

adverse determination of patentability as that phrase is used in 35 U.S.C. 154(b)(1)(C)(iii).

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Dated: November 24, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03-30151 Filed 12-3-03; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 291-0424b; FRL-7590-5]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by January 5, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.

Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947-4117, fong.yvonne@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: VCAPCD 74.20. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 7, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 03-30167 Filed 12-3-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 176, and 177

[Docket No. RSPA-03-16370 (HM-233)]

RIN 2137-AD84

Hazardous Materials; Incorporation of Exemptions Into Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations to incorporate into the regulations the provisions of certain widely used exemptions which have established a history of safety and which may be converted into regulations for general use. We are also making minor revisions to the requirements for use of packagings authorized under exemptions. The proposed changes would provide wider access to the benefits of the provisions granted in these exemptions and eliminate the need for the current exemption holders

to reapply for renewal of the exemption, thus reducing paperwork burdens and facilitating commerce while maintaining an acceptable level of safety.

DATES: Comments must be received by February 6, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number RSPA-03-16370 (HM-233)] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

- Hand Delivery: 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.

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Office of Hazardous Materials Standards, (202) 366-8553 or Diane LaValle, Office of Hazardous Materials Exemptions and Approvals, (202) 366-4535, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) (hereafter, "we" or "us") is proposing amendments to the Hazardous Materials Regulations

(HMR; 49 CFR parts 171–180) to incorporate a number of changes based on existing exemptions. This rulemaking is part of an ongoing effort to identify commonly used exemptions that have an established history of safety and may be converted into regulations. Adoption of these exemptions as rules of general applicability will provide wider access to benefits of the provisions granted in these exemptions. Additionally, these proposed changes will eliminate the need for the current holders to reapply for extension of the exemptions every two years and for us to process these renewal requests. In addition, we are proposing minor revisions to the requirements for use of packagings authorized under exemptions. We have identified the following subjects as suitable for incorporation into this notice of proposed rulemaking:

Salvage cylinders: The use of non-DOT specification salvage cylinders for the overpacking and transportation in commerce of damaged or leaking cylinders of certain pressurized and non-pressurized hazardous materials has been authorized under various exemptions for several years. The exemptions affected are DOT–E 9507, 9781, 9991, 10022, 10110, 10151, 10323, 10372, 10504, 10519, 10789, 10987, 11257, 11459, 12676, 12698, 12790, and 12898. This proposal also responds to a petition for rulemaking (P–1168) submitted by the Chlorine Institute, Inc.

Meter provers: A mechanical displacement meter prover is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Exemptions provide relief from both bulk and non-bulk specification packaging requirements for mechanical displacement meter provers that are either truck or trailer mounted. The hazardous materials provided for are in Class 3 and Division 2.1. The exemptions affected are DOT–E 8278, 9004, 9048, 9162, 9287, 9305, 9352, 10228, 10596, 10765, 12047, and 12808.

Segregation: Exemptions provide relief from the segregation requirements in § 177.848 which prohibit storage, loading, and transportation of (1) cyanides, cyanide mixtures or solutions with acids; and (2) Division 4.2 materials with Class 8 liquids, on the same transport vehicle. The exemptions affected are DOT–E 9723, 9769, 10441, 10933, 11153, and 11294.

II. Public Participation

Comments should identify the docket number (RSPA–03–16370) and, if sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at <http://dms.dot.gov>.

The following is a section-by-section summary of the proposed changes.

Section-by-Section Review

Part 171

Section 171.7

We are proposing to incorporate by reference Chapters II, III, IV, V and VI of the American Society of Mechanical Engineers (ASME) “Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids,” ASME B31.4–1998 Edition. See the § 173.3 preamble discussion.

Part 173

Section 173.3

We are proposing to authorize the use of salvage cylinders for overpacking a damaged or leaking cylinder containing materials other than Class 1 or 7 or acetylene. Salvage cylinders must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code. Salvage cylinders are limited to a maximum capacity of 450 L (119 gallons), and must be limited in pressure and volume so that they do not exceed the maximum allowable working pressure if the damaged cylinder contained within totally discharges. We have authorized the use of salvage cylinders under exemptions for several years with a safe and satisfactory transportation experience. Materials in Classes 1 and 7 and acetylene are not authorized under the terms of these exemptions; therefore, we have no transportation experience and are not including them in the proposal. Salvage cylinders must be retested in accordance with the Compressed Gas Association’s (CGA) Pamphlet C–6; however, because a salvage cylinder is not a DOT specification cylinder, the requirement for a Requalification Identification Number (RIN) does not apply.

