

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Dunbar, City of, Kanawha County ...	540076	Aug. 6, 1974, Emerg; June 1, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
East Bank, Town of, Kanawha County.	540077	May 29, 1975, Emerg; June 1, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Glasgow, Town of, Kanawha County	540078	June 9, 1975, Emerg; June 15, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Handley, Town of, Kanawha County	540279	Dec. 3, 1975, Emerg; July 5, 1984, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Kanawha County, Unincorporated Areas.	540070	Apr. 2, 1976, Emerg; Mar. 18, 1985, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Logan, City of, Logan County	545535	Jan. 29, 1971, Emerg; July 16, 1971, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Logan County, Unincorporated Areas.	545536	Jan. 29, 1971, Emerg; Apr. 7, 1972, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Man, Town of, Logan County	545537	Jan. 29, 1971, Emerg; Sept. 10, 1971, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Marmet, Town of, Kanawha County	540079	June 12, 1975, Emerg; Apr. 15, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Mitchell Heights, Town of, Logan County.	540095	Jan. 29, 1971, Emerg; Aug. 13, 1971, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Nitro, City of, Kanawha County	540081	Apr. 21, 1975, Emerg; Apr. 15, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Pratt, Town of, Kanawha County	540082	Apr. 18, 1975, Emerg; May 1, 1984, Reg; Feb. 6, 2008, Susp.	.....do	Do.
South Charleston, City of, Kanawha County.	540223	June 5, 1974, Emerg; June 15, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Saint Albans, City of, Kanawha County.	540083	July 16, 1975, Emerg; June 15, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
West Logan, Town of, Logan County.	545539	Mar. 5, 1971, Emerg; June 2, 1972, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Region VIII				
North Dakota:				
Barnes County, Unincorporated Areas.	380339	Apr. 19, 1978, Emerg; June 4, 1987, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Kathryn, City of, Barnes County	380001	June 4, 1975, Emerg; July 19, 1982, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Litchville, City of, Barnes County	380187	Apr. 11, 1978, Emerg; Nov. 20, 1979, Reg; Feb. 6, 2008, Susp.	.....do	Do.
Valley City, City of, Barnes County	380002	Apr. 11, 1974, Emerg; Sept. 28, 1984, Reg; Feb. 6, 2008, Susp.	.....do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 18, 2008.

David I. Maurstad,
Assistant Administrator
Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 177, 178, 180

[Docket No. PHMSA-05-21812 (HM-218D)]

RIN 2137-AE10

Hazardous Materials; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to update, clarify or provide relief from certain requirements governing the classification, packaging, or labeling of hazardous materials transported in

commerce. Among other provisions, PHMSA is adopting a new proper shipping name and identification number for fuel blends composed of ethanol and gasoline. In addition, PHMSA is updating references to consensus standards, revising and clarifying certain hazard communication requirements, and clarifying transportation requirements applicable to dry ice, detonator assemblies, and explosives. PHMSA is also expanding exceptions from regulation for small quantities of hazardous materials.

DATES: *Effective date:* The effective date of these amendments is October 1, 2008.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of October 1, 2008.

Voluntary Compliance: Compliance with the requirements adopted herein is

authorized as of January 28, 2008. However, persons voluntarily complying with these regulations should be aware that appeals may be received and as a result of PHMSA's evaluation of these appeals, the amendments adopted in this final rule could be subject to further revision.

FOR FURTHER INFORMATION CONTACT:

Cameron Satterthwaite, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule adopts various updates and amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) based on PHMSA initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. Most of the amendments, as detailed below, are intended to provide relief to industry by eliminating, revising, clarifying, or relaxing regulatory requirements.

This final rule also adds a new entry to the Hazardous Materials Table (HMT) for ethanol and gasoline blends with more than 10 percent alcohol (e.g., E85). This new entry—"Ethanol and gasoline mixtures or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol, 3, UN 3475, II,"—coupled with a revision to the entry—"Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol, 3, NA1203, II"—will enhance the effectiveness of hazard communication and response by aligning the classification scheme with emergency response protocols. Because these protocols vary based on the concentration of ethanol (or "ethyl alcohol") in a gasoline mixture, differentiating in the classification of blends is critical to effective hazard communication. To minimize regulatory cost and burden, these requirements will not become effective for two years; however, voluntary compliance is permitted immediately.

In response to two petitions for rulemaking, we are adopting expanded small quantity exceptions for Packing Group II and III materials in Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9. This exception is expected to yield annual savings of about \$1 million, with no adverse safety impact.

Also in this final rule, we are:

(1) Updating provisions incorporating consensus standards issued by the

Chlorine Institute and the Compressed Gas Association (see §§ 171.7, 173.301, 178.337-9, and 178.337-10).

(2) Adding a definition for "household wastes" to clarify the current exception in the HMR for transportation of such materials (see §§ 171.8, 173.12 and 173.134).

(3) Revising the HMT to harmonize certain entries with international standards (see § 172.101) by removing, adding, and revising certain proper shipping names.

(4) Revising certain hazard communication provisions to address shipping paper requirements for marine pollutants, marking requirements for limited quantities, proper shipping name markings on packages, and labeling of intermediate bulk containers (IBCs) (see §§ 172.203, 172.315, and 172.406).

(5) Clarifying requirements applicable to the transportation of dry ice on aircraft, detonator assemblies, and packagings authorized for the transportation of certain explosives (see §§ 173.24, 173.61, 173.62, 173.217, 175.30, and 175.900).

(6) Clarifying that a shipper must use a carrier with a safety permit to transport hazardous materials for which safety permits are required as specified under the Federal Motor Carrier Safety Regulations (see § 173.22).

(7) Clarifying segregation requirements for hazardous materials transported by motor carrier (see § 177.848).

II. Notice of Proposed Rulemaking

We published a notice of proposed rulemaking (NPRM) under this docket on September 26, 2006 (71 FR 55757). The comment period for the NPRM closed on November 24, 2006. PHMSA received comments from the following individuals, companies, and organizations:

(1) Lawrence Laude (Laude; PHMSA-05-21812-3);

(2) Hydro-Test Products Inc. (Hydro-Test; PHMSA-05-21812-4);

(3) Henry Hsiu (Hsiu; PHMSA-05-21812-5);

(4) Archer Daniels Midland Company (ADM; PHMSA-05-21812-6);

(5) Regulatory Resources Inc. (RRI; PHMSA-05-21812-7);

(6) United Parcel Service (UPS; PHMSA-05-21812-8);

(7) Florida Power and Light Company (FPL; PHMSA-05-21812-9);

(8) Laboratory Corporation of America (LabCorp; PHMSA-05-21812-10);

(9) Krista Duncan (Duncan; PHMSA-05-21812-11);

(10) Petroleum Marketers Association of America (PMAA; PHMSA-05-21812-12);

(11) Health and Personal Care Logistics Conference, Inc. (H&PCLC; PHMSA-05-21812-13);

(12) Association of Hazmat Shippers, Inc. (AHS; PHMSA-05-21812-14);

(13) Veolia Environmental Services Technical Solutions L.L.P.C. (Veolia; PHMSA-05-21812-15);

(14) National Tank Truck Carriers (NTTC; PHMSA-05-21812-16);

(15) Renewable Fuels Association (RFA; PHMSA-05-21812-17);

(16) American Trucking Associations (ATA; PHMSA-05-21812-18);

(17) Petroleum Marketers and Convenience Stores of Iowa (PMCI; PHMSA-05-21812-19);

(18) Shell Chemical LP (Shell Chemical; PHMSA-05-21812-20); and

(19) BWXT Pantex, LLC (BWXT Pantex; PHMSA-05-21812-21).

