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Part III

Department of Transportation

**Research and Special Programs
Administration**

**49 CFR Parts 171, 172, and 173
Hazardous Materials; Requirements for
Lighters and Lighter Refills; Proposed
Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, and 173**

[Docket No. RSPA-2004-18795 (HM-237)]

RIN 2137-AD88

Hazardous Materials; Requirements for Lighters and Lighter Refills**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend requirements in the Hazardous Materials Regulations for the examination, testing, certification, and transportation of lighters and lighter refills. This action will clarify regulatory requirements and, where appropriate, decrease the regulatory burden without compromising the safe transportation of lighters and lighter refills in commerce.

DATES: Comments must be received by November 15, 2004.**ADDRESSES:** You may submit comments identified by the docket number RSPA-2004-18795 (HM-237) by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments.

- Web Site: <http://dms.dot.gov> Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA-2004-18795 (HM-237) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION:**I. Background**

The Lighter Association, Inc. (Lighter Association) is the national trade association of the U.S. lighter industry (manufacturers and distributors) representing at least 60% of the total lighter market in the U.S. According to information provided by the Lighter Association, more than 900 million lighters are transported in U.S. commerce annually. Fifty percent of these lighters are manufactured outside of the United States and are typically imported into the United States in freight containers transported by vessel.

Lighters and lighter refills containing flammable gases or liquids are regulated as hazardous materials by the Research and Special Programs Administration (RSPA, we or us). Current requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) applicable to the transportation of lighters are nearly fifty years old and do not adequately address current industry standards and safety practices. In accordance with § 173.21(i) of the HMR, lighter designs and their inner packagings must be examined by an agency approved by RSPA's Associate Administrator for Hazardous Materials Safety (Associate Administrator). The Associate Administrator reviews each lighter design test report and issues lighter manufacturers or shippers a unique identifier number (approval number, T-number). Lighter designs must conform to the construction, capacity, and integrity requirements in § 173.308 of the HMR. This section specifies the amount of fuel that may be contained in each device; requires each device to be capable of withstanding an internal pressure of at least two times the vapor pressure of the fuel at 55 °C without leakage; and establishes overpack requirements. In addition, § 172.102, Special Provision N10, requires lighters and lighter refills to be packaged in specified UN specification packagings that meet the Packing Group II performance level. Unless excepted by the HMR, any person who offers or transports lighters in commerce must mark the package and annotate the shipping paper with the approval number issued by the Associate Administrator.

The United Nations Recommendations on the Transport of

Dangerous Goods, 13th Revised Edition (UN Model Regulations), specify packaging requirements for lighters in greater detail than the HMR. For example, in addition to capacity and pressure limits, the UN Model Regulations require lighters in transportation to be protected against inadvertent discharge and valve mechanisms and their ignition devices to be securely sealed, taped, or otherwise fastened to prevent operation or leakage of the contents during transportation. The UN Model Regulations require lighters to be packaged in rigid outer packagings that meet the Packing Group II performance level, while the HMR specify the types of rigid outer packagings that are authorized.

Since 1995, the U.S. Consumer Product Safety Commission (CPSC) and Health Canada have issued 97 lighter design recalls. Most recalls were due to excessive leakage or defective ignition elements. However, some of these recalls were prompted by incidents that involved fatalities, injuries, explosions, or fires for no apparent reason. Because these incidents were not transportation-related, we do not know at this time how many of the defective lighter designs had been approved by RSPA or CPSC. Although the CPSC approves lighter designs solely for child-safety compliance, product recalls are the only mechanism that they have to remove defective consumer products from the marketplace. According to the Lighter Association, a failure to meet the pressure capability or leakage requirements of the HMR and the construction and structural integrity requirements of accepted industry standards most likely caused the incidents.

We are concerned that these defective designs identified by CPSC could fail in transportation with potentially catastrophic results. We have recently been made aware of transportation incidents outside the United States involving containers of lighters that were found to contain high levels of flammable gas either above or near the lower explosive limit (LEL). It is highly possible that these lighter designs would not conform to the requirements in the HMR, UN Model Regulations, or industry standards. The problems may not stem from deficiencies in the current regulations; however, we believe there is a need to clarify, simplify and update current requirements to better facilitate and promote compliance, thereby enhancing the safe transportation of lighters in commerce. In addition, we believe that the recordkeeping and accountability

requirements proposed in this rule will lead to better enforcement of the regulations where necessary and lower the regulatory burden where appropriate.

