment	9	UN3171	….	9	134	220	220	None	No limit	No limit	A	…..
	*		*		*		*		*		*		*
G	Environmentally hazardous substance, liquid, n.o.s.	9	UN3082	III	9	8, 146, 173, 335, IB3, T4, TP1, TP29	155	203	241	No limit	No limit	A	…..
	*		*		*		*		*		*		*
	Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, with more than 10% ethanol	3	UN3475	II	3	144, 177, IB2, T4, TP1	150	202	242	5 L	60 L	E	…..
	*		*		*		*		*		*		*
	Formaldehyde solutions, flammable	3	UN1198	III	3, 8	176, B1, IB3, T4, TP1	150	203	242	5 L	60 L	A	40
	*		*		*		*		*		*		*
D	Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol	3	NA1203	II	3	144, 177,	150	202	242	5 L	60 L	E	……..
	Gasoline includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol	3	UN1203	II	3	144, 177, B1, B33, IB2, T8	150	202	242	5 L	60 L	E	……..
	*		*		*		*		*		*		*

* * * * *

■ 12. In § 172.102(c)(1), new Special Provisions 173 and 176, are added in appropriate numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

173. For adhesives, printing inks, printing ink-related materials, paints, paint-related materials, and resin solutions which are assigned to UN3082, and do not meet the definition of another hazard class, metal or plastic packaging for substances of packing groups II and III in quantities of 5 L (1.3 gallons) or less per packaging are not required to meet the UN performance package testing when transported:

a. Except for transportation by aircraft, in palletized loads, a pallet box or unit load device (*e.g.* individual packaging placed or stacked and secured by strapping, shrink or stretch-wrapping or other suitable means to a pallet). For vessel transport, the palletized loads, pallet boxes or unit

load devices must be firmly packed and secured in closed cargo transport units; or

b. Except for transportation by aircraft, as an inner packaging of a combination packaging with a maximum net mass of 40 kg (88 pounds). For transportation by aircraft, as an inner packaging of a combination packaging with a maximum gross mass of 30 kg when packaged as a limited quantity in accordance with § 173.27(f).

* * * * *

176. This entry must be used for formaldehyde solutions containing methanol as a stabilizer. Formaldehyde solutions not containing methanol and not meeting the Class 3 flammable liquid criteria must be described using a different proper shipping name.

* * * * *

■ 13. In § 172.202, paragraph (b) is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

* * * * *

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3), and (4) of this section must be shown in sequence with no additional information interspersed. For example, ''UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II.'' The shipping description sequences in effect on December 31, 2006, may be used until January 1, 2013.

* * * * *

■ 14–15. In § 172.203, paragraph (i)(2) is revised and paragraph (p) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(i) * * *

(2) Minimum flashpoint if 60 °C (140 °F) or below (in °C closed cup (c.c.)) in association with the basic description. For lab packs packaged in conformance with § 173.12(b) of this subchapter, an indication that the lowest flashpoint of all hazardous materials contained in the lab pack is below 23 °C or that the flash point is not less than 23 °C but not more than 60 °C must be identified on the shipping paper in lieu of the minimum flashpoint.

* * * * *

(p) *Liquefied petroleum gas (LPG).* The word ''non-odorized'' must immediately precede the proper shipping name on a shipping paper when non-odorized liquefied petroleum gas is offered for transportation.

■ 16. In § 172.336, paragraph (d) is added to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(d) When a bulk packaging is labeled instead of placarded in accordance with § 172.514(c) of this subchapter, identification number markings may be displayed on the package in accordance with the marking requirements of § 172.301(a)(1) of this subchapter.

■ 17. Section 172.404 is revised to read as follows:

§ 172.404 Labels for mixed and consolidated packaging.

(a) *Mixed packaging.* When compatible hazardous materials having different hazard classes are packed within the same packaging, or within the same outside container or overpack as described in § 173.25, the packaging, outside container or overpack must be labeled as required for each class of hazardous material contained therein.

(b) *Consolidated packaging.* When two or more packages containing compatible hazardous materials are placed within the same outside container or overpack, the outside container or overpack must be labeled as required for each class of hazardous material contained therein, unless labels representative of each hazardous material in the outside container or overpack are visible.