Commenters were generally supportive of PHMSA's efforts to update, clarify, or provide relief from certain regulatory requirements. Many of the proposals in the NPRM were either fully supported by commenters or received no comment; these amendments are adopted as proposed. Each of the proposals, with corresponding comments, is discussed in more detail below.

III. Section-by-Section Review

A. Gasoline/Ethanol Fuel Blends (§§ 171.14, 172.101, 172.102, 172.336)

Alternative fuels have been produced and used on a small scale for decades, driven by environmental, economic, and energy security concerns. The most common of these fuels, designated E85, is being used and transported in increasing volumes in the United States. A blend of 85 percent ethyl alcohol (ethanol) and 15 percent petroleum (gasoline), E85 poses unique hazards that must be communicated and understood immediately in the case of a transportation incident. E85 and other fuel blends with high ethanol concentration are polar/water-miscible flammable liquids (i.e., they mix with water) and will degrade the effectiveness of fire-fighting foam that is not alcohol-resistant.

The 2004 Emergency Response Guidebook (ERG2004) instructs emergency responders to use different fire extinguishing materials based on the relative concentration of ethanol in a blended fuel. ERG 2004 refers to Guide 127 (Flammable Liquids Polar/Water-Miscible), which specifies the use of alcohol resistant foam for response to incidents involving Alcohols, n.o.s., 3, UN1987, or Denatured alcohol, 3, NA1987. For incidents involving blends of gasoline and ethanol (typically

transported under the shipping descriptions “Flammable liquid, n.o.s., (ethanol, gasoline), 3, UN1993”, and “Gasohol, 3, NA1203”), ERG 2004 refers to Guide 128 (Flammable Liquids Non-Polar/Water-Immiscible). Guide 128 specifies the use of regular foam but contains the following warning: “CAUTION: For mixtures containing a high percentage of an alcohol or polar solvent, alcohol-resistant foam may be more effective.”

To help emergency responders utilize the most effective emergency response procedures for incidents involving fuel blends composed of ethanol (or “ethyl alcohol”) and gasoline in various concentrations, we proposed in the NPRM to add a new proper shipping description, “Ethanol and gasoline mixture *or* Ethanol and motor spirit *or* Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II” to the HMT. This new HMT entry is consistent with a new shipping description adopted within the Fifteenth Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations).

In addition, we proposed to revise the hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks that carry materials under this description. Currently, the HMR provide exceptions from the identification number marking requirements for each of the different liquid petroleum distillate fuels, including gasohol containing up to 20% ethanol, transported in a compartmented cargo tank or tank car if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point. Because of this exception, emergency responders may not know that fires involving materials transported in a compartmented cargo tank or tank car should be handled with alcohol resistant foam. In the NPRM, we proposed to eliminate this exception for materials described under the proposed new HMT entry “Ethanol and gasoline mixture *or* Ethanol and motor spirit *or* Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II”. Thus, as proposed, display of the new UN identification number for ethanol fuel blends would be required to ensure that emergency responders understand the unique response measures applicable to such materials.

To facilitate compliance with the new provisions applicable to ethanol fuel blends, we proposed a two-year transition period. We asked commenters specifically to address the proposed transition period, including whether the

transition period would provide sufficient time for shippers and carriers to incorporate the proposed new shipping name and UN identification number into shipping papers and package markings with minimal disruptions to normal business operations. We also asked if the proposed two-year transition period should be shortened to ensure that the new shipping name and UN identification number are utilized as quickly as possible. In addition, we requested comments on how to balance these two potentially competing goals.

Shell strongly supports the addition of the new proper shipping description, “Ethanol and gasoline mixture *or* Ethanol and motor spirit *or* Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II.” Shell contends the new description will provide more effective guidance to emergency responders. Shell also notes that ethanol content greater than 10 percent in motor fuel blends requires alcohol resistant foam to minimize blanket break down and vapor breakthrough and re-ignition.

Five commenters [ADM, PMAA, NTTTC, RFA, and PMCI] suggest that the emergency response requirements cited in the NPRM could be satisfied through other, more effective or less costly means. PMCI suggests that adoption of the proposed amendments would increase confusion for persons attempting to determine the most appropriate shipping description for gasoline/alcohol fuel blends. NTTTC and PMCI suggest using a uniform gasoline “UN1203” marking for both gasoline and gasoline/alcohol fuel blends, while revising the ERG to specify the use of alcohol resistant foam for any Class 3, Flammable liquid, rather than incorporating a new shipping description into the HMR. As an alternative to this approach, PMCI recommends authorizing the new shipping description for both gasoline and gasoline/alcohol fuel blends. Under this alternative, multiple compartmented cargo tanks transporting both gasoline and gasoline/alcohol fuel blends could display only one UN identification number rather than multiple UN identification numbers representing different types of fuel blends.

Several commenters addressed the potential cost impacts of our proposal to limit the applicability of the current exception that permits display of the UN identification number for the material having the lowest flashpoint on multi-compartmented cargo tank motor vehicles and rail tank cars transporting different liquid petroleum distillate fuels, including gasoline and gasohol.

One commenter [PMAA] asserts that the proposed rule would impose significant costs for retrofitting trucks to display multiple UN identification numbers. In response to our request for specific comments regarding the costs for tank truck carriers to comply with the proposal, NTTTC states that it is unable to quantify the total number of tank trucks in ethanol service. NTTTC states that its members operate over 10,000 petroleum trailers and that these trailers are equipped to transport both ethanol and gasoline, although NTTTC cannot confirm the extent to which trailers actually transport both materials. NTTTC further asserts that due to the shortage of petroleum trailers currently in service, with the introduction of ultra-low sulfur diesel (ULSD) and other alternative fuels, it is not practical to “dedicate” these trailers exclusively to gasoline or ethanol service. As a result, NTTTC suggests that trailers should be equipped to handle both. Regarding the identification marking provisions, NTTTC states that the majority of cargo tank motor vehicles, most of which have multiple compartments, have Hazard Class 3, FLAMMABLE LIQUID placards with UN1203 “gasoline” markings permanently affixed to them. NTTTC estimates costs approaching or equaling \$600 per vehicle to convert the identification numbers and placards on a multi-compartmented cargo tank.

We believe that the new shipping description for gasoline/ethanol fuel blends will enhance emergency responders’ ability to respond effectively to incidents involving these materials. A unique shipping description and UN identification number will enable emergency responders to quickly identify whether an ethanol fuel blend is present and minimize confusion as to appropriate response measures. The new shipping description will be incorporated into the 2008 edition of the ERG. Therefore, we are adopting the proposed new shipping description “Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture, *with more than 10% ethanol*, Class 3, UN3475, II.”

We disagree with the cost estimates from NTTTC. As detailed in a May 1, 2006 letter of clarification (Reference Number 01-0082R; included in the docket for this rulemaking), the marking exception does not apply to multi-compartment cargo tanks or rail tank cars containing a fuel blend with more than 10 percent alcohol and various petroleum distillate fuels because the alcohol-fuel blend does not meet the definition for a petroleum distillate fuel. Therefore, a multi-compartment cargo

tank or rail tank car containing an alcohol-fuel blend together with petroleum distillate fuels such as gasoline must be marked with the identification number applicable to the fuel blend, in addition to the identification number of the petroleum distillate fuel.

For example, under current requirements, a compartmented cargo tank containing Gasoline, UN1203; Diesel Fuel, UN1993; Flammable liquid, n.o.s. (E85), UN1993; and Denatured Alcohol, NA1987, must display identification numbers “1203,” “1993” (for the E85), and “1987.” After the effective date of this final rule, a compartmented cargo tank carrying the same materials will be required to display identification numbers “1203,” “3475” (for the E85), and “1987.” In this scenario, the only modification is replacement of the identification number “1993” (for the E85) with new identification number “3475” for gasoline and alcohol blends containing more than 10% alcohol. The cost to replace one identification number marking on up to 4 sides of the vehicle should be significantly less than the costs estimated by commenters.