II. Summary of Regulatory Changes by Section

Section 171.8

The terms “lighter” or “lighter refill” are not currently defined in the HMR. Therefore, in this NPRM, we are proposing to add definitions for “Lighter” and “Lighter refill” in § 171.8. Our proposed lighter definition is based on the current definition found in the CPSC regulations, 16 CFR parts 1210 and 1212, the American Society for Testing and Materials (ASTM) F400–00 *Standard Consumer Safety Specification for Lighters*, and the International Organization for Standardization’s (ISO) 9994:1995(E) *Lighters—Safety Specification*. As proposed, for purposes of the HMR, “Lighter” would be defined as a mechanically operated flame-producing device that employs an ignition device, and, contains a Division 2.1 liquefied gas fuel such as butane, isobutane, propane, or mixture thereof, where the vapor pressure of the Division 2.1 material exceeds a gauge pressure of 101.3 kPa (14.7 psia) at 20 °C. Under this definition, a lighter may be refillable or non-refillable, utilize a flint or electronic ignition system, and may be constructed under any style or design meeting the standards. This definition includes “cigarette” lighters and multi-purpose lighters. A multi-purpose lighter is one that is: (1) A utility lighter, that is, a lighter greater than four inches in length that may be used to light a fireplace or grill; (2) a micro torch or torch lighter or jet turbo lighter, that is, a high-intensity wind-resistant or wind-proof style that has little or no visible flame that may or may not be operated in a hands-free mode; and (3) a portable soldering or brazing torch with self-contained fuel supply. In this proposal, we no longer use the term “and similar devices” when describing lighters. Consequently, another description most appropriate for a device not meeting the definition of “lighter” must be chosen.

For the purpose of the HMR, this definition does not include non-pressurized (*i.e.*, gauge vapor pressure of fuel not more than 34.5 kPa (5.0 psi) at 24 °C (75 °F)) “wick” lighter styles containing absorbed or unabsorbed flammable liquid fuel. Such lighters, when offered for transportation in a fueled condition, must be packaged and described based on the flammable liquid contained therein (*e.g.*, Petroleum

distillates, n.o.s. or Solids containing flammable liquids, etc.).

Under this NPRM, a “Lighter refill” would be defined as a pressurized container of not more than 4 fluid ounces capacity (7.22 cubic inches) that does not contain an ignition device but does contain a release device. The pressurized container may be UN specification or non-specification as authorized under the limited quantity provisions for compressed gases in § 173.306(a)(1). We are proposing that under no circumstance may the description “lighter refill” be used for containers exceeding 4 fluid ounce (7.22 cubic inches) capacity regardless of whether a specification container is used or not. Containers exceeding 4 fluid ounce (7.22 cubic inches) capacity must be described based on the type of gas contained therein. The definition “lighter refill” does not include non-pressurized flammable liquid lighter fuel used for “wick” style lighters. Such fuel would be appropriately described and packaged under the proper shipping name “Petroleum distillates, n.o.s.” or similar description.

Section 172.101

Section 172.101(c)(11) addresses the offering and transportation of lighter design samples. We propose to amend the note to paragraph (c)(11) by adding the words “lighter samples” and by adding a section reference for the transportation requirements applicable to these samples.

In addition, we are proposing changes to the § 172.101 Hazardous Materials Table (HMT) for the shipping description “Lighters or Lighter refills.” Currently, there is only one description in the HMT for both lighters and lighter refills. Despite the use of the same identification number (UN 1057), we are proposing to separate the two articles in the HMT because the approval, special provisions, and packaging requirements are different for lighters and lighter refills. Under this proposal, lighter refills would continue to be authorized in transportation without approval under the conditions specified in § 172.102, Special Provision 169.

Section 172.102

We propose to add two new numerical special provisions, 168 and 169, to specify what may be described under the description “lighters” and “lighter refills”, respectively. Special Provision 168 would specify that lighter designs must be examined and tested by an authorized person. In addition, it would reference specific paragraphs in § 173.308 for determining what constitutes a “new” lighter design,

procedures for offering and transporting lighter samples for examination and testing, and would provide transitional dates for existing lighter designs. Special Provision 169 would set forth requirements for lighter refills that do not require approval (*i.e.*, certification) under the HMR.

Currently, Special Provision N10 sets forth authorized packagings for lighters and lighter refills. We propose to remove this special provision and relocate the packaging, marking, and shipping paper requirements for lighters to a more appropriate section in the HMR (*see* discussion under § 173.308).

Section 173.21

Currently, § 173.21(i) prohibits the transportation of cigarette lighters and similar devices unless the design of the device and its inner packaging have been examined by the Bureau of Explosives and approved in writing by the Associate Administrator. In this proposal, we are revising this paragraph to permit lighter design samples to be offered and transported to an examination and testing facility under certain conditions set forth in § 173.308(b)(2).