Section 173.5a

We are proposing to editorially revise the requirements in § 173.5a and redesignate the current requirements as paragraph (a). We are also proposing to add a new paragraph (b) to include provisions for the transportation of

mechanical displacement meter provers. We have authorized the transportation of mechanical displacement meter provers under exemptions for several years with a safe and satisfactory transportation experience. We are proposing to except mechanical displacement meter provers from the specification packaging requirements when: (1) They have a capacity not over 1,000 gallons; (2) they are permanently mounted on a truck chassis or a trailer; and (3) they contain only the residue of a Class 3 or Division 2.1 material. A mechanical displacement meter prover must be designed and constructed in accordance with certain provisions specified in the ASME Standard B31.4, and is subject to periodic visual inspection and hydrostatic retesting.

Section 173.12

Currently, § 173.12 authorizes the transportation of lab packs for disposal and recovery by highway only. However, under certain exemptions lab packs have been authorized to be transported by rail and cargo vessel. Lab packs are combination packagings used for the transportation of waste materials in Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9. Lab packs are excepted from the specification packaging requirements for combination packagings if packaged in accordance with § 173.12(b). We are proposing to amend paragraph (b) to allow lab packs to also be transported for disposal and recovery by rail and cargo vessel.

We are proposing to add a new paragraph (e) in § 173.12 to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with acids under certain conditions. Currently, the HMR prohibit the loading, storage and transportation of cyanides and cyanide mixtures or solutions on the same transport vehicle with acids, if a mixture of the materials would generate hydrogen cyanide (see § 177.848(c)). Transportation of these materials on the same transport vehicle has been authorized under the terms of numerous exemptions with certain packaging and segregation requirements with a satisfactory and safe transportation experience. The exemptions affected are DOT–E 9723, 9769, 10441, and 10933.

We are also proposing to authorize the transportation of waste Division 4.2 materials with Class 8 liquids under certain conditions. Storage, loading and transportation of Division 4.2 materials with Class 8 liquids on the same transport vehicle or storage facility is currently prohibited by the HMR. However, we have authorized the transportation of these materials on the

same transport vehicle under the exemption program under certain conditions with a safe and satisfactory transportation experience. The exemptions affected are DOT-E 11153 and 11294.

Section 173.13

Section 173.13 excepts Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9 materials from labeling and placarding requirements of the HMR if the material is packaged in accordance with the provisions of this section. The current exception applies to hazardous materials being transported by motor vehicle, rail car, or cargo aircraft. For transportation by cargo aircraft, the hazardous material must also be permitted to be transported on cargo aircraft in column (9B) of the Hazardous Materials Table (HMT). Section 173.13 restricts the net quantity per inner packaging to 1 L (0.3 gallon) for liquids and 2.85 kg (6.25 lbs.) for solids and requires triple packaging which exceeds the packaging standard currently authorized. For many years, we have also authorized transportation by passenger aircraft with certain limitations with a safe and satisfactory transportation experience. The affected exemptions are DOT E-7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. Therefore, we are proposing to expand the exception to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in Column (9A) of the HMT. The proposed exception provides the same level of safety as was previously provided under the exemption program.

Section 173.22a

We are proposing to revise paragraph (b) of § 173.22a by removing the requirement that a copy of each exemption that authorizes use of a packaging must be maintained at each facility where the package is being used in connection with the transportation of a hazardous material. Currently, the "Special Provisions" section of each exemption states where the exemption must be maintained, if we believe it is necessary. We believe that such a requirement should be handled on a case-by-case basis and see no need for an across-the-board requirement in the HMR. This proposal also responds to a petition for rulemaking (P-1293) submitted by W.W. Grainger, Inc. We are also proposing to revise paragraph (c) of § 173.22a to clarify that a "current" copy of an exemption must be provided to the carrier by each person offering hazardous materials under the

terms of an exemption when the exemption contains requirements that apply to the carrier. Additionally, we are proposing to add the website address where a copy of an exemption can be obtained.