Further, to minimize the cost of transitioning to the new UN3475 marking, we are permitting motor carriers to transport E85 in accordance with the most recent marking requirements in place prior to the publication of this rule for a period of two years following the effective date of this final rule. Specifically, we are permitting use of compartmented cargo tanks, tank cars, and cargo tanks displaying the current UN identification number marking of the distillate fuel having the lowest flashpoint in addition to the UN identification number marking of fuel blends containing more than 10 percent alcohol. We believe the two-year transition period will substantially reduce the financial burden on carriers affected by this amendment by allowing them to retain the current permanent markings on their tanks while transitioning to the new identification marking for UN3475. We did not receive any comments opposing the implementation of a two-year transition period.

Currently, the HMR references special provision 172 under the entries “Denatured alcohol, NA1987” and “Alcohols, n.o.s., UN1987.” Special provision 172 allows for the alcohols described under these entries to contain up to 5 percent petroleum products. The ethanol blend, E95, is an alcohol solution containing up to 5 percent petroleum product and may be described as either “Denatured alcohol, NA1987” or “Alcohols, n.o.s., UN1987.” Therefore, to maintain consistency with the current requirements and to further offset potential costs, we are allowing transportation of ethanol and gasoline blends containing no more than 5 percent petroleum product and described as “Denatured alcohol” or “Alcohols, n.o.s.” to be marked with the identification number “1987” instead of “3475.” This exception is consistent with a comment submitted by RFA noting that many ethanol-fuel blends such as E95 (containing 95% ethanol and 5% gasoline), are currently shipped in bulk packagings marked with the UN identification number “1987,” corresponding to the proper shipping names “Denatured alcohol” and “Alcohols, n.o.s.” Although we are not introducing a new shipping description that corresponds to the identification number “1987” as suggested by RFA, we agree that the proper shipping names “Alcohols, n.o.s., UN1987” and “Denatured alcohol, NA1987” are acceptable alternatives to the new proper shipping name “Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, with more than 10% ethanol, UN3475” for ethanol and gasoline mixtures containing not more than 5 percent petroleum products.

In relation to adding the new proper shipping description, “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol, 3, UN3475, II,” we proposed in the NPRM to add a new Special Provision 177 in § 172.102 to specify the proper applicability of this new description. We received no comments opposing this proposed amendment and are, therefore, adopting it as proposed.

To correspond with the new shipping description in this final rule, we are also revising the entry for “Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol, 3, NA1203, II” to limit this entry to gasoline blends with not more than 10 percent alcohol. The purpose of this revision is to make it explicitly clear that gasoline blends containing more than 10 percent ethanol should be described under the new shipping description “Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol, 3, UN3475, II.” To minimize the financial impact of this revision we are authorizing continued use of the entry “Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol, 3, NA1203, II” for two years following the effective date of this final rule.

In conjunction with the new description for gasoline and ethanol blends with more than 10 percent ethanol, Shell suggests removing the entry “Gasohol, NA1203” and revising the entry for “Gasoline, UN1203” to add a special provision that specifically communicates to shippers that the entry “Gasoline, UN1203” may be used for gasoline and ethanol blends with not more than 10 percent ethanol for use in spark-ignition engines. We agree that Shell’s suggestion has merit. Although we are not removing the entry “Gasohol, NA1203” in this rule, we are revising the entry “Gasoline, UN1203” to allow for this description to be used for gasoline and ethanol blends with not more than 10 percent ethanol. We are revising the proper shipping name in column 2 of the HMT to include the allowance in italics following the name “Gasoline.” This will provide shippers with the flexibility to accurately describe gasoline containing small amounts of ethanol on their shipping documentation. The ever increasing amount of gasoline blends containing 10 percent or less ethanol makes this modification particularly important.

The following chart compares currently authorized proper shipping names and the proper shipping names authorized under this final rule for gasoline and gasoline-alcohol blends:

Material	Current proper shipping name and ID number	Proper shipping name and ID number authorized in this final rule
Gasoline, with not more than 10% ethanol.	Gasohol, NA1203	<ul style="list-style-type: none"> • Gasohol, NA1203. • Gasoline UN 1203. • Gasohol, NA1203 (w/ not more than 10% ethanol). • Gasoline UN 1203 (w/ not more than 10% ethanol) • Ethanol and gasoline mixture, UN3475 (w/ more than 10% ethanol)
Gasoline, with not more than 20% ethanol.	Gasohol, NA1203	

Material	Current proper shipping name and ID number	Proper shipping name and ID number authorized in this final rule
Gasoline/ethanol blends with more than 10% ethanol..	<ul style="list-style-type: none"> • Flammable liquid, n.o.s., UN1993 • Gasohol, NA1203(w/ not more than 20% ethanol) 	<ul style="list-style-type: none"> • Ethanol and gasoline mixture, UN3475. • Alcohols, n.o.s., UN1987 (Alcohol mixtures containing up to 5% gasoline). • Denatured alcohol, NA1987 (Alcohol mixtures containing up to 5% gasoline). • Ethanol and gasoline mixture, UN3475 (Alcohol mixtures containing up to 5% gasoline).
E85 (85% ethanol, 15% gasoline).	Flammable liquid, n.o.s., UN1993	Ethanol and gasoline mixture, UN3475.
Alcohol mixtures containing up to 5% gasoline.	<ul style="list-style-type: none"> • Alcohols, n.o.s., UN1987 • Denatured alcohol, NA1987 	<ul style="list-style-type: none"> • Alcohols, n.o.s., UN1987. • Denatured alcohol, NA1987. • Ethanol and gasoline mixture, UN3475.
E95 (95% ethanol, 5% gasoline).	<ul style="list-style-type: none"> • Alcohols, n.o.s., UN1987 • Denatured alcohol, NA1987 	<ul style="list-style-type: none"> • Alcohols, n.o.s., UN1987. • Denatured alcohol, NA1987. • Ethanol and gasoline mixture, UN3475.

B. Marine Pollutants (§§ 171.4 and 172.203)

Marine pollutants are hazardous materials that present an environmental hazard to rivers, lakes, streams, oceans, and other marine habitats. Section 171.4 prohibits the transportation of materials meeting the definition of a marine pollutant except in accordance with HMR requirements. Marine pollutants transported in non-bulk packagings are excepted from HMR requirements, unless the transportation is by vessel.

The International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) petitioned PHMSA (P-1465) to amend the HMR to clarify that the exception for non-bulk packages of marine pollutants transported by motor vehicle, rail car or aircraft does not apply to a marine pollutant “intended for transport” aboard a vessel. VOHMA states that the current language suggests the consignor who prepares the shipment and offers it in intermodal transportation has no obligation to declare the marine pollutant on the shipping paper if the initial transport is by motor vehicle or rail. As a result, a shipment intended for transportation by vessel and initially offered into transportation by highway, rail or air may be improperly described on the vessel shipping documents by a freight forwarder.

To address VOHMA’s concerns, in the NPRM we proposed to clarify in § 171.4(c) that shipments for which all or part of the transportation is by vessel must conform to applicable HMR requirements, even if the initial transportation is by rail or highway. We also proposed to amend § 172.203(l), which addresses shipping paper requirements for shipments of marine pollutants, to clarify that marine pollutants in non-bulk packagings transported all or in part by vessel must be shown on the shipping paper with

the words “Marine Pollutant” appearing in association with the basic description.