Section 173.306

In § 173.306, paragraph (h) would be redesignated as paragraph (i), and a new paragraph (h) would be added to prescribe requirements for lighter refills. Consequently, current paragraphs (i) and (j) would be redesignated as paragraphs (j) and (k) respectively. We propose to require lighter refills to conform to the current HMR volumetric capacity limit of 4 fluid ounces (7.22 cubic inches) for non-specification pressure vessels containing limited quantities of compressed gas. Because they contain a release device, lighter refills may not be described as “Gas cartridges (*flammable*)” (UN2037). We are aware the UN Model Regulations specify the maximum quantity of flammable gas that may be contained in a lighter refill is 65 grams and, depending on the type of gas placed in the refill, the volumetric capacity we are proposing may not be sufficient. We are soliciting comments on this particular proposal for potential solutions to this disparity.

Consistent with the UN Model Regulations, the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Organization’s International Maritime Dangerous Goods Code (Amendment 32; IMDG Code), we are proposing to require

lighter refills to be packaged in outer packagings meeting the Packing Group II performance level. This specification packaging requirement is currently prescribed in the ICAO Technical Instructions for transport by aircraft and, under the 13th Revised Edition of the UN Model Regulations and Amendment 32 of the IMDG Code (both effective January 1, 2005), the use of rigid outer packagings at the Packing Group II performance level will be required for lighter refills transported by all modes. Unless otherwise excepted, we propose to continue requiring UN specification outer packaging for lighter refills transported by all modes under the HMR and invite comments on whether, for highway or rail transport, this requirement is overly restrictive.

We propose that, regardless of transport mode, lighter refills are not eligible for the exceptions under the ORM-D hazard class and may not be renamed "Consumer commodity." We propose, in paragraph (2), to continue to allow the current exception from subparts C through H of part 172 (*i.e.*, shipping papers, marking, labeling, placarding, emergency response information, and training), and part 177, for no more than 1,500 lighter refills carried aboard a transport vehicle (*see* discussion under § 173.308(e)). In addition, this exception allows the use of non-specification outer packaging meeting the general requirements of subpart B of part 173. We invite comments on whether this exception is necessary, no longer relevant, or if it should be discontinued in the interest of safety.

Section 173.308

Section 173.308 would be revised to add for lighters only: (a) General requirements including a new approval process; (b) examination and testing criteria including provisions for the offering of samples for examination and testing and recordkeeping requirements; (c) packaging requirements; (d) shipping paper and marking requirements; and (e) exceptions.

Proposed paragraph (a) prescribes requirements for the design, capacity, and pressure capability of lighters that are generally consistent with definitions in ASTM F 400, ISO 9994, UN Model Regulations (Twelfth Revised Edition) and the current HMR. One important difference, however, is the adoption of a volumetric capacity limit consistent with the limited quantity of compressed gas provisions in § 173.306(a)(1) of the HMR (4 fluid ounces (7.22 cubic inches)). In the interest of safety, we believe that although we are proposing an upper limit (10 grams (0.35 ounce))

of fuel that may be contained in a device, a maximum volumetric capacity consistent with the limited quantity provisions of the current HMR is also necessary.

In § 173.308(a)(3), the HMR currently require a cigarette lighter or similar device, including closures, to be capable of withstanding without leakage or rupture an internal pressure of at least two times the vapor pressure of the fuel at 55 °C (131 °F). In addition, the HMR currently require each lighter design to be subjected to a leakage test (*see* § 173.308(b)(3) of the regulatory text for actual test procedures). In this rule we are proposing to maintain the pressure capability requirement as a capability and not a required test. We are aware that the ASTM and ISO standards for lighters both prescribe an identical test for determining the pressure capability of a device and an elevated temperature test to determine leakage that appears to be less stringent than the HMR. In addition, we are aware that in Canada and Mexico, ASTM F400-00, *Safety Standard for Lighters* has the force and effect of law, and lighters imported to or manufactured there must conform to the standard. Because the ASTM standard is voluntary in the United States, we believe a significant number of these defective lighters are redirected to the U.S. market.

