PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.572 is amended by:

■ i. Alphabetically adding commodities to the table in paragraph (a)(1), and

■ ii. Revising the table in paragraph (b), so the amendments to paragraphs (a)(1) and (b) read as follows:

§ 180.572 Bifenazate; tolerance for residues.

(a)(1) * * *

Commodity	Parts per million
* * *	* *
Atemoya	1.6
Avocado	7.0
* * *	* *
Berry, low-growing subgroup 13–07G	1.5
Biriba	1.6
* * *	* *
Cherimoya	1.6
* * *	* *
Custard apple	1.6
* * *	* *
Fruit, small, vine climbing subgroup 13–07F, except fuzzy kiwifruit	1.0
* * *	* *
Ilama	1.6
* * *	* *
Soursop	1.6
* * *	* *
Sugar apple	1.6
* * *	* *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Timothy, forage	50	12/31/10
Timothy, hay	150	12/31/10

[FR Doc. 2010–21719 Filed 8–31–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 176, 177, 179, and 180

[Docket No. PHMSA–2010–0195 (HM–244C)]

RIN 2137–AE61

Hazardous Materials: Minor Editorial Corrections and Clarifications

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

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to identify typographical and other errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors, incorrect CFR references and citations, inconsistent use of terminology, misstatements of certain regulatory requirements and inadvertent omissions of information. Because these amendments do not impose new requirements, notice and public comment procedures are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of the 49 CFR.

II. Section by Section Review

The following is a summary by section of the minor editorial corrections and clarifications made in this final rule. The summary does not include minor editorial corrections such as punctuation errors or similar minor revisions.

Part 107

Section 107.117

This section sets forth conditions and procedures for emergency processing for an application for a special permit. The daytime telephone number for the Federal Motor Carrier Administration in paragraph (d)(3) is no longer correct. Accordingly, we are revising this contact number.

Section 107.329

This section sets forth the maximum and minimum civil penalties for violations of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* and violations of regulations issued pursuant to that law. Those maximum and minimum penalties were most recently adjusted on December 29, 2009 (74 FR 68701) to consider the effects of inflation since reauthorization of the Federal hazardous material transportation law in August 2005. We found that the inflation adjustment in the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. 2461 note) (the Act)—the change in the CPI–U over the prescribed period—was 12.5%, but that the Act limited the adjustment of the maximum and minimum civil penalties to 10%. These adjusted maximum and minimum civil penalties apply to any violation occurring on or after January 1, 2010.

More recently, it has been called to our attention that we did not apply the "rounding" requirement in Section 5 of the Act in making adjustments to the minimum civil penalty amounts. Applying the 12.5% increase in the CPI–U to the $450 minimum penalty for a violation related to training produces an increase of $56.25, which would be rounded to $100—except for the limitation in the Act that the initial adjustment may not exceed 10%. Thus, the adjusted minimum penalty of $495 for a violation related to training was correct. However, when the $250 minimum penalty amount for other violations is increased by 12.5%, the result would be an increase of $31.25, which must be rounded to the nearest $100—or $0. Thus, we should have left the minimum civil penalty for other violations at $250. Accordingly, we are correcting this error in both § 107.329 and § 171.1(g). PHMSA does not believe that the improper $275 civil penalty amount has been used in any enforcement case arising out of

violations that occurred on or after January 1, 2010, and we will continue to use the proper $250 amount in such enforcement cases that have arisen since that date.

Part 171

Section 171.6

Section 171.6 consolidates and displays the control numbers assigned to the HMR collections of information by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This section complies with the requirements of 5 CFR 1320.7(f), 1320.12, 1320.13 and 1320.14 (OMB regulations implementing the Paperwork Reduction Act of 1995) for the display of control numbers assigned by OMB to collections of information of the HMR. In paragraph (b)(2), the table of OMB control numbers is revised to update affected sections for OMB control numbers 2137–0022 and 2137–0572.

Section 171.7

Paragraph (b) of § 171.7 lists materials that are "informational materials not requiring incorporation by reference" into the HMR. In the preamble to the HM–244A final rule published in the **Federal Register** on October 1, 2008 (73 FR 57001), we stated that the Compressed Gas Association's (CGA) publication CGA C–1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, could be used as guidance material to assist cylinder requalifiers in setting up their training procedures and was not to be considered as a stand alone tool for training persons on how to perform requalification of cylinders using the volumetric expansion test method. In that final rule, we also stated we were removing the entries in §§ 171.7(b) and 180.205(g)(6) that refer to the publication. However, due to an oversight, the amendatory language was inadvertently omitted. Therefore, in this final rule, we are removing the entry for CGA C–1.1 from § 171.7(b) and paragraph (g)(6) from § 180.205.