One commenter [Hsiu] supports the proposed clarification. Another commenter [Shell Chemical] expresses concern regarding our proposed clarification in § 172.203(l). Shell Chemical states that addressing marine pollutants only is not broad enough to address VOHMA’s petition. Shell Chemical notes that the proposed amendment for marine pollutants would not address other shipping paper provisions specific to vessel shipments and the IMDG Code, which, while not required for U.S. domestic land transportation, are mandatory for vessel transportation. The commenter notes as an example the requirement for adding the minimum flashpoint to the shipping paper if the flashpoint is less than 60.5°C, which is required in § 172.203(i) for vessel transportation. The commenter also states that shippers who use computer systems may have a problem generating a single shipping description to meet all the requirements for vessel shipments where the initial carriage is by highway and subsequent carriage is by vessel. In this situation, according to Shell Chemical, the computer system normally generates two shipping documents: one for the highway portion of the shipment and another, which is sent to the shipper’s port agent, covering the vessel portion and containing the IMDG Code description. To address these issues, Shell Chemical suggests revising only § 172.203(i) to require a shipper who offers a hazardous material by vessel either directly or indirectly to provide the initial carrier or port agent all information necessary for shipment in accordance with the IMDG Code and allow for the IMDG Code information to appear either on the initial carrier’s shipping paper or on a separate document. We disagree. The addition of

the language proposed by Shell Chemical would require all vessel shipments to conform to the IMDG Code, which is authorized but not required for domestic shipments. Further, because no provision of the HMR prohibits inclusion of additional information in a shipping paper, making express allowance for this in § 172.203(i) would be redundant and unnecessary. Therefore, we are adopting the amendments as proposed.

C. Incorporation by Reference (§ 171.7)

The “National Technology Transfer and Advancement Act of 1996” directs agencies to use voluntary consensus standards. According to the Office of Management and Budget (OMB), Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” government agencies must use voluntary consensus standards wherever practical in the development of regulations. Agency adoption of industry standards promotes productivity and efficiency in government and industry, expands opportunities for international trade, conserves resources, improves health and safety, and protects the environment.

To these ends, PHMSA actively participates in the development and updating of consensus standards through representation on more than 20 national consensus standards bodies. PHMSA regularly reviews updated consensus standards and considers their merit for inclusion in the HMR. Section 171.7 lists all standards incorporated by reference into the HMR.

In this case, we evaluated the following updated consensus standards pertaining to cargo tanks and compressed gas cylinders and determined that the revised standards provide an enhanced level of safety

without imposing significant compliance burdens. These standards have a well-established and documented safety history; their adoption will maintain the high safety standard currently achieved under the HMR. We received no comments opposing our adoption of the consensus standards and informational materials proposed in the NPRM. Therefore, we are updating, revising, and adding the following reference materials in paragraphs (a)(3) and (b) of § 171.7:

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we are updating "Type 1½ JQ 225, Dwg., H51970, Revision D April 5, 1989; or Type 1½ JQ 225, Dwg. H50155, Revision F, April 4, 1989" to Revisions F and H respectively.

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we are updating "Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 3rd Edition, October 1997" to the 4th Edition, October 2003.

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we are adding a reference to "Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002."

- In response to a Chlorine Institute petition (P-1444) and a Midland Manufacturing Corporation petition (P-1448), under the entry "Chlorine Institute," we are adding a reference to "Typical Manway Arrangement Chlorine Cargo Tank, Dwg. 137-5, November 1996."

- In response to a Chlorine Institute petition (P-1444), under the entry "Chlorine Institute," we are removing the reference to "Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwgs. 137-1 and 137-2, September 1, 1982."

- In response to a Compressed Gas Association (CGA) petition (P-1482), we are updating "CGA Pamphlet C-5 Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991" to the reaffirmed 1995 Edition.

- In response to a CGA petition (P-1472), we are updating "CGA Pamphlet C-7, A Guide for the Preparation of Precautionary Markings of Compressed Gas Containers, appendix A, issued 1992 (6th Edition)" to the 2004 (Eighth) Edition. The updated pamphlet allows for hazard class numbers to be placed on subsidiary labels which is prohibited in the 1992 Edition.

- In response to a CGA petition (P-1440), we are authorizing the use of "S-1.1, Pressure Relief Device Standards—

Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition" for DOT specification cylinders and UN pressure receptacles. Consequently, we will be removing references to the Ninth Edition (1996) and Eleventh Edition (2003).

- In response to a CGA petition (P-1440), we are updating "CGA Pamphlet S-7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996" to the 2005 Edition.

- We are updating "ISO 7225, Gas cylinders—Precautionary labels, First Edition, November 1994, (Corrected and reprinted August 1995), (E)" to the Second Edition, July 2005.

Paragraph (b) of this section contains a list of informational materials not requiring incorporation by reference. These materials are for informational purposes only and are not mandatory requirements. In the NPRM, we proposed to revise paragraph (b) of this section to add a reference to CGA publication, "C-1.1, Personnel Training and Certification Guidelines for Cylinder Requalification by the Volumetric Expansion, issued 2004 (1st Edition)." In addition we proposed to add a new paragraph (g)(6) to § 180.205 to indicate that the CGA publication is an example of materials that may be used to train personnel in requalifying cylinders using the volumetric expansion method.

One commenter [Hydro-Test] states that other commercially available guidelines concerning the requalification of cylinders may be overlooked if the CGA publication is specifically referenced in the HMR. We recognize that other satisfactory training materials are available or may be developed. It is not our intention to require the use of a particular set of training materials. Rather, as the rule text makes explicit, the referenced publication is cited only as an example of available training materials.

D. Household Wastes (§§ 171.8, 173.12, and 173.134)

Although the HMR explicitly exempt shipments of "hazardous waste" (§ 173.134(b)(13)(i)), the term "hazardous waste" is not defined in the rules. In the NPRM, we proposed to include a new definition for "Household wastes" to mean "any solid waste (including garbage, trash, and sanitary waste from septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)."

We also proposed to clarify in § 173.12, which provides packaging exceptions for hazardous waste shipments, that household wastes are not subject to the HMR.

Three commenters [Duncan; Veolia; and RRI] oppose the amendments, suggesting that the proposed definition would allow unregulated transportation of household hazardous wastes to and from household waste collection centers. RRI also asserts the proposed definition could cause confusion because it would except all "household wastes," without regard to hazards, quantities, or commercial or personal generation.

The commenters appear to have misunderstood our intent in proposing a definition for "household wastes." The definition is intended to clarify a long-standing exception from regulation under the HMR for waste materials that are generated from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). Such household wastes typically are picked up at curbside by municipal governments for disposal in accordance with applicable State or local government requirements.

In regard to collection centers, we note that the transportation of consolidated household waste material in a motor vehicle by a government employee, solely for noncommercial government purposes, is not "commercial" transportation for purposes of the HMR and, therefore, is not subject to the requirements of the HMR (see § 171.1(d)(5)). However, transportation of a consolidated hazardous waste shipment from a collection center by a commercial motor carrier under contract to a government entity is "commercial" transportation for purposes of the HMR and, therefore, is subject to all applicable HMR requirements.

RRI also questions the use of undefined terms within the proposed definition, such as "solid waste," "sanitary waste," "hotel," and "motel." RRI observes that the Environmental Protection Agency (EPA) uses similar terminology, but may define such terms differently, causing confusion regarding the applicability of these terms. We disagree. The term "solid waste" is meant to cover those items commonly found in household trash and garbage receptacles; the meaning of the terms "hotel," "motel," and "sanitary waste" should be evident from the way these terms are used in the definition. Further, although there are similarities

in terminology between PHMSA's and EPA's requirements, PHMSA's definitions are intended to stand on their own for the purposes of transportation under the HMR.

For the reasons described above, in this final rule, we are adopting the definition and clarifications for "Household waste" as proposed in the NPRM.

E. Hazardous Materials Table (HMT; § 172.101)

Section 172.101 contains the HMT and explanations for each of the columns in the HMT. This final rule makes various amendments to the HMT. For the purpose of the Government Printing Office's publication procedures, changes to the HMT appear under three sections of the Table, "remove," "add," and "revise."