Part 174

Section 174.81

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

Part 176

Section 176.83

We are proposing to add a new paragraph (a)(11) to reference a segregation exception in § 173.12(e) for lab packs containing cyanides and cyanide mixtures or solutions transported with acids, and for Division 4.2 materials in lab packs transported with Class 8 liquids. See § 173.12 preamble discussion.

Section 176.84

We are proposing to add a Note to paragraph (b), Code "52" cross-referencing § 173.12(e) for cyanides and cyanide mixtures or solutions in lab packs. See § 173.12 preamble discussion.

Part 177

Section 177.848

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

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) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this proposed rule provide a relaxation of

the regulations and, as such, would impose little or no additional costs to affected industry.

B. Executive Order 13132

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

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or
- (5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted as final, this rule would preempt 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 RSPA issues a regulation concerning any of the covered subjects, RSPA 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 proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, 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.

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule incorporates into the Hazardous Materials Regulations certain widely used exemptions. It would relax certain requirements, while maintaining safety. It would result in modest cost savings and would not impose significant impacts on any of the entities, small or otherwise, potentially affected by the rule. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

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

E. Paperwork Reduction Act

RSPA has current information collection approvals under: OMB No. 2137-0051, "Rulemaking, Exemption, and Preemption Requirements" with 4,219 burden hours and an expiration date of May 31, 2006; and OMB No. 2137-0022, "Testing, Inspection, and Marking of Cylinders", with 168,431 burden hours and an expiration date of September 30, 2005. We do not anticipate any significant change in burden of these current information

collections as a result of this proposed rulemaking.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request under OMB No. 2137-xxxx, "Inspection and Testing of Meter Provers" as proposed under this rule requiring annual visual inspections and 5-year pressure tests for meter provers. RSPA will submit this new information collection request to the Office of Management and Budget (OMB) for approval based on the requirements in this proposed rule. If these proposed requirements are adopted in a final rule with any revisions, RSPA will resubmit any revised information collection and recordkeeping requirements to the Office of Management and Budget for re-approval. We estimate that this proposed new information collection burden will be as follows: OMB No. 2137-xxxx, "Inspection and Testing of Meter Provers":

Annual Number of Respondents: 50.

Annual Responses: 250.

Annual Burden Hours: 175.

Annual Burden Cost: \$9,500.00.

RSPA specifically requests comments on the information collection and recordkeeping burden associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of the comment period identified in the **DATES** section of this rulemaking. 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.

Please direct your requests for a copy of this proposed new information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

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 does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these proposed revisions on the environment and whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

I. 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://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 173

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

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

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; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, under the entry “American Society of Mechanical Engineers”, a new entry is added in appropriate alphabetical order.

The new entry reads as follows:

§ 171.7 Reference material.

(a) * * *

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

Source and name of material	49 CFR reference
* * * * *	
American Society of Mechanical Engineers,	
Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids, Chapters II, III, IV, V and VI, ASME B31.4–1998 Edition	173.3
* * * * *	

PART 173—SHIPPER—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

4. In § 173.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) *Salvage cylinders.* Cylinders of hazardous materials that are damaged or leaking may be overpacked in a non-specification full opening hinged head or fully removable head steel salvage cylinder under the following conditions:

(1) Only a cylinder containing a Division 2.1, 2.2, 2.3, 3, 6.1, or a Class 8 material may be overpacked in a salvage cylinder. A cylinder containing acetylene may not be overpacked in a salvage cylinder.

(2) Each salvage cylinder must be designed, constructed and marked in accordance with Section VIII, Division I of the ASME Code (IBR, see § 171.7 of this subchapter) with a minimum design margin of 4 to 1. Salvage cylinders may not be equipped with a pressure relief device. Salvage cylinders must have provisions for securely positioning the damaged cylinder contained therein.

(3) The maximum water capacity for a salvage cylinder may not exceed 450 L (119 gallons).

(4) Contents must be limited in pressure and volume so that if totally discharged into the salvage cylinder, the pressure in the salvage cylinder will not exceed the MAWP at:

- (i) 21 °C (70 °F) for non-liquefied gases, or
- (ii) 55 °C (131 °F) for liquefied gases.

(5) Each salvage cylinder must be cleaned and purged after each use.