In 2002, the Lighter Association petitioned the CPSC to require that all lighters manufactured or imported into the United States conform to ASTM F-400. In its petition, the Lighter Association stated that, between 1997 and 2002, there were 256 incidents involving lighters, of which 166 incidents resulted in fires and 69 incidents resulted in explosions. Although the lighters were not in transportation in commerce at the time of the incidents, the Lighter Association believes that the incidents caused by fuel leakage, self-ignition, inadequate pressure capability, and failure to withstand high temperatures and drop tests could occur in transportation under similar conditions. On May 27, 2004, the CPSC denied the Lighter Association petition to adopt ASTM F-400 as a mandatory consumer product standard. In its conclusion, the CPSC stated that, while the cost of compliance to the industry may be low, the risk of death or injury as a result of lighter malfunctions does not warrant a rulemaking action. CPSC recommended that their Office of Compliance send a letter to all known lighter manufacturers and importers urging them to comply with ASTM F-400.

We are soliciting comments on whether the pressure test should remain

as a capability test only and what impact or costs would be incurred if it were a required test. Although this regulatory requirement is currently a capability standard, we assume that prototype designs of devices are tested for structural integrity and, therefore, any costs incurred to show proof of compliance with the standard would be minimal if we adopt certain required tests from the ASTM/ISO standards for lighters. We are soliciting comments on whether to incorporate by reference transportation-related portions of the ASTM/ISO standards for lighters, thereby making compliance necessary, or to include them in the HMR as suggested methods by which the performance standard may be met. We are also soliciting comments on whether the leakage test currently required by the HMR is overly restrictive or unnecessary or whether we can adhere the same level of safety by requiring the elevated temperature and sealed fluid fuel reservoir leakage tests prescribed in the ASTM and ISO standards for lighters. Based on the merits of comments received, we may add a requirement for mandatory testing of lighters in accordance with the ASTM or ISO standards.

Under the current regulations, packages of lighters must be marked with, and, shipping papers must be annotated with, the approval number assigned by RSPA. Under this proposal, we will no longer be approving lighter designs. Proposed paragraph (a) specifies who may examine and test a lighter design, that is, a person who is qualified and authorized by the Associate Administrator under the provisions of subpart E of part 107 as limited by the conditions specified in § 173.308(a)(4). Each authorized person would be assigned an identification code by RSPA to examine and test lighter designs and the identification code must appear on the test report with a unique test report identifier for each design tested. The entire "code" (both parts) would be required to be marked on a package containing lighters and annotated on shipping papers where applicable. The proposal permits testers to use the same design identifier that manufacturers register with CPSC, allowing for increased flexibility and less regulatory burden.

Currently the HMR require all examination and testing facilities to be located in the United States. We invite comments on whether foreign entities should be allowed to examine and test lighter designs on behalf of the Competent Authority of the United States.

Proposed paragraph (b) defines a "new" lighter design and prescribes the requirements under which a lighter design sample may be offered for transportation and transported for examination and testing. For transportation by aircraft, we are proposing that inner, intermediate, or outer packagings containing lighter samples must meet the pressure differential requirements (95 kPa) in § 173.27(c). Paragraph (b) also prescribes the leakage test that a lighter design must pass (current test required by HMR) and the recordkeeping requirements for each lighter design. Finally, paragraph (b) includes a provision to allow for a five-year transition period for existing lighter approvals based on the life-cycle of current lighter designs. Consistent with CPSC policy, private labelers and distributors of such devices are not required to maintain copies of test reports, provided no changes are made to a device that would affect the ability of the device to pass the specified tests. A private labeler is someone who might place an approved device in a gift set, or someone who places advertisement logos in the form of labels on approved devices for resale. We invite comments on whether our definition of a "new" lighter design needs further clarification or if it is overly restrictive.

Paragraph (c) prescribes the packaging requirements for successfully tested lighter designs. Currently, both lighters and their inner packagings must be examined, tested, and approved by the Associate Administrator. We propose to allow for a performance-based inner packaging design and would continue to require UN standard outer packaging at the Packing Group II performance level. This specification packaging requirement is currently prescribed in the ICAO Technical Instructions for transport by aircraft and in the 13th Revised Edition of the UN Model Regulations. Effective January 1, 2005, Amendment 32 of the IMDG Code will require the use of rigid outer packagings at the Packing Group II performance level. Therefore, unless otherwise excepted, we propose to continue the specification packaging requirement for lighters transported by all modes under the HMR and invite comments on whether, for highway or rail transport, this requirement is overly restrictive.

Paragraph (d) prescribes the shipping paper and package marking requirements for lighters. Consistent with the current shipping paper and marking requirements in the HMR, we propose to require the identification code and test report identifier to be annotated on a shipping paper, in

association with the basic description, and marked on a package, for all designs contained therein. In addition, we propose to continue requiring that, for transportation by vessel, a closed transport vehicle or closed freight container must be marked with the warning statement currently required by the HMR. Because the IMDG Code requires that all quantities of flammable gases be placarded with the Division 2.1 placard, we are soliciting comments as to whether this requirement is redundant or if the additional safeguard is warranted.