In the NPRM, we proposed to harmonize certain proper shipping names in the HMR with the Fourteenth revised edition of the UN Recommendations, the 2007–2008 International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and Amendment 33 to the International Maritime Organization Dangerous Goods Code (IMDG Code), and to correct other entries. One commenter [Laude] identified an error in the NPRM: The non-bulk packaging references for the HMT entry "Radioactive material, Type A package *non-special form, non fissile or fissile excepted*, Class 7, UN2915," were incorrect. This error has been corrected in this final rule. We did not receive any comments opposing these proposed changes and are, therefore, adopting the amendments as proposed. In addition we are removing two entries for "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*, UN2030." A duplicate entry was inadvertently added during the process of amending "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*, UN2030" under docket HM–244, which was published in the **Federal Register** on October 1, 2007 (72 FR 52578). Both of these entries contained errors. Therefore, we are removing both entries and adding the correct description for "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*, UN2030."

F. Special Provisions (§ 172.102)

Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging provisions, prohibitions, and exceptions applicable to particular

quantities or forms of hazardous materials. In the NPRM, we proposed to revise Special Provision B69 to clarify that metal covered hopper cars, covered motor vehicles, portable tanks, and non-specification bins must be sift-proof and weather-resistant and to remove the requirement for bins to be approved by the Associate Administrator. We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

G. Package Marking—RQ (§§ 172.315 and 172.324)

Except for transportation by aircraft, § 172.315 excepts limited quantity shipments of hazardous materials from the requirement for marking the proper shipping name of the material on the package when the identification number of the material is shown within a square-on-point configuration. In the NPRM, we proposed to revise § 172.315 to clarify that if a shipper identifies a limited quantity material which is also a hazardous substance, the shipper is required to mark the letters "RQ" on the package in association with the square-on-point configuration containing the identification number of the material.

We received two comments [Hsiu and RRI] supporting the proposed amendment. RRI suggests that, for increased visibility, this provision should be added to § 172.324, which contains the marking requirements for hazardous substances in non-bulk packagings. We agree; therefore, in this final rule, we are revising § 172.324 to add this clarification and adopting the amendment to § 172.315 as proposed.

We also invited comments on whether or not the name of the hazardous substance should also be included along with the letters "RQ," even though the proper shipping name is not required. Hsiu recommends we remove all hazardous substance marking requirements for limited quantity shipments to expedite the movement of international shipments; international regulations do not require "RQ" markings. We disagree. It is important to identify packages containing a hazardous substance, regardless of the size of the package. This marking is necessary for emergency responders who respond to incidents involving packages containing hazardous substances and are required to implement EPA mandated procedures tied to the risk associated with reportable quantity amounts. Therefore, we are also revising § 172.324 to incorporate this provision.

H. Placement of Labels (§ 172.406)

Section 172.406 specifies the placement of labels on a package. Paragraph (e) of this section prescribes requirements for the duplicate labeling of packages based on size. Paragraph (e)(1) requires each package or overpack having a volume of 1.8 m³ (64 cubic feet) or more to be labeled on at least two sides or two ends (other than the bottom of the package). In the NPRM, we proposed to add a new paragraph (e)(6) to clarify that IBCs having a volume of 1.8 m³ (64 cubic feet) or more are required to be labeled on at least two sides or two ends. We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

I. Small Quantity Exceptions (§ 173.4)

Section 173.4 establishes exceptions for small quantities of hazardous materials. In response to petitions from the Dangerous Goods Advisory Council (DGAC) (P–1454) and Pharmaceutical Research and Manufacturers of America (PhRMA) (P–1457), we proposed in the NPRM to except de minimis quantities (less than 1 gram for solids and less than 1 milliliter for liquids per inner packaging) of PG II and PG III materials of Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9 materials. We proposed to require these materials to be transported in a combination packaging, with cushioning and absorbent material that would be capable of sustaining a drop test and a compressive load test.

We received five comments supporting this proposal [RRI, Hsiu, FPL, H&PCLC, and AHS]. RRI suggests the performance-based criteria be removed from the packaging requirements in favor of a requirement for a strong, tight packaging in conformance with Part 173, Subpart B. Additionally, RRI suggests amending the gross mass packaging limits by removing the 64 pound gross weight limitation while retaining the net hazardous material mass provisions to allow for more packaging configurations. RRI believes these suggestions would generate more cost savings than the proposed rule. We disagree. The packaging performance standard proposed in the NPRM is consistent with the performance standard currently required for shipments of small quantities under § 173.4 and with the packaging standard recommended in the two petitions for rulemaking we received on this issue. The transportation history of the small quantity exception demonstrates that the packaging standard provides a high

level of safety; moreover, the standard is measurable and enforceable. Therefore, we are adopting the packaging standard proposed in the NPRM.

Hsiu asks whether packaging tests and recordkeeping are mandatory. Packaging tests and recordkeeping are not mandatory. The performance standard proposed in the NPRM and adopted in this final rule is a capability standard. Capability may be demonstrated in a variety of different ways, such as engineering analysis, selective testing of similar packages, or actual testing of each specific design type.

Two commenters request we expand the small quantity exception proposed in the NPRM. Hsiu requests that explosives classed as Division 1.4S be included within the small quantity exception; FPL requests we authorize sample bottles containing up to 2 mL under the small quantity exception. Hsiu's and FPL's requests are beyond the scope of this rulemaking. A petition for rulemaking may be submitted to us in accordance with 49 CFR Part 106, Subpart B.

Therefore, in this final rule, we are adopting a new exception for small quantities—less than 1 gram for solids and less than 1 milliliter for liquids per inner packaging. When packaged for transportation as specified in accordance with the new paragraph (e), these materials are in amounts and forms that do not pose an unreasonable risk to health and safety or property.

J. Agricultural Exceptions (§ 173.5)

Section 173.5 establishes the conditions under which agricultural products such as pesticides and fertilizers are excepted from HMR requirements. In order to utilize the exceptions provided, paragraph (b)(2) specifies limits for the amount of agricultural product that may be transported in a single vehicle. In the NPRM, we proposed to clarify this exception by replacing the term “vehicle” with “motor vehicle.” We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

K. Hazardous Waste Exceptions (§ 173.12)

Section 173.12 provides packaging exceptions for shipments of hazardous waste materials. In a final rule published on January 24, 2005, under Docket No. RSPA 03–16370 (HM–233; 70 FR 3304), we added a new paragraph (e) to this section to authorize the storage, loading and transportation of waste cyanide and waste cyanide mixtures or solutions with Class 8 acids under certain conditions. In the NPRM,

we proposed to revise paragraph (e) to authorize the transportation of waste cyanides and waste cyanide mixtures or solutions with not only Class 8 acids but all acids. We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

L. Shipper Responsibilities (§ 173.22)

Section 173.22 establishes a shipper's responsibility for complying with applicable HMR requirements. In the NPRM, we proposed, in response to a petition from NTTC (P–1469), to amend this section to require shippers who offer certain hazardous materials for transportation to use carriers holding a valid safety permit issued by the Federal Motor Carrier Safety Administration (FMCSA). FMCSA regulations (49 CFR Part 385, Subpart E) require motor carriers transporting certain types and amounts of hazardous materials to apply for a safety permit. To obtain a safety permit, a carrier must have a “satisfactory” safety rating and must meet certain other safety and security requirements. The safety permit requirements apply to motor carriers transporting: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) certain high explosives; (3) certain toxic inhalation hazard (TIH) materials; and (4) certain bulk shipments of liquefied methane gas and liquefied natural gas. A carrier may not transport any of the listed materials unless it has a valid safety permit.