Part 172

Section 172.101

This section contains the Hazardous Materials Table (HMT) and explanatory text for each of the columns in the table. Some of the information for the entry "Helium, compressed, UN1046" in the HMT was reported under the incorrect columns. In this final rule, we are revising the entry "Helium, compressed, UN1046" by correcting the information reported in columns 5, 6, 7, 8a, 8b, and 9a.

Section 172.604

This section prescribes requirements for providing the emergency response telephone number on hazardous materials shipping papers. As amended in the final rule, "Revision of Requirements for Emergency Response Telephone Numbers," HM–206F, published October 19, 2009 (74 FR 53413), we are correcting § 172.604(b)(1) by adding the word "information" to the phrase "emergency response provider" so that it reads "emergency response information provider (ERI provider)." In the October 19, 2009 final rule, the word "information" was inadvertently omitted during the printing of the regulatory text.

In paragraphs (b)(1) and (b)(2), we are clarifying the term "contract number" by adding the wording "or other unique identifier assigned by the ERI provider" to clarify that the term "contract number" identifies the registrant to the ERI provider. This clarification should serve to avoid confusion when an ERI provider may be using the term "contract number" for another purpose.

In paragraph (b)(2), we are also clarifying that the person who is registered with the emergency response provider must be identified by name or contract number on the shipping paper immediately before, after, above, or below the emergency response telephone number in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found unless the name or identifier is entered elsewhere in a prominent manner in accordance with paragraph (b)(1).

Section 172.800

This section prescribes hazardous materials security plan requirements. In a final rule, "Risk-Based Adjustment of Transportation Security Plan Requirements," HM–232F, published March 9, 2010 (75 FR 10974), there were three drafting errors. First, we indicated that "the security planning requirement will apply, as it does now, to all Division 1.4 explosives transported in quantities that require placarding under Subpart F of Part 172 of the HMR." However, in the regulatory text to the final rule we referenced § 172.504(c) in place of Subpart F of Part 172. As a result, the changes may be interpreted to require placards for certain Division 1.4S materials that fall under § 172.504(f)(6). This was not our intent. Second, we indicated, in the final rule, that the security planning requirement for desensitized explosives in Class 3 and Division 4.1 would apply to quantities that require placarding under § 172.504(c). This reference is not clear and is inconsistent with previous references to "quantities that require placarding under the provisions of Subpart F of Part 172." Therefore, to clarify the first two errors, we are revising § 172.800(b)(2) and (b)(7) to remove the reference to "§ 172.504(c)" and replacing it to read "subpart F of this part."

The third error is closely related to the first two errors. We indicated, in the final rule, that the security planning requirements for Division 4.3 materials would continue to require security plans for "any quantity" of Division 4.3 materials. Again, this reference is not clear and is inconsistent with previous references to "quantities that require placarding under the provisions of Subpart F of Part 172." Therefore, to correct this error we are revising § 172.800(b)(9) to read "any quantity of a Division 4.3 material requiring placarding in accordance with subpart F of this part," as intended in the final rule to HM–232F.

Part 173

Section 173.27

This section specifies general requirements for packaging hazardous materials for transportation by aircraft. The reference to § 171.11 in paragraph (f) is no longer valid. Therefore, PHMSA is correcting this error by revising paragraph (f) to remove the reference to § 171.11 and replacing it with a reference to § 171.22.

Section 173.171

This section prescribes requirements for smokeless powder for small arms. The entry "Smokeless powder for small arms (100 pounds or less)," NA3178 is only applicable to U.S. transportation as indicated by the "D" in column 1 of the HMT. Therefore, in § 173.171, the introductory text is revised to clarify that the provisions of this section applies to domestic transportation only.

Section 173.314

This section prescribes requirements for transporting compressed gases in tank cars and multi-unit tank cars. For the entry "Chlorine," column 2 of the table entitled "Outage and filling limits" refers to "Note 13". There is no "Note 13." To correct this error, the reference to "Note 13" in column 2 of the table, is removed. In addition, for the entries "Hydrogen Sulphide" and "Hydrogen sulphide, liquefied" column 1 of the table reflects the international spelling while the proper shipping name entries

in the § 172.101 HMT reflect the domestic spelling of "Hydrogen sulfide." Both spellings are authorized in accordance with § 172.101(c)(1). However, we are revising the entries in the § 173.314 table to read "Hydrogen Sulfide" and "Hydrogen sulfide, liquefied" to be consistent with the spelling in the § 172.101 HMT.