Paragraph (e)(1) continues to allow the current exception from subparts C through H of part 172, and part 177, for no more than 1,500 lighters carried aboard a transport vehicle by highway. In addition, it allows the use of non-specification outer packaging meeting the general requirements of subpart B of part 173. This paragraph does not, however, contain an exception from marking the test report identifier on the outer package because of the potential for transportation by common or contract carriage. We invite comments on whether this exception is necessary, no longer relevant, or if its use should be discontinued in the interest of safety.

Based on the minimal level of risk posed by limited numbers of lighters, we are proposing in paragraph (e)(2) to allow additional exceptions for the private carriage of lighters. Under the current regulations, second or third tier distributors of lighters have great difficulty in complying with the UN standard packaging and the approval marking requirements. As proposed in this paragraph, lighters could be transported by private carriers in non-specification rigid outer packagings where the outer package contains 300 or fewer lighters. The total number of lighters that could be transported on a single vehicle would be limited to 1,500. These limits are based on current industry practice. In addition, because the approval number is not always known or may not be readily available at the time of delivery to a retail facility, we propose, that for lighters transported by private carriers, the lighter test report identifier would not be required to be marked on the outer packaging.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed 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).

The proposed rule will not impose increased compliance costs on the regulated industry. Rather, the proposed rule incorporates current approval procedures for the transportation of lighters and lighter refills into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the proposed rule excepts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this proposed rule should reduce the compliance burden on the regulated industry without compromising transportation safety.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("federalism"). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts 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, contents, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items (i), (ii), (iii), and (v) above and preempts State, local, and Indian tribe requirements not meeting the

“substantively the same” standard. This proposed rule is necessary to update, clarify and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125 (b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

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

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 that a rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule will not impose increased compliance costs on the regulated industry. Rather, the proposed rule incorporates current approval procedures for the transportation of lighters and lighter refills into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the proposed rule exempts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this proposed rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This notice 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.

E. Paperwork Reduction Act

RSPA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, “Approvals for Hazardous Materials,” with an expiration date of June 30, 2007. This rule proposes no new information collection and recordkeeping requirements.

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

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

All comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section, and received prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the RSPA Desk Officer, Office of Management and Budget (OMB) at fax number, 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

F. 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.

G. Unfunded Mandates Reform Act

This proposed rule imposes no unfunded mandates and thus does not impose unfunded mandates under the

Unfunded Mandates Reform Act of 1995.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit <http://dms.dot.gov>.

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

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

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101–5127; 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.

2. In § 171.8, new definitions “Lighter” and “Lighter refill” are added, in appropriate alphabetical sequence, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Lighter means a mechanically operated flame-producing device employing an ignition device and containing a Division 2.1 fuel such as butane, isobutane, propane, or a mixture containing any of these gases whose vapor pressure at 20 °C (68 °F) exceeds a gauge pressure of 101.3 kPa (14.7 psia). See § 173.308 of this subchapter.

Lighter refill means a pressurized container of not more than 4 fluid ounces (7.22 cubic inches) capacity that

does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1 flammable gas fuel. See § 173.306(h) of this subchapter.

* * * * *

3. In § 171.11, in paragraph (d), a new paragraph (18) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *
(18) Lighters and lighter refills (see § 171.8 of this subchapter) must conform to the requirements of this subchapter.

* * * * *

4. In § 171.12, in paragraph (b), a new paragraph (22) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(22) Lighters and lighter refills (see § 171.8 of this subchapter) must conform to the requirements of this subchapter.

* * * * *

5. In § 171.12a, in paragraph (b), a new paragraph (21) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(21) Lighters and lighter refills (see § 171.8 of this subchapter) must conform to the requirements of this subchapter.

* * * * *

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

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

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

7. In § 172.101, in paragraph (c)(11), the Note to paragraph (c)(11) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(11) * * *

Note to Paragraph (c)(11): For the transportation of samples of self-reactive materials, organic peroxides, explosives or lighters, see §§ 173.224(c)(3), 173.225(c)(2), 173.56(d) or 173.308(b)(2) of this subchapter, respectively.