We received one comment supporting this proposal [ATA]. We received four comments opposing this proposal [Hsiu, Veolia, Shell Chemical, and NTTC]. Hsiu states that this is against the precedent PHMSA established when it determined that shippers are not responsible for verifying hazardous materials endorsements on commercial driver licenses. Veolia notes that, currently, FMCSA has chosen to limit dispersal of the required information to only State and local law enforcement personnel due to security concerns. Shell notes that the obligation to secure and maintain a safety permit under 49 CFR 385.403 is the motor carrier's and not the shipper's. Shell is concerned that this proposal, if adopted, would establish the wrong precedent, placing shippers in an enforcement role for which they are ill equipped. We also received comments from the petitioner, NTTC, who opposes this amendment due to the lack of a publicly accessible and updated list of carriers who hold current safety permits.

We note that the proposal in the NPRM implements a statutory requirement in 49 U.S.C. 5109(f), which provides that a shipper offering a

hazardous material for transportation in commerce may only offer that material to a motor carrier with a safety permit issued in accordance with 49 U.S.C. 5109. We do not agree that by incorporating this statutory provision into the HMR we are placing shippers in an “enforcement” role. Rather, we are asking shippers, consistent with statutory requirements, to exercise due diligence and responsible care with respect to selecting motor carriers. Therefore, we are adopting the proposal in this final rule.

In accordance with 49 CFR 385.417, “a motor carrier must provide the number of its safety permit to a person who offers a [covered hazardous material] for transportation in commerce.” FMCSA issues each motor carrier a paper copy of its safety permit. A shipper may request the carrier's safety permit number or a copy of its safety permit to verify that it is using a carrier holding a valid safety permit.

M. General Packaging Requirements (§ 173.24)

Section 173.24 establishes general requirements for packagings and packages. Paragraph (g) of this section addresses the venting of packages to reduce internal pressures that may develop by the evolution of gas from the contents during transportation. Currently, this paragraph specifies that a package containing a hazardous material and transported on board an aircraft must not vent. In the NPRM, we proposed to revise paragraph (g)(1) to specify that the venting of packagings containing carbon dioxide, solid (dry ice) would not be prohibited for air transportation. We received no comments opposing this proposed amendment. However, one commenter [UPS] notes that § 173.320(c) refers shippers of refrigerated and cryogenic liquids to ICAO Packing Instruction (PI) 202. ICAO PI 202 applies to Class 2 refrigerated liquefied gases in open and closed cryogenic receptacles authorized for air transportation that require venting. We agree with the commenter that cryogenic liquids as specified in § 173.320(c) should also be referenced in this section. Therefore, in this final rule, we are adopting the proposed amendment and adding a reference to ICAO PI 202.

N. Transportation of Explosives (§§ 173.61, 173.62)

Section 173.61 establishes requirements for transporting Class 1 (explosive) materials in the same outside packaging with other materials that could, under normal conditions of transportation, adversely affect the

explosive or its packaging. Paragraph (c) of this section lists specific explosives that may not be transported in the same outside packaging as other Class 1 materials. In a final rule published May 6, 1997 (HM 215B; 62 FR 24708), we added a new entry to the HMT “Detonator, assemblies, non-electric for blasting,” UN0500. This entry should have also been added to paragraph (c) to indicate that this material is not authorized to be packed together with other Class 1 explosives. In the NPRM, we proposed to correct this oversight by amending paragraph (c) to include UN 0500 “Detonator assemblies, non-electric for blasting.” We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

Section 173.62 establishes specific packaging requirements for Class 1 (explosive) materials. The Table of Packing Methods in paragraph (c) specifies the packing instructions assigned to each explosive. In the NPRM, we proposed to revise packing instruction (PI) 134 in the Table of Packing Methods to authorize the use of a specification 4H1 plastic box as an outer packaging for certain explosives. We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

O. Transportation of Dry Ice (§§ 173.217, 175.10, 175.900)

Section 173.217 establishes packaging requirements for dry ice (carbon dioxide, solid). In the NPRM, we proposed to revise this section for clarity and to harmonize the HMR with requirements in the ICAO Technical Instructions applicable to the transportation of dry ice by air. Currently under paragraph (d), the HMR require the shipper to have a specific and special written arrangement with the air carrier to transport more than 441 pounds of dry ice in a single compartment. The ICAO Technical Instructions no longer include this requirement. The United Parcel Service (UPS) petitioned PHMSA (P-1439) to amend this section for consistency with the most recent edition of the ICAO Technical Instructions. We agreed and proposed to revise the current paragraph (d) accordingly. In addition, we proposed to revise paragraph (d) to address air specific provisions such as ventilation safety procedures, net mass marking requirements, and quantity limit exceptions for dry ice used as a refrigerant for non-hazardous materials. Further, we proposed requirements for air carriers who transport dry ice in a proposed new § 175.900.

In the NPRM, we proposed to require shippers to mark the net mass of dry ice contained in the package on the outside of the package. Two commenters [LabCorp and UPS] request clarification regarding the proposed net mass marking requirements. LabCorp states that the NPRM is not clear as to whether the proposed net mass marking requirement specified in § 173.217(c)(1) is in addition to, rather than in place of, the standard requirement in § 172.301 to mark the package with the proper shipping name and UN number. We agree and are revising the language in paragraph (c)(1) to specify that the net mass marking requirement is in addition to the applicable marking requirements in Part 172, Subpart D. We are also adding a statement to clarify that each unit load device (ULD) when used as the packaging for dry ice would be subject to all the applicable marking requirements for dry ice. We are also adding clarification in § 175.900 to specify that if an operator adds dry ice to such a ULD, the net mass marking would need to be revised if the amount of dry ice exceeds the net mass quantity marked on the ULD. UPS also suggests the text should be clarified to specify that the quantity limits in columns (9A) and (9B) of the HMT are not applicable to dry ice that is used as a refrigerant for non-hazardous materials and is loaded in a unit load device or other type of pallet. We agree, and have revised § 173.217(c) accordingly.

UPS also suggests slight revisions to clarify the applicability of the marking requirements for packagings containing less than 5 pounds of dry ice. These proposed revisions would create redundancy and are therefore unnecessary. Accordingly, we are not incorporating these suggested revisions.

The HMR require a shipper to have a specific and special written arrangement with an air carrier to transport more than 441 pounds of dry ice in a single compartment. The ICAO Technical Instructions have been broadened by removing the 441 pound threshold of dry ice in a single compartment and the requirement for a specific and written arrangement with the carrier. In the NPRM, in response to a UPS petition (P-1439), we proposed to incorporate the ICAO Technical Instructions' provisions, which require the shipper of the dry ice and the carrier to make arrangements to ensure that proper ventilation procedures are followed. We received three comments on the proposed revisions [Hsiu, LabCorp, and UPS]. Both Hsiu and LabCorp question the interpretation of the phrase “arrangements between the shipper and the operator” and state the carrier

requirements specified in Part 175 thoroughly address safety issues. Although we agree that the transportation of hazardous materials by aircraft is adequately addressed in Part 175, the intent of the proposed dry ice requirements is to notify the initial air carrier, through advance shipper-carrier arrangements, of the quantities of dry ice that will be aboard the aircraft. The stowage of dry ice is the responsibility of the aircraft operator and is based on the specific aircraft type, the number of air exchanges per hour in the cargo compartment, the method of packing and stowing, whether animals are carried in the compartment, and other factors. The shipper should provide notification of the amount of dry ice to be shipped to the carrier in advance to afford the carrier the opportunity to take into account these safety factors. To eliminate confusion, we are clarifying that it is the carrier's responsibility to comply with the dry ice transportation provision in § 175.900. Note that the arrangements required under this final rule need not be in writing.