Part 176

Section 176.54

This section prescribes requirements for repairs involving welding, burning, and power-actuated tools and appliances. We are revising paragraph (b)(1) to correct the reference to 33 CFR 126.15(c) to read 33 CFR 126.30.

Part 177

Section 177.843

This section prescribes requirements for surveying for contamination on motor vehicles used to transport Class 7 radioactive materials under exclusive use conditions. We are revising paragraph (a) to correct the reference to "§ 173.427(b)(3) or (c) or § 173.443(c)" to read "§ 173.427(b)(4) or (c) or § 173.443(c)" to correct a typographical error.

Part 179

Appendix B

49 CFR part 179, appendix B prescribes procedure for the "Simulated Pool and Torch Fire Test." PHMSA is correcting an error in the pool and torch fire test requirements. The conversion that was used to establish the tolerances for the flame temperatures was incorrect. A temperature conversion was made. However, a factor of 1.8 should have been used to convert between degrees Fahrenheit and degrees Celsius. The temperature requirements should read 871 °C (1600 °F) +/− 55.6 °C (132.08 °F).

Part 180

Section 180.213

This section prescribes requirements for requalification markings for cylinders.

We are revising paragraph (d)(2) to correct the reference to § 173.301(l) to read § 171.23(a)(4).

III. Regulatory Analyses and Notices

A. Statutory Authority

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to remove unnecessary cross references to the hazardous materials table, correct mailing addresses, grammatical and typographical errors, and, in response to requests for clarification, improve the clarity of certain provisions in the Hazardous Materials Regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) 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; or (2) imposes substantial direct compliance costs on State and local governments. PHMSA is not aware of any State, local, or Indian Tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

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"). Because this final rule does not have Tribal implications, does not impose substantial direct compliance costs on Indian Tribal governments, and does not preempt Tribal law, 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

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

F. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

G. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

H. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

I. 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.

List of Subjects

49 CFR Part 107

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

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

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

49 CFR Part 176

Hazardous materials transportation, Segregation, Handling and stowage, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Loading and unloading, Segregation and separation.

49 CFR Part 179

Hazardous materials transportation, Rail car specifications.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended 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. 5101–5129, 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.

§ 107.117 [Amended]

■ 2. In § 107.117, in paragraph (d)(3), the phone number "202–366–6121" is removed and the phone number "202–385–2400" is added in its place.

§ 107.329 [Amended]

■ 3. In § 107.329, in paragraphs (a) and (b), the figure "$275" is removed and the figure "$250" is added in its place.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

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

§ 171.1 [Amended]

■ 5. In § 171.1, in paragraph (g), the wording "$275" is removed and the wording "$250" is added.

■ 6. In § 171.6, the table in paragraph (b)(2) is amended by revising the entries for "2137–0022" and "2137–0572" to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) Table.

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
*	*	*
2137–0022	Testing, Inspection, and Marking Requirements for Cylinders.	§§ 173.5b, 173.302a, 173.303, 173.304, 173.309, 178.2, 178.3, 178.35, 178.44, 178.45, 178.46, 178.57, 178.59, 178.60, 178.61, 178.68, 180.205, 180.207, 180.209, 180.211, 180.213, 180.215, 180.217, Appendix C to Part 180.
*	*	*
2137–0572	Testing requirements for non-bulk packages.	§§ 173.168, 178.2, 178.601, Appendix C to Part 178, Appendix D to Part 178.

§ 171.7 [Amended]

■ 7. In the table in paragraph (b) of § 171.7, the entry "Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151, CGA C–1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition" is removed.

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

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

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

■ 9. In § 172.101, in the Hazardous Materials Table, the entry for "Helium, compressed" is revised to read as follows.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(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)
*	*	*		*		*		*		*	*		
	Helium, compressed.	2.2	UN1046		2.2		306	302	302, 314	75 kg	150 kg	A	85
*	*	*		*		*		*		*	*		

* * * * *

■ 10. In § 172.604, as amended October 19, 2009, at 74 FR 53422, effective November 18, 2009, and delayed until October 1, 2010, at 74 FR 54489, October 22, 2009, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(b) * * *

(1) The number of the person offering the hazardous material for transportation when that person is also the emergency response information provider (ERI provider). The name of

the person, or contract number or other unique identifier assigned by an ERI provider, identified with the emergency response telephone number must be entered on the shipping paper immediately before, after, above, or below the emergency response telephone number unless the name is entered elsewhere on the shipping paper in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found; or

(2) The number of an agency or organization capable of, and accepting responsibility for, providing the detailed information required by paragraph (a)(2) of this section. The person who is registered with the ERI provider must ensure that the agency or organization has received current information on the material before it is offered for transportation. The person who is registered with the ERI provider must be identified by name, or contract number or other unique identifier assigned by the ERI provider, on the shipping paper immediately before, after, above, or below the emergency response telephone number in a prominent, readily identifiable, and clearly visible manner that allows the information to be easily and quickly found, unless the name or identifier is entered elsewhere in a prominent manner as provided in paragraph (b)(1) of this section.