(c) *Consolidation bins used by a single motor carrier.* Notwithstanding the provisions of paragraph (b) of this section, labeling of a consolidation bin is not required under the following conditions:

(1) The consolidation bin must be reusable, made of materials such as plastic, wood, or metal and must have a capacity of 64 cubic feet or less;

(2) Hazardous material packages placed in the consolidation bin must be properly labeled in accordance with this subpart;

(3) Packages must be compatible as specified in § 177.848 of this subchapter;

(4) Packages may only be placed within the consolidation bin and the bin be loaded on a motor vehicle by an employee of a single motor carrier;

(5) Packages must be secured within the consolidation bin by other packages or by other suitable means in such a manner as to prevent shifting of, or significant relative motion between, the packages that would likely compromise the integrity of any package;

(6) The consolidation bin must be clearly and legibly marked on a tag or fixed display device with an indication of each hazard class or division contained within the bin;

(7) The consolidation bin must be properly blocked and braced within the transport vehicle; and

(8) Consolidation bins may only be transported by a single motor carrier, or on railcars transporting such vehicles.

■ 18. In § 172.432, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 172.432 INFECTIOUS SUBSTANCE label.

(a) Except for size and color, the INFECTIOUS SUBSTANCE label must be as follows:

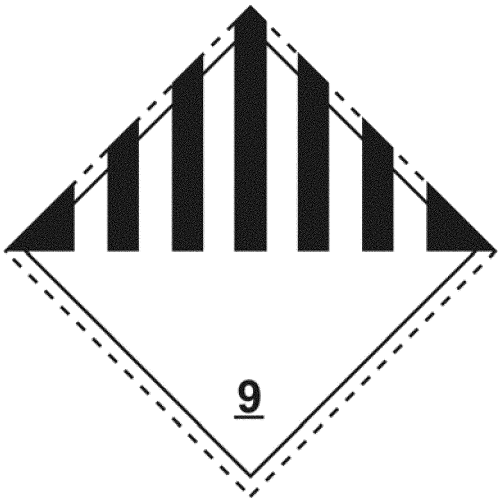
* * * * *

(c) Labels conforming to requirements in place on September 30, 2011 may continue to be used until October 1, 2014.

■ 19. In § 172.446, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 172.446 CLASS 9 label.

(a) Except for size and color, the ''CLASS 9'' (miscellaneous hazardous materials) label must be as follows:



* * * * *

(c) Labels conforming to requirements in place on September 30, 2011 may continue to be used until October 1, 2014.

■ 20. Section 172.514, paragraph (c)(4) is revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(c) * * *

(4) *An IBC.* For an IBC labeled in accordance with subpart E of this part instead of placarded, the IBC may display the proper shipping name and UN identification number in accordance with the size requirements of § 172.302(b)(2) in place of the UN number on an orange panel or placard.

* * * * *

■ 21. In § 172.519, paragraph (c)(1) is revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(c) * * *

(1) Each placard prescribed in this subpart must measure at least 250 mm (9.84 inches) on each side and must have a solid line inner border approximately 12.7 mm (0.5 inches) from each edge.

* * * * *

■ 22. In § 172.552, paragraph (c) is added to read as follows:

§ 172.552 ORGANIC PEROXIDE placard.

* * * * *

(c) For transportation by highway, a Division 5.2 placard conforming to the specifications in this section in effect on December 31, 2006 may continue to be used until January 1, 2014.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

■ 24. In § 173.3, revise paragraphs (c)(6) and (d)(6) to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(c) * * *

(6) The overpack requirements of § 173.25 do not apply to drums used in accordance with this paragraph.

* * * * *

(d) * * *

(6) Transportation is authorized by motor vehicle and cargo vessel only.

* * * * *

■ 25. In § 173.60, paragraph (b)(14) is revised to read as follows:

§ 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(14) Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged provided that a negative result was obtained in Test Series 4 of the UN Manual of Tests and Criteria on an unpackaged article. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against conditions encountered during normal transportation. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling, storage or launching devices in such a way that they will not become loose during normal conditions of transport and are in accordance with DOD-approved procedures. When such large explosive articles, as part of their operational safety and suitability tests, are subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, they may be offered for transportation in accordance with the requirements prescribed in (b)(14) above subject to approval by the Associate Administrator.