The HMR provide an exception from the shipping paper and certification requirements for dry ice shipments prepared in accordance with applicable requirements, provided the package is marked “Carbon dioxide, solid” or “Dry ice” and includes an indication that the material being refrigerated is used for diagnostic or treatment purposes. To avoid confusion, we proposed to revise § 173.217(e) to specify that only dry ice actually used to refrigerate materials being shipped for diagnostic or treatment purposes may be transported under this exception. We did not receive any comments opposing this proposed revision; therefore, we are adopting it without change in this final rule.

Section 175.10 establishes exceptions for the transportation of certain hazardous materials by aircraft, including hazardous materials that may be carried by passengers or crew members in checked or carry-on baggage. In the NPRM, we proposed to revise paragraph (a)(10) to harmonize the HMR with the ICAO Technical Instructions applicable to the transportation of dry ice in checked or carry-on baggage by excepting from the HMR shipments of dry ice used to pack perishables in carry-on and checked baggage. In the NPRM, we indicated the net mass requirement would be 2.3 kg (5 pounds). The ICAO Technical Instructions allow 2.5 kg (5.5 pounds). To correct this inconsistency, we are amending the section to read “2.5 kg (5.5 pounds).” Likewise, we are amending § 173.217(c) to raise the limit

from 2.3 kg to 2.5 kg for such packages when transported as cargo. Although the ICAO TI does not provide a cargo exception equivalent to that found in § 173.217(c), we believe that establishing a consistent limit for packages transported as cargo and packages transported by passengers or crew members will facilitate the transportation of such packages.

In response to a UPS petition (P-1439) and to harmonize with international standards, we proposed to add a new § 175.900 to incorporate the ICAO Technical Instructions aircraft loading requirements for carbon dioxide, solid (dry ice). The proposed amendment would provide guidelines to the aircraft operator for handling dry ice shipments based on the aircraft type, the aircraft ventilation rates, the method of packing and stowing, the presence of animals on the flight. In addition, the proposed amendment would require the aircraft operator to ensure that the ground staff is informed of the presence of dry ice, and provide the Pilot-in-Command with information to reflect any quantity change of dry ice.

We received one comment [UPS] supporting this proposal. We did not receive any comments opposing the proposed amendment; therefore, we are adopting it without change in this final rule. UPS also suggested including text in either this section or in § 175.33 (Shipping paper and notification of pilot-in-command provisions) to adopt DOT-E 12378, which allows for dry ice loaded on an aircraft to be shown as aggregate mass (in kg) quantity per loading position, rather than a net mass (in kg) quantity per package. Because this additional requirement was not proposed in the NPRM, it is beyond the scope of this rulemaking. However, we agree that there may be some merit in adopting the provision in DOT-E 12378, which allows for dry ice loaded on an aircraft to be shown as an aggregate quantity per loading position, rather than a net quantity per package; we will consider this issue in a future rulemaking.

P. Transportation of Compressed Gas in Cylinders (§§ 173.301, 173.304, 173.306)

Section 173.301 establishes general requirements for the transportation of compressed gases in cylinders and spherical pressure vessels. Paragraph (f) of this section addresses pressure relief devices (PRDs), and paragraph (g) addresses manifolded cylinders in transportation. Paragraphs (f) and (g) require pressure relief devices to conform to the applicable provisions specified in CGA S-1.1 and CGA S-7. In response to a CGA petition (P-1440),

we proposed in the NPRM to update the incorporation by reference of CGA publications S-1.1 and S-7. We did not receive any comments opposing this proposed revision; therefore, we are adopting it without change in this final rule. In addition, paragraph (c) is revised to incorporate the updated CGA S-1.1 and CGA S-7 publications specified above.

Section 173.304a specifies additional requirements for shipments of liquefied compressed gases in specification cylinders. Paragraph (e)(1)(ii) is revised to incorporate the updated revision to CGA Pamphlet S-1.1 as specified in the preamble language for § 171.7.

Section 173.306 establishes transportation requirements for limited quantities of compressed gases. We are reprinting paragraphs (i), (j), and (k) to correct the paragraph designations.

Q. Transportation of Gas Generator Assemblies (§ 173.335)

Section 173.335 establishes requirements for the transportation of gas generator assemblies. This entry was initially added in a December 21, 1990 (55 FR 52402; HM-181) rulemaking to harmonize the HMR with various international standards such as the ICAO Technical Instructions, IMDG Code, and UN Recommendations. However, ICAO removed this entry in the 2003-2004 edition of the ICAO Technical Instructions. In the NPRM, we proposed to remove this section in its entirety to harmonize with ICAO. We did not receive any comments opposing this deletion; therefore, we are removing it from the HMR in this final rule.

R. Motor Carrier Segregation Requirements (§ 177.848)

Section 177.848 addresses segregation requirements for hazardous materials transported by motor carrier. Currently, in paragraph (a)(1), the segregation requirements apply to hazardous materials in packages that are required to be labeled. However, the current requirements do not specify whether these segregation provisions apply to hazardous materials in packages which require placarding. In the NPRM, we proposed to revise paragraph (a)(1) to specify that the segregation requirements for hazardous materials would be applicable to packages that require placarding. We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

S. UN Portable Tanks (§ 178.274)

Section 178.274 establishes design and manufacturing requirements for UN portable tanks. Currently, paragraph

(b)(1) specifies that the design temperature range for the shell of a UN portable tank must be -40°C to -50°C (-40°F to 122°F). The temperature range " -0°C to -50°C " should be specified as " -40°C to 50°C ." In the NPRM, we proposed to revise paragraph (b)(1) to correct this error. We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

T. MC 331 Cargo Tanks (§§ 178.337-9, 178.337-10)

Section 178.337-9 establishes requirements for pressure relief devices, piping, valves, hoses, and fittings on MC 331 specification cargo tanks. Paragraph (b)(8) requires angle valves used on cargo tanks intended for chlorine service to conform to the Chlorine Institute Dwg. 104-8. In response to petitions for rulemaking from the Chlorine Institute (P-1444) and Midland Manufacturing Corporation (P-1448), we proposed, in the NPRM, to revise paragraph (b)(8) to incorporate the Chlorine Institute's "Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition," dated October 2002, to authorize the use of an alternative angle valve for cargo tanks that transport chlorine. We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

Section 178.337-10 establishes accident damage protection requirements for MC 331 specification cargo tanks. The Chlorine Institute petitioned PHMSA (P-1444) to update the references to the Chlorine Institute's drawings 137-1 and 137-2 entitled "Standards for Housing and Manway Covers for Steel Cargo Tanks," dated September 1, 1982, by replacing them with the Chlorine Institute's drawing 137-5 entitled "Typical Manway Arrangement Chlorine Cargo Tank," dated November 1996. In the NPRM, we proposed to revise paragraph (d) to remove the Chlorine Institute's drawings 137-1 and 137-2, and replace them with the Chlorine Institute's updated drawing 137-5. We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

U. Office of Hazardous Materials Enforcement Investigator (§ 107.305)

Section 107.305 specifies the authority of the PHMSA Office of Hazardous Materials Enforcement (OHME) to initiate and conduct investigations. This section also details the authority of each OHME inspector in relation to the process of conducting

investigations and inspections. For clarity, we are revising several paragraphs in this section to replace the term "inspector" with the term "investigator." This will help reduce confusion since the term "inspector" is used in other areas of the HMR with a different meaning.

V. Minor Editorial Correction (§ 172.704)

In § 172.704, at paragraph (a)(2)(ii), a reference to obsolete "§§ 171.11 and 171.12" is corrected to read "§§ 171.22 through 171.25."