* * * * *

8. In § 172.101, the Hazardous Materials Table is revised to read as follows:

§ 172.101—HAZARDOUS MATERIALS TABLE

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions	(8) Packaging (§ 173.***)		(9) Quantity limitations		(10) Vessel stowage	
							(8A) Excep-tions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger air-craft/rail	(9B) Cargo aircraft only	(10A) Location
	(REMOVE).											
*	Lighter replacement cartridges containing liquefied petroleum gases (and similar devices, each not exceeding 65 grams). See Lighters or Lighter refills etc. containing flammable gas. Lighters or Lighter refills containing flammable gas.	*	*		*	*			*	*		
	(ADD).											
*	Lighters containing flammable gas Lighter refills containing flammable gas exceeding 4 fluid ounces capacity (7.22 cubic inches).	2.1	UN1057		2.1	168 169	308	308	1 kg	15 kg	B	40
*	Lighter replacement cartridges containing liquefied petroleum gases (and similar devices) see Lighter refills containing flammable gas, etc.	*	*		*	*			*	*		

* * * * *

§ 172.102 [Amended]

9. In § 172.102:
a. In paragraph (c)(1), new Special Provisions 168 and 169 are added.
b. In paragraph (c)(5), Special Provision N10 is removed.
The additions read as follows:

§ 172.102 Special provisions.

* * * * *

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

* * * * *

168 This entry applies to lighters (see § 171.8 of this subchapter). Representative samples of each new lighter design must be examined and successfully tested as specified in § 173.308(b)(3). For criteria in determining what is a new lighter design, see § 173.308(b)(1). For transportation of new lighter design samples for examination and testing, see § 173.308(b)(2). The examination and testing of each lighter design must be performed by a person authorized by the Associate Administrator under the provisions of subpart E of part 107 of this chapter, as specified in § 173.308(a)(4). For continued use of approvals dated prior to [enter date five years after effective date of final rule], see § 173.308(b)(4)(ii).

169 This entry applies to lighter refills (see § 171.8 of this subchapter) that contain a Division 2.1 (flammable) gas but do not contain an ignition device. Lighter refills offered for transportation under this entry may not exceed 4 fluid ounces capacity (7.22 cubic inches). A lighter refill exceeding 4 fluid ounces capacity (7.22 cubic inches) must be classed as a Division 2.1 material, described with the proper shipping name appropriate for the material, and packaged in the packaging specified in part 173 of this subchapter for the flammable gas contained therein. See § 173.306(h) of this subchapter.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

11. In § 173.21, paragraph (i) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(i) Except for a package containing a lighter design sample that meets the

requirements of § 173.308(b)(2), a package containing a lighter (see § 171.8 of this subchapter) of a design that has not been examined and successfully tested by an authorized person under the criteria specified in § 173.308(a)(4).

* * * * *

§ 173.306 [Amended]

12. In § 173.306:
a. In paragraph (a)(1), in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.
b. In paragraph (a)(3), in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.
c. In paragraph (b), in the last sentence, the wording “paragraph (h)” is removed and the wording “paragraph (i)” is added in its place.
d. Paragraphs (h) through (j) are redesignated as paragraph (i) through (k), and a new paragraph (h) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(h) Lighter refills. (1)(ii) Lighter refills (see § 171.8 of this subchapter) may not contain an ignition element but must contain a release device. Lighter refills offered for transportation under this section may not exceed 4 fluid ounces capacity (7.22 cubic inches). Lighter refills must be tightly packed and secured against movement in one of the following outer packagings at the Packing Group II performance level:

- Wooden box: 4C1 or 4C2
Plywood box: 4D
Reconstituted wood box: 4F
Fiberboard box: 4G
Plastic box: 4H1 or 4H2
Steel box: 4A
Aluminum drum: 1B2
Steel drum: 1A2
Fiber drum: 1G
Plastic 1H2
Metal drum: 1N2

(ii) For transportation by passenger-carrying aircraft, the net mass of flammable gas may not exceed 1 kg per package, and, for cargo-only aircraft, the net mass of flammable gas may not exceed 15 kg per package. A container exceeding 4 fluid ounces volumetric capacity (7.22 cubic inches) may not be connected or manifolded to a lighter or similar device and must be described and packaged according to the fuel contained therein.

(2) Exceptions. For highway transportation, when no more than 1,500 lighter refills covered by this paragraph are transported in one motor vehicle, the requirements of subparts C

through H of part 172, and Part 177 of this subchapter do not apply. Lighter refills covered under this paragraph must be packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of this part. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the word “LIGHTER REFILLS” and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. No person may offer for transportation or transport the lighter refills or prepare the lighter refills for shipment unless that person has been specifically informed of the requirements of this section.

* * * * *

13. Section 173.308 is revised to read as follows:

§ 173.308 Lighters.

(a) General requirements. No person may offer for transportation or transport a lighter (see § 171.8 of this subchapter) except under the following conditions:

(1) The lighter must contain a fuel reservoir not exceeding 4 fluid ounces capacity (7.22 cubic inches), and must contain not more than 10 grams (0.35 ounce) of flammable gas. A lighter that exceeds these volumetric capacity and weight limitations may be offered for transportation or transported only if specifically approved by the Associate Administrator.