(6) Each salvage cylinder must be plainly marked with:

- (i) The proper shipping name of the hazardous material contained inside the packaging;
- (ii) The name and address of the consignee or consignor;
- (iii) The words “SALVAGE CYLINDER” in letters at least 50 mm (2.0 inches) high in a permanent manner; and
- (iv) The name and address or registered symbol of the manufacturer in a permanent manner.

(7) Each salvage cylinder must be labeled for the hazardous material contained inside the packaging.

(8) The shipper must prepare shipping papers in accordance with subpart C of part 172 of this subchapter.

(9) The overpack requirements of § 173.25 of this part do not apply to salvage cylinders used in accordance with this section.

(10) Transportation is authorized by motor vehicle only.

(11) At least once every 2 years, each cylinder must be visually inspected (internally and externally) in accordance with CGA Pamphlet C–6 (IBR, see § 171.7 of this subchapter) and pressure tested. A minimum test pressure of at least 1½ times MAWP must be maintained for at least 30

seconds. The cylinder must be examined under test pressure and removed from service if a leak or a defect is found.

(12) The retest and inspection must be performed by a person familiar with salvage cylinders and trained and experienced in the use of the inspection and testing equipment.

(13) Each salvage cylinder that is requalified in accordance with paragraph (d)(11) of this section must be durably and legibly marked on the sidewall with the word “Tested” followed by the requalification date (month/year), e.g., “Tested 9/04.” The marking must be in letters and numbers at least 12 mm (0.5 inches) high.

(14) *Record retention.* The owner of each salvage cylinder or his authorized agent shall retain a record of the most recent visual inspection and pressure test until the salvage cylinder is requalified. The records must be made available to a DOT representative upon request.

(15) In addition to the training requirements of §§ 172.700 through 172.704 of this subchapter, a person who loads, unloads or transports a salvage cylinder must be trained in handling, loading and unloading the salvage cylinder.

* * * * *

5. Section 173.5a is revised to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

(a) *Oilfield service vehicles.* Notwithstanding § 173.29 of this subchapter, a cargo tank motor vehicle used in oilfield servicing operations is not subject to the specification requirements of this subchapter provided—

(1) The cargo tank and equipment contains only residual amounts (*i.e.*, it is emptied so far as practicable) of a flammable liquid alone or in combination with water,

(2) No flame producing device is operated during transportation, and

(3) The proper shipping name is preceded by “RESIDUE: LAST CONTAINED * * * ” on the shipping paper for each movement on a public highway.

(b) *Mechanical displacement meter provers.* (1) For purposes of this section, a mechanical displacement meter prover is a mechanical device, permanently mounted on a truck chassis or trailer and transported by motor vehicle, consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantity of a product being pumped or transferred at facilities such as drilling

locations, refineries, tank farms and loading racks.

(2) A mechanical displacement meter prover is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Class 3 or Division 2.1 material. For liquids, the meter prover must be drained to the maximum extent practicable and may not exceed 10% of its capacity; for gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with Chapters II, III, IV, V and VI of the ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the maximum service pressure determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(d) or § 178.345–8(d) of this subchapter and with 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(3) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase “RESIDUE: LAST CONTAINED * * *” before the basic description.

(4) A meter prover must be visually inspected once a year; and pressure tested once every 5 years at not less than 75% of design pressure.

(5) Each meter prover successfully completing the test and inspection must be marked in accordance with § 180.415(b) of this subchapter. The marking must be on the side of a tank or the largest piping component in letters 50 mm (2.0 inches) high on a contrasting background.

(6) The owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as “Meter Prover returned to service” or “Meter Prover removed from service”.

(7) Prior to any repair work, the meter prover must be emptied of any hazardous material. Meter provers containing flammable lading must be purged.

6. In § 173.12, paragraph (b)(1), the first sentence is revised and a new paragraph (e) is added to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) * * *

(1) Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combinations packagings if packaged in accordance with this paragraph and transported for disposal or recovery by highway, rail or cargo vessel only. * * *

* * * * *

(e) *Exceptions from segregation requirements.* (1) The provisions of §§ 174.81(c), 176.84(b) and 177.848(c) of this subchapter do not apply to waste cyanides or waste cyanide mixtures or solutions stored, loaded, or transported with acids in accordance with the following:

(i) The waste cyanides or waste cyanide mixtures or solutions must be packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 acids must be packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) Waste cyanides or waste cyanide mixtures may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging; waste cyanide solutions may not exceed 1 L (0.3 gallon) per inner receptacle and may not exceed 10 L (3.0 gallons) per outer packaging.