■ 26. In § 173.62, in paragraph (c), in the Table of Packing Methods, Packing Instruction 130 is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing Instruction	Inner packaging	Intermediate packaging	Outer packaging
* * *	*	*	* *
130	Not necessary	Not necessary	Boxes. Steel (4A). Wood natural, ordinary (4C1). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel, removable head (1A2). Aluminum, removable head (1B2). Plywood (1D). Fiber (1G). Plastics, removable head (1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			
* * *	*	*	* *

* * * * *

■ 27. In § 173.120, paragraph (e) is added to read as follows:

§ 173.120 Class 3—Definitions.

* * * * *

(e) *Transitional provisions.* The Class 3 classification criteria in effect on December 31, 2006, may continue to be used until January 1, 2012.

■ 28. In § 173.121, paragraph (c) is added to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(c) *Transitional provisions.* The criteria for packing group assignments in effect on December 31, 2006, may continue to be used until January 1, 2012.

■ 29. In § 173.132, paragraph (e) is added to read as follows:

§ 173.132 Class 6, Division 6.1—Definitions.

* * * * *

(e) *Transitional provisions.* The Division 6.1 classification criteria in effect on December 31, 2006, may continue to be used until January 1, 2012.

■ 30. In § 173.133, paragraph (c) is added to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

* * * * *

(c) *Transitional provisions.* The criteria for packing group assignments in effect on December 31, 2006, may continue to be used until January 1, 2012.

■ 31. In § 173.134, paragraph (c)(2) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *

(c) * * *

(2) The following materials may be offered for transportation and transported as a regulated medical waste when packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030 and transported by a private or contract carrier in a vehicle used exclusively to transport regulated medical waste:

(i) Waste stock or culture of a Category B infectious substance;

(ii) Plant and animal waste regulated by the Animal and Plant Health Inspection Service (APHIS);

(iii) Waste pharmaceutical materials;

(iv) Laboratory and recyclable wastes;

(v) Infectious substances that have been treated to eliminate or neutralize pathogens;

(vi) Forensic materials being transported for final destruction;

(vii) Rejected or recalled health care products;

(viii) Documents intended for destruction in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements; and

(ix) Medical or clinical equipment and laboratory products provided they are properly packaged and secured against exposure or contamination. Sharps containers must be securely closed to prevent leaks or punctures.

* * * * *

■ 32. Section 173.175 is added to read as follows:

§ 173.175 Permeation devices.

Permeation devices that contain hazardous materials and that are used for calibrating air quality monitoring devices are not subject to the requirements of this subchapter provided the following requirements are met:

(a) Each device must be constructed of a material compatible with the hazardous materials it contains;

(b) The total contents of hazardous materials in each device is limited to 2 ml (0.07 ounces) and the device must not be liquid full at 55 °C (131 °F);

(c) Each permeation device must be placed in a sealed, high impact resistant, tubular inner packaging of plastic or equivalent material. Sufficient absorbent material must be contained in the inner packaging to completely absorb the contents of the device. The closure of the inner packaging must be securely held in place with wire, tape or other positive means;

(d) Each inner packaging must be contained in a secondary packaging constructed of metal, or plastic having a minimum thickness of 1.5 mm (0.06 inches). The secondary packaging must be hermetically sealed;

(e) The secondary packaging must be securely packed in strong outer packaging. The completed package must be capable of withstanding, without breakage or leakage of any inner packaging and without significant reduction in effectiveness:

(1) The following free drops onto a rigid, non resilient, flat and horizontal surface from a height of 1.8 m (5.9 feet):

(i) One drop flat on the bottom;

(ii) One drop flat on the top;

(iii) One drop flat on the long side;

(iv) One drop flat on the short side;

(v) One drop on a corner at the junction of three intersecting edges; and

(2) A force applied to the top surface for a duration of 24 hours, equivalent to the total weight of identical packages if stacked to a height of 3 m (10 feet) (including the test sample).

(3) Each of the above tests may be performed on different but identical packages.

(f) The gross mass of the completed package must not exceed 30 kg.