(2) The maximum filling density may not exceed 85 percent of the volumetric capacity of each fluid chamber at 15 °C (59 °F).

(3) Each lighter design, including closures, must be capable of withstanding, without leakage or rupture, an internal pressure of at least two times the pressure of the flammable gas at 55 °C (131 °F).

(4) Each lighter design must be examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing under the provisions of subpart E of part 107 of this chapter and who—

- (i) Has the equipment necessary to perform the testing required to the level of accuracy required;
(ii) Is able to demonstrate, upon request, the knowledge of the testing procedures and requirements of the HMR relative to lighters;
(iii) Does not manufacture or market lighters, is not owned in whole or in part, or is not financially dependent upon any entity that manufactures or markets lighters;
(iv) Is a resident of the United States; and

(v) Performs all examination and testing in accordance with the requirements of paragraphs (b)(3) and (b)(4) of this section.

(5) The Associate Administrator will assign an identification code to each person who is authorized to examine and test lighters. This identification code must be incorporated into a unique test report identifier for each successfully tested lighter design.

(b) *Examination and testing of lighter design types.* (1) *Lighter design type definition.* A new lighter design is one that has never been examined and tested or one that differs from a previous design in any manner that may affect the escape (leakage) of gas. Lighter characteristics that may affect the escape of gas include changes in materials of construction, ignition mechanism, burner valve design, wall thickness, sealing materials, and type of fuel (e.g., vapor pressure differences).

(2) *Lighter samples submitted for examination and testing.* Samples of a new lighter design are excepted from the requirements of paragraph (a)(4) of this section and may be offered for transportation and transported under the following conditions:

(i) The samples must be transported only to an authorized testing agency;

(ii) No more than 12 lighters may be packaged in a single outer packaging;

(iii) Inner packagings must conform to the requirements of paragraph (c)(1) of this section. For transportation by aircraft, intermediate or outer packagings must meet the pressure differential requirements of § 173.27(c) of this part;

(iv) The outer packaging must conform to the requirements of Subpart M of Part 178 of this subchapter at the Packing Group I performance level and to the requirements of § 173.24 of this subpart;

(v) The word "sample" must appear on the shipping paper as part of the proper shipping name or in association with the basic description; and

(vi) In addition to other required markings and labels, the package must be marked "SAMPLE FOR EXAMINATION AND TESTING."

(vii) All other applicable requirements of this subchapter must be met.

(3) *Examination and testing of sample lighters by an authorized testing agency.* Each sample lighter must be examined for conformance with paragraph (a) of this section by a person authorized by the Associate Administrator. In addition, lighters must be subjected to the following elevated temperature leakage test:

(i) A minimum of six lighters must be submitted for examination and testing.

Store the lighters in a laboratory desiccator for 24 hours. After drying, weigh each lighter on an analytical balance capable of accurately measuring gross mass to within 1/10 of a milligram (0.0001 grams).

(ii) After weighing, place the lighters together in an explosion-proof, controlled-temperature laboratory oven capable of maintaining $38.7 \pm 1^\circ\text{C}$ ($100 \pm 3^\circ\text{F}$) for 96 continuous hours (4 days). At the end of 96 hours, remove the lighters from the oven and place them in the same laboratory desiccator that was used for initial storage of the lighters. Allow the lighters to cool.

(iii) After cooling, weigh each lighter, subtract the mass after oven exposure from the original mass before the oven exposure, and determine the net weight differences for each lighter tested.

(iv) Weight losses must be assessed to determine the quantity of gas that leaked from the lighters and from the weight change as a result of absorbed moisture. If the net weight has increased, the test facility must run the required test using six empty lighters in parallel with the six filled lighters. The parallel tests are conducted to determine the weight of moisture absorbed in the plastic in order to more accurately determine the weight loss of the lighters from gas leakage.

(v) If the net weight loss for any one of the six lighters exceeds 20 milligrams (0.020 grams), the design must be rejected.

(vi) Lighters manufactured to a rejected lighter design may not be offered for transportation or transported in commerce unless approved in writing by the Associate Administrator.