(iv) The waste cyanides or waste cyanide mixtures or solutions must be—
(A) Separated from the acids by a minimum horizontal distance of 1.2 m (4 feet); and

(B) Secured on pallets not less than 100 mm (4 inches) high.

(2) The provisions of §§ 174.81(d), 176.83(b) and 177.848(d) of this subchapter do not apply to waste

Division 4.2 materials stored, loaded or transported with Class 8 liquids in accordance with the following:

(i) The waste Division 4.2 materials are packaged in lab packs in accordance with paragraph (b) of this section;

(ii) The Class 8 liquids are packaged in lab packs in accordance with paragraph (b) of this section or in authorized single packagings not exceeding 208 L (55 gallons) capacity;

(iii) The waste Division 4.2 materials may not exceed 1 kg (2.2 pounds) per inner receptacle and may not exceed 10 kg (22 pounds) per outer packaging;

(iv) The waste Division 4.2 materials must be separated from the Class 8 liquids by a minimum horizontal distance of 1.2 m (4 feet);

(v) The waste Division 4.2 materials and the Class 8 liquids are secured on pallets of not less than 100 mm (4 inches) in height.

* * * * *

7. In § 173.13, paragraph (b) is revised to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

* * * * *

(b) A hazardous material conforming to the requirements of this section may be transported by motor vehicle, rail car, or passenger vessel. In addition, packages prepared in accordance with this section may be transported by aircraft under the following conditions:

(1) *Cargo-only aircraft.* Only hazardous materials permitted to be transported aboard either a passenger or cargo-only aircraft by column (9A) or (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard cargo-only aircraft.

(2) *Passenger carrying aircraft.* Only hazardous materials permitted to be transported aboard a passenger aircraft by column (9A) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized aboard passenger aircraft. The completed package, assembled as for transportation, must be successfully tested in accordance with part 178 of this subchapter at the Packing Group I level. A hazardous material which meets the definition of a Division 5.1 (oxidizer) at the Packing Group I level in accordance with § 173.127(b)(1)(i) of this subchapter may not be transported aboard a passenger aircraft.

(3) Packages offered for transportation aboard either passenger or cargo-only aircraft must meet the requirements for transportation by aircraft specified in § 173.27 of this subchapter.

* * * * *

§ 173.22a [Amended]

8. Amend § 173.22a:

a. In paragraph (c), by adding the word “current” between the words “the” and “exemption” the last time it appears.

b. In paragraph (b), by removing the second sentence; and revising the last sentence to read as follows:

§ 173.22a Use of packagings authorized under exemptions.

* * * * *

(b) * * * Copies of exemptions may be obtained by accessing the Hazardous

Materials Safety Web site at *http://hazmat.dot.gov/exemptions_index.htm* or by writing to the Associate Administrator for Hazardous Materials Safety, U.S. Department of Transportation, Washington, DC 20590-0001, Attention: Records Center.
* * * * *

PART 174—CARRIAGE BY RAIL

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

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

10. In § 174.81, paragraphs (c) and (d) are revised to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

PART 176—CARRIAGE BY VESSEL

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

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

12. In § 176.83, new paragraph (a)(11) is added to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids and waste Division 4.2 materials transported with Class 8 liquids are set forth in § 173.12(e) of this subchapter.

13. In § 176.84, in the paragraph (b) Table, following Code “52”, a footnote is added to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
* * * * *	
52	Stow “separated from” acids. ¹
* * * * *	

¹ For waste cyanides or waste cyanide mixtures or solutions, refer to § 173.12(e) of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

15. In § 177.848, paragraphs (c) and (d) are revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions and Division 4.2 materials may not be stored, loaded and transported with acids.

(d) Except as otherwise provided in this subchapter, hazardous materials must be stored, loaded or transported in accordance with the following table and other provisions of this section:

* * * * *

Issued in Washington, DC on November 24, 2003 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Administrator for Hazardous Materials Safety.

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