■ 33. In § 173.189, the first sentence of paragraph (a) is revised to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

(a) Batteries and cells may not contain any hazardous material other than sodium, sulfur or sodium compounds (*e.g.,* sodium polysulfides, sodium tetrachloroaluminate, *etc.*). * * *

* * * * *

PART 174—CARRIAGE BY RAIL

■ 34. The authority citation for part 174 continues to read as follows:

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

■ 35. In § 174.55, paragraph (a) is revised to read as follows:

§ 174.55 General requirements.

(a) Each package containing a hazardous material being transported by rail in a freight container or transport vehicle must be loaded so that it cannot fall or slide and must be safeguarded in such a manner that other freight cannot fall onto or slide into it under conditions normally incident to transportation. When this protection cannot be provided by using other freight, it must be provided by blocking and bracing. For examples of blocking and bracing in freight containers and transport vehicles, see Bureau of Explosives Pamphlet No. 6 and the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, see § 171.7 of this subchapter).

* * * * *

■ 36. In § 174.67, paragraphs (a)(6), (b) introductory text, (b)(1), and (c) introductory text are revised to read as follows:

§ 174.67 Tank car unloading.

* * * * *

(a) * * *

(6) Before a manhole cover or outlet valve cap is removed from a tank car, the car must be relieved of all interior pressure by cooling the tank with water or by venting the tank by raising the safety valve or opening the dome vent at short intervals. However, if venting to relieve pressure will cause a dangerous amount of vapor to collect outside the car, venting and unloading must be deferred until the pressure is reduced by allowing the car to stand overnight, otherwise cooling the contents, or venting to a closed collection system. These precautions are not necessary when the car is equipped with a manhole cover which hinges inward or with an inner manhole cover which does not have to be removed to unload the car, and when pressure is relieved by piping vapor into a condenser or storage tank.

(b) After the pressure is released, for unloading processes that require the removal of the manhole cover, the seal must be broken and the manhole cover removed as follows:

(1) *Screw type.* The cover must be loosened by placing a bar between the manhole cover lug and knob. After two complete turns, so that the vent openings are exposed, the operation must be stopped, and if there is any sound of escaping vapor, the cover must be screwed down tightly and the interior pressure relieved as prescribed in paragraph (a)(6) of this section, before again attempting to remove the cover.

* * * * *

(c) When the car is unloaded through a bottom outlet valve, for unloading processes that require the removal of the

manhole cover, the manhole cover must be adjusted as follows:

* * * * *

■ 37. In § 174.101, paragraphs (o)(2) and (o)(3) are revised to read as follows:

§ 174.101 Loading Class 1 (explosive) materials.

* * * * *

(o) * * *

(2) Each truck body or trailer must be secured on the rail car so that it will not permanently change position or show evidence of failure or impending failure of the method of securing the truck body or trailer under impact from each end of at least 13 km (8.1 miles) per hour. Its efficiency must be determined by actual test, using dummy loads equal in weight and general character to the material to be shipped. For recommended methods of blocking and bracing, see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

(3) Lading must be loaded, blocked, and braced within or on the truck body or trailer so that the lading will not change position under impact from each end of at least 13 km (8.1 miles) per hour. For recommended methods of blocking and bracing, see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

* * * * *

■ 38. In § 174.112, paragraph (c)(3) is revised to read as follows:

§ 174.112 Loading Division 1.3 materials and Division 1.2 (explosive) materials (Also see § 174.101).

* * * * *

(c) * * *

(3) Packages of Division 1.2 materials and Division 1.3 (explosive) materials are blocked and braced within the truck body, trailer, or container to prevent their shifting and possible damage due to shifting of other freight during transportation (ends, sidewalls, or doors of the truck body, trailer, or container may not be relied on to prevent the shifting of heavy loads). For recommended methods of blocking and bracing see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

■ 39. In § 174.115, paragraph (b)(3) is revised to read as follows:

§ 174.115 Loading Division 1.4 (explosive) materials.

* * * * *

(b) * * *

(3) Packages of Division 1.4 (explosive) materials are blocked and braced within the truck body, trailer, or container to prevent their shifting and possible damage due to shifting of other freight during transportation. Ends, side walls, or doors of the truck body, trailer, or container may not be relied on to prevent shifting of heavy loads. For recommended methods of blocking and bracing see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

PART 175—CARRIAGE BY AIRCRAFT

■ 40. 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.