(4) *Recordkeeping requirements.* (i) Following the examination of each new lighter design, the person or agency that conducted the examination and test must prepare a test report. At a minimum, the test report must contain the following information:

(A) Name and address of test facility;

(B) Name and address of applicant;

(C) A test report identifier, that is, the authorized person or agency identifier code immediately followed by an alpha/numeric identifier of four or more characters assigned to the specific lighter design by the authorized person or agency (e.g., "LAA* * *," where, "LAA" is the identification code assigned to the authorized person or agency by the Associate Administrator and "* * *" is replaced with the unique test report identifier assigned to the specific lighter design by the authorized person or agency);

(D) Manufacturer of the lighter. For a foreign manufacturer, the U.S. agent or importer must be identified;

(E) Description of the lighter design type (e.g., model, dimensions, ignition mechanism, reservoir capacity, lot/batch number) in sufficient detail to ensure conformance with paragraph (b)(4)(iii) of this section; and

(F) A certification by the authorized testing agency that the lighter design conforms to paragraph (a) of this section and passes or does not pass the required leakage test in paragraph (b) of this section.

(ii) For as long as any lighter design is in production and for at least three years thereafter, a copy of each lighter's test report must be maintained by the authorized testing agency that performed the examination and testing and the manufacturer of the design. For a foreign manufacturer, each test report must be maintained in accordance with this paragraph by the foreign manufacturer's U.S. agent or importer.

(iii) Test reports must be traceable to a specific lighter design and must be made available to a representative of the Department upon request.

(5) *Transitional provisions.* Until [INSERT DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE], approval numbers (i.e., T-* * *) previously issued by the Associate Administrator may continue to be marked on packages and annotated on shipping papers, where applicable. After that time, previously issued approvals will no longer be valid and each lighter design must be re-examined and tested under the provisions of this section.

(c) *Packaging requirements.* (1) *Inner containment.* Lighters must be placed in an inner packaging that is designed to prevent movement of the lighters and inadvertent ignition or leakage. The ignition device and gas control lever of each lighter must be designed, or securely sealed, taped, or otherwise fastened or packaged to protect against accidental functioning or leakage of the contents during transport. If lighters are packed vertically in a plastic tray, a plastic, fiberboard or paperboard partition must be used to prevent friction between the ignition device and the inner packaging.

(2) *Outer packaging.* Lighters must be packaged in one of the following outer packagings at the Packing Group II performance level:

Wooden box: 4C1 or 4C2

Plywood box: 4D

Reconstituted wood box: 4F

Fiberboard box: 4G

Plastic box: 4H1 or 4H2

Steel box: 4A

Aluminum drum: 1B2

Steel drum: 1A2

Fiber drum: 1G
Plastic 1H2
Metal drum: 1N2

(d) *Shipping paper and marking requirements.* (1) In addition to the requirements of subpart C of part 172, shipping papers must be annotated with the lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) traceable to the test report assigned to the lighters or, if applicable, the previously issued approval number (*i.e.*, T***), in association with the basic description.

(2) In addition to the requirements of subpart D of part 172, a lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) or, if applicable, the previously issued approval number (*i.e.*, T***), must be marked on a package containing lighters.

(3) For transportation by vessel in a closed transport vehicle or a closed freight container, the following warning must be affixed to the access doors:

WARNING—MAY CONTAIN
EXPLOSIVE MIXTURES WITH AIR—
KEEP IGNITION SOURCES AWAY
WHEN OPENING.

The warning must be on a contrasting background and must be in letters measuring at least 12.7 mm (0.5 inch) in height.

(e) *Exceptions.* (1) *Common or contract carriage.* For highway

transportation by common or contract carrier, when no more than 1,500 lighters covered by this section are transported in one motor vehicle, the requirements of subparts C through H of part 172, and Part 177 of this subchapter do not apply. Inner packagings must conform to paragraph (c)(1) of this section. Lighters must be further packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of part 173. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the word "LIGHTERS" and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. In addition, outer packagings must be marked with the test report identifier as specified in paragraph (b)(4)(i)(c) of this section or, if applicable, the previously issued approval number (*i.e.*, T***). No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section.

(2) *Private carriage.* For highway transportation by a private carrier, lighters that have been examined and successfully tested in accordance with this section are not subject to any other requirements of this subchapter under the following conditions:

(i) No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section;

(ii) Lighters must be placed in an inner packaging that is designed to prevent accidental activation of the ignition device or valve, release of gas, and movement of the lighters (*e.g.*, tray, blister pack, etc.);

(iii) Inner packagings must be placed in a securely closed rigid outer packaging that limits movement of the inner packagings and protects them from damage;

(iv) The outer package may contain not more than 300 lighters;

(v) A transport vehicle may carry not more than 1,500 lighters at any one time;

(vi) The lighters may not be placed in an outer packaging with other hazardous materials; and

(vii) Outer packagings must be plainly and durably marked with the words "LIGHTERS, excepted quantity."

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Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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