* * * * *

■ 11. In § 172.800, paragraphs (b)(2), (7), and (9), as amended March 9, 2010, at 75 FR 10988, effective October 1, 2010, are revised to read as follows:

§ 172.800 Purpose and applicability.

* * * * *

(b) * * *

(2) A quantity of a Division 1.4, 1.5, or 1.6 material requiring placarding in accordance with subpart F of this part;

* * * * *

(7) A quantity of desensitized explosives meeting the definition of Division 4.1 or Class 3 material requiring placarding in accordance with subpart F of this part;

* * * * *

(9) A quantity of a Division 4.3 material requiring placarding in accordance with subpart F of this part;

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

■ 13. In § 173.27, paragraph (f) introductory text is revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(f) *Combination packaging.* Unless otherwise specified in this part, or in § 171.22 of this subchapter, when combination packaging are offered for transportation aboard aircraft, inner packaging must conform to the quantity limitations set forth in table 1 of this paragraph for transport aboard passenger-carrying aircraft and table 2 of this paragraph for transport aboard cargo aircraft only, as follows:

* * * * *

■ 14. In § 173.171, the introductory text is revised to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 may be reclassed in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

* * * * *

§ 173.314 [Amended]

■ 15. In § 173.314, in the table in paragraph (c), in column 1, the entries for "Hydrogen Sulphide" and "Hydrogen sulphide, liquefied" are removed and "Hydrogen sulfide" and "Hydrogen sulfide, liquefied" are added in their place; and in column 2 of the table, for the entry "Chlorine", the reference to "Notes 6, 13" is removed and the reference "Note 6" is added in its place.

PART 176—CARRIAGE BY VESSEL

■ 16. The authority citation for part 176 continues to read as follows:

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

§ 176.54 [Amended]

■ 17. In § 176.54, in paragraph (b)(1), the reference "33 CFR 126.15(c)" is removed and the reference "33 CFR 126.30" is added.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

■ 19. In § 177.843, paragraph (a) is revised to read as follows:

§ 177.843 Contamination of vehicles.

(a) Each motor vehicle used for transporting Class 7 (radioactive) materials under exclusive use conditions in accordance with § 173.427(b)(4) or (c) or § 173.443(c) of this subchapter must be surveyed with radiation detection instruments after each use. A vehicle may not be returned to service until the radiation dose rate at every accessible surface is 0.005 mSv per hour (0.5 mrem per hour) or less and the removable (non-fixed) radioactive surface contamination is not greater than the level prescribed in § 173.443(a) of this subchapter.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 20. The authority citation for part 179 continues to read as follows:

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

■ 21. In Appendix B to Part 179, paragraph 2. a. (1) is revised to read as follows:

Appendix B to Part 179, Procedures for Simulated Pool and Torch Fire Testing

* * * * *

2. *Simulated pool fire test.*

a. * * *

(1) The source of the simulated pool fire must be hydrocarbon fuel with a flame temperature of 871 °C (1600 °F) plus-or-minus 55.6 °C (132.08 °F), throughout the duration of the test.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

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

■ 23. In § 180.205, paragraph (g)(6) is revised to read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(g) * * *

(6) Training materials may be used for training persons who requalify cylinders using the volumetric expansion test method.

* * * * *

■ 24. In § 180.213, paragraph (d)(2) is revised to read as follows:

§ 180.213 Requalification markings.

* * * * *

(d) * * *

(2) Exception. A cylinder subject to the requirements of § 171.23(a)(4) of this

subchapter may not be marked with a RIN.