■ 41. In § 175.10, paragraphs (a)(17)(i)(B) and (a)(17)(ii)(B) are revised to read as follows:

(a) * * *

(17) * * *

(i) * * *

(B) Visual inspection of the wheelchair or mobility aid reveals no obvious defects;

* * * * *

(ii) * * *

(B) The lithium ion battery and any spare batteries are carried in the same manner as spare batteries in paragraph (a)(18) of this section.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 42. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 43. In § 177.848, paragraph (c) is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids if a mixture of the materials would generate hydrogen cyanide; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 materials.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

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

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

■ 45. In § 178.35, paragraphs (c)(4) and (g) are revised and paragraph (h) is removed.

The revisions read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(c) * * *

(4) *Inspector's report.* Prepare a report containing, at a minimum, the applicable information listed in CGA C–11 (IBR, see § 171.7 of this subchapter). Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory. The inspector must furnish the completed test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.

* * * * *

(g) *Manufacturer's reports.* At or before the time of delivery to the purchaser, the cylinder manufacturer must have all completed certification documents listed in CGA C–11. The manufacturer of the cylinders must retain the reports required by this subpart for 15 years from the original test date of the cylinder.

■ 46. In § 178.37, paragraphs (j) and (l) are revised to read as follows:

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

* * * * *

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out of each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder. Cylinders may be subjected to a bend test in lieu of the flattening test. Two bend test specimens must be taken in accordance with ISO 9809–1 or ASTM E 290 (IBR, *see* § 171.7 of this subchapter), and must be

subjected to the bend test specified therein.

* * * * *

(l) *Acceptable results for physical, flattening and bend tests.* An acceptable result for physical and flattening tests is elongation of at least 20 percent for 2 inches of gauge length or at least 10 percent in other cases. Flattening is required, without cracking, to 6 times the wall thickness of the cylinder. An acceptable result for the alternative bend test is no crack when the cylinder is bent inward around the mandrel until the interior edges are not further apart than the diameter of the mandrel.

* * * * *

■ 47. In § 178.71, paragraphs (c) and (p)(6) are revised to read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(c) Following the final heat treatment, all cylinders, except those selected for batch testing must be subjected to a proof pressure or a hydraulic volumetric expansion test.

* * * * *

(p) * * *

(6) The test pressure in bar, preceded by the letters ''PH'' and followed by the letters ''BAR''.

* * * * *

■ 48. In § 178.320, in paragraph (a), the definition of ''Cargo tank wall'' is revised to read as follows:

§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

(a) * * *

Cargo tank wall means those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of a completed cargo tank motor vehicle.

* * * * *

■ 49. In § 178.345–1, paragraph (i)(2) is revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(i) * * *

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be equipped with a drain located on the bottom centerline that is accessible and kept open at all times. For carbon steel, self-supporting cargo tanks, the drain configuration may consist of a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inch diameter, 6.0 inches apart, one of which is located as close to the bottom centerline as practicable. Vapors trapped in a void within the connecting structure must be allowed to escape to the atmosphere either through the drain or a separate vent.

* * * * *

■ 50. In § 178.347–1, paragraphs (c) and (d) introductory text are revised to read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank motor vehicle built to this specification with a MAWP greater than 35 psig or any cargo tank motor vehicle built to this specification designed to be loaded by vacuum must be constructed and certified in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) Any cargo tank motor vehicle built to this specification with a MAWP of 35 psig or less or any cargo tank motor vehicle built to this specification designed to withstand full vacuum but not equipped to be loaded by vacuum must be constructed in accordance with Section VIII of the ASME Code.

* * * * *

■ 51. In § 178.347–4, paragraph (b) is revised to read as follows:

§ 178.347–4 Pressure relief.

* * * * *

(b) *Type and construction.* Vacuum relief devices are not required for cargo tank motor vehicles that are designed to be loaded by vacuum in accordance with § 178.347–1(c) or built to withstand full vacuum in accordance with § 178.347–1(d).

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 52. The authority citation for part 180 continues to read as follows:

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

■ 53. In § 180.417, paragraph (b)(1)(v) is revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(1) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(5), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

Issued in Washington, DC, on July 8, 2011, under authority delegated in 49 CFR Part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

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