* * * * *

Issued in Washington, DC, on August 26, 2010 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2010–21759 Filed 8–31–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2009–0027; 92220–1113–0000; ABC Code: C3]

RIN 1018–AW27

Endangered and Threatened Wildlife and Plants; Threatened Status for Shovelnose Sturgeon Under the Similarity of Appearance Provisions of the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine it necessary to treat shovelnose sturgeon (*Scaphirhynchus platorynchus*) as threatened due to similarity of appearance to the endangered pallid sturgeon (*Scaphirhynchus albus*) under the similarity of appearance provisions of the Endangered Species Act of 1973, as amended. The shovelnose sturgeon and the endangered pallid sturgeon are difficult to differentiate in the wild and inhabit overlapping portions of the Missouri and Mississippi River basins. Commercial harvest of shovelnose sturgeon has resulted in the documented take of pallid sturgeon where the two species coexist and is a threat to the pallid sturgeon. This determination to treat shovelnose sturgeon due to similarity of appearance will substantially facilitate law enforcement actions to protect and conserve pallid sturgeon. This rule extends take prohibitions to shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, and their roe when associated with a commercial fishing activity in areas where pallid sturgeon and shovelnose sturgeon commonly coexist. Accidental or incidental capture of pallid or shovelnose sturgeon, or shovelnose-pallid sturgeon hybrids, in commercial fishing gear will not be considered take provided the sturgeon are immediately released to the wild at the point where taken with roe intact.

DATES: This rule becomes effective on October 1, 2010.

FOR FURTHER INFORMATION CONTACT: George Jordan, Pallid Sturgeon Recovery Coordinator, 2900 4th Avenue North, Room 301, Billings, Montana 59101 (telephone (406) 247–7365; facsimile (406) 247–7364). Public comments and literature referenced in association with this rule are available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2009–0027 and at the above office, by appointment, during normal business hours. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

In 1990, the U.S. Fish and Wildlife Service (Service) listed the pallid sturgeon (*Scaphirhynchus albus*) as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) (55 FR 36641, September 6, 1990). The pallid sturgeon has a flattened, shovel-shaped snout, possesses a long and slender and completely armored caudal peduncle, and lacks a spiracle and belly scutes (Forbes and Richardson 1905, pp. 38–41). The pallid sturgeon is a bottom-oriented species found only in portions of the Missouri and Mississippi River basins (Kallemeyn 1983, p. 4). The species can be long-lived (40 plus years), with females reaching sexual maturity later than males (Keenlyne and Jenkins 1993, pp. 393, 395). Pallid sturgeon at the northern end of their range can attain sizes (both length and weight) much larger than pallid sturgeon at the southern end of their range (Service 1993, p. 3). Current known threats to the pallid sturgeon include habitat modification, small population size, limited natural reproduction, hybridization, pollution and contamination, entrainment, and commercial harvest (Service 2007, pp. 38–59).

The pallid sturgeon and the shovelnose sturgeon are both members of the genus *Scaphirhynchus.* These sturgeon can be difficult to differentiate in the wild and inhabit overlapping portions of the Missouri and Mississippi River basins. Within these areas of overlap, four States continue to allow commercial harvest of shovelnose sturgeon. Take of the endangered pallid sturgeon has been documented to occur where this commercial fishery is allowed (Sheehan *et al.* 1997, p. 3; Service 2007, pp. 45–48; Bettoli *et al.* 2009, p. 3). Incidental and illegal harvest of pallid sturgeon is a significant impediment to the survival and recovery of this species in some parts of its range (Service 2007, p. 45). Our recent 5-year status review recommended that we identify and implement measures to eliminate or significantly reduce illegal and accidental harvest of pallid sturgeon (Service 2007, p. 59).

Previous Federal Actions

On September 6, 1990, the pallid sturgeon was listed as endangered under the Act (55 FR 36641). At the time of listing, the primary threats and vulnerabilities for pallid sturgeon were curtailment of range, habitat destruction and modification, low population size, lack of recruitment, commercial harvest, pollution and contaminants, and hybridization (55 FR 36641, September 6, 1990; Service 1993, pp. 10–15). Since listing, we worked cooperatively with State partners to address the threat posed by commercial harvest. A recent status review found that restrictions imposed through State fishing regulations had helped, but that incidental and illegal take during commercial harvest of shovelnose sturgeon was still having a substantial and detrimental effect on the pallid sturgeon (Service 2007, pp. 45–48). To address this issue, on September 22, 2009, we published in the **Federal Register** a proposed rule to treat the shovelnose sturgeon as a threatened species due to its similarity of appearance to the endangered pallid sturgeon (74 FR 48215).

Public Comments Solicited

As part of the September 22, 2009, proposed rule (74 FR 48215), we requested interested parties to provide comments and materials concerning the proposed rule during a 60-day public comment period. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. During the public comment period, we received several requests for a public hearing. On January 14, 2010, we published a **Federal Register** notice announcing a 21-day reopening of the comment period and an informational meeting and public hearing on January 28, 2010, in Cape Girardeau, Missouri (75 FR 2102).

Peer Review

In accordance with our policy for peer review (59 FR 34270, July 1, 1994), and