IV. Sunset Provision

In the NPRM, we requested comments on whether certain amendments should be tied to a sunset provision. We received two comments (Hsiu and Shell Chemical) opposing inclusion of a sunset provision. We agree that such a provision is not appropriate for this rulemaking and, accordingly, are not including a sunset provision in this final rule.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

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

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

In this final rule, we are amending the HMR to clarify and relax overly burdensome requirements. We are also responding to requests from industry associations, including the Chlorine Institute and Compressed Gas Association, to add references and update standards that are incorporated in the HMR. PHMSA believes the final rule will yield net economic benefits by enhancing the clarity of the HMR, thereby increasing compliance while reducing compliance costs. Further, the creation of an exception to the HMR for small quantities of certain hazardous

materials (less than 1 gram for solids and less than 1 milliliter for liquids), and clarification that household wastes are not subject to the HMR, will reduce packaging and compliance costs to the regulated community. This final rule also updates the HMR to incorporate the most recent editions of industry consensus standards. Incorporation by reference of recognized standards and materials reduces the regulatory burden on persons who offer or transport hazardous materials in commerce.

The major implementation cost associated with adoption of this final rule relates to our addition of a new shipping name and UN number for fuel blends composed of ethanol ("ethyl alcohol") and gasoline in various concentrations. For these materials, we are adding a new entry "Ethanol and gasoline mixture or Ethanol and motor spirit or Ethanol and petrol mixture, with more than 10% ethanol, 3, UN3475, II" to the HMT. The new shipping name and UN number will help emergency responders utilize the most effective procedures for incidents involving ethanol/gasoline blends.

Ethanol/gasoline blends currently are transported primarily by motor vehicle. Adoption of the new shipping name and ID number will necessitate remarking of cargo tank motor vehicles used to transport ethanol/gasoline fuel blends. Commenters to the NPRM suggested that these costs could amount to \$600 per cargo tank for a multi-compartmented vehicle. As discussed in detail above, we believe that commenters have over-stated potential compliance costs associated with remarking cargo tank motor vehicles. However, to minimize the cost of transitioning to the new shipping name and UN number, we are providing a two-year transition period, during which the currently authorized shipping name and UN number for ethanol/gasoline fuel blends may continue to be used. This extended transition period will provide companies with sufficient time to plan for and implement the changes in an orderly and deliberate fashion.

To further offset potential costs, we are allowing for ethanol and gasoline blends with not more than 5 percent petroleum products and described as "Denatured alcohol" or "Alcohols, n.o.s." to continue to be marked with the identification number "1987" instead of "3475." Thus, shippers and carriers of these ethanol/gasoline blends will incur no compliance costs associated with adoption of this final rule.

We estimate that the costs associated with remarking cargo tanks used to

transport ethanol/fuel blends will range from \$4 to \$15 per cargo tank motor vehicle. There are approximately 30,000 cargo tank motor vehicles used to transport gasoline and related products. Assuming that half of these vehicles will need to be remarked with the UN identification number for ethanol/gasoline blends, the total costs to the affected industry will range from \$60,000 (15,000 vehicles x \$4) to \$225,000 (15,000 vehicles x \$15). We believe that these costs will be more than offset by the public safety benefits of more effective and efficient emergency response to transportation incidents involving ethanol/gasoline shipments. As explained above, use of the new name and ID number will facilitate rapid deployment of emergency response measures and materials best suited to these incidents.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not implement 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 hazmat law (49 U.S.C. 5125(b)) expressly 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, content, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. This final rule preempts any State, local,

or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazmat law provides that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption (49 U.S.C. 5125(b)(2)). That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from publication of this final rule.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

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

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 final rule amends provisions in the HMR based on petitions for rulemaking and PHMSA initiatives. These amendments are intended to update, clarify or provide relief from certain regulatory requirements. While maintaining safety, it relaxes certain requirements that are overly burdensome and updates references to consensus standards that are incorporated in the HMR. The changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities. The major implementation cost associated with adoption of this final rule relates to our addition of a new shipping name and UN number for fuel blends composed of ethanol (“ethyl alcohol”) and gasoline in various concentrations. For these materials, we are adding a new entry “Ethanol and gasoline mixture or

Ethanol and motor spirit or Ethanol and petrol mixture, *with more than 10% ethanol*, 3, UN3475, II” to the HMT. The new shipping name and UN number will help emergency responders utilize the most effective procedures for incidents involving ethanol/gasoline blends.

Ethanol/gasoline blends currently are transported primarily by motor vehicle. Adoption of the new shipping name and ID number will necessitate remarking of cargo tank motor vehicles used to transport ethanol/gasoline fuel blends. Commenters to the NPRM suggested that these costs could amount to \$600 per cargo tank for a multi-compartmented vehicle. As discussed in detail above, we believe that commenters have over-stated potential compliance costs associated with remarking cargo tank motor vehicles. However, to minimize the cost of transitioning to the new shipping name and UN number, we are providing a two-year transition period, during which the currently authorized shipping name and UN number for ethanol/gasoline fuel blends may continue to be used. This extended transition period will provide companies with sufficient time to plan for and implement the changes in an orderly and deliberate fashion.

To further offset potential costs, we are allowing for ethanol and gasoline blends with not more than 5 percent petroleum products and described as “Denatured alcohol” or “Alcohols, n.o.s.” to continue to be marked with the identification number “1987” instead of “3475.” Thus, shippers and carriers of these ethanol/gasoline blends will incur no compliance costs associated with adoption of this final rule.

We estimate that the costs associated with remarking cargo tanks used to transport ethanol/fuel blends will range from \$4 to \$15 per cargo tank motor vehicle. There are approximately 30,000 cargo tank motor vehicles used to transport gasoline and related products. Assuming that half of these vehicles will need to be remarked with the UN identification number for ethanol/gasoline blends, the total costs to the industry associated with this provision of the final rule will range from \$60,000 (15,000 vehicles × \$4) to \$225,000 (15,000 vehicles × \$15). We believe that these costs will be more than offset by the emergency response benefits that will result from adoption of the new shipping name and UN number. As indicated above, the new name and ID number will help emergency responders utilize the most effective response procedures for incidents involving

ethanol/gasoline blends. More effective emergency response techniques reduce the time required to handle an incident and, thus, the costs associated with the incident.

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

F. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. §§ 1532–1538). It does not result in costs of \$120.7 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.

I. Environmental Assessment

The National Environmental Policy Act (42 U.S.C. §§ 4321–4375) requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is making miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA’s own initiatives. The amendments are intended to update, clarify, or provide

relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; resolve outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand.

2. Alternatives

In developing this proposed rule, we considered two alternatives:

(1) Do nothing.

(2) Propose revisions to the HMR based on petitions for rulemaking and PHMSA initiatives.

Alternative 1

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2

Many of the industry standards currently incorporated by reference have been revised and updated to incorporate new technology and methodology. Proposed changes would relax requirements in certain instances while still ensuring safety, clarify regulatory requirements, and make the regulatory provisions more consistent—all in furtherance of the safe transportation of hazardous materials in commerce.

3. Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Making the regulatory provisions in the HMR clearer and more consistent with international transportation and industry standards

will promote compliance and thereby enhance the safe transportation of hazardous materials and the protection of the environment. Updating the references to industry standards enhances safety an environmental protection by recognizing the use of new technologies. Our proposal to relax certain regulatory requirements is based on PHMSA's experience, review, and determination that the changes are consistent with safety. Neither the "do nothing" alternative nor the action alternative would result in any significant impacts on the environment.

4. Consultations and Public Comment

Various modal agencies, including FAA, FMCSA, FRA, and the USCG were consulted and participated in the notice and comment process. A listing of the commenters is specified in the **SUPPLEMENTARY INFORMATION** section under "Background." No commenters addressed the potential environmental impacts of the proposals in the NPRM.

5. Decision about the Degree of Environmental Impact

PHMSA finds that the selected alternative will not have a significant impact on the human environment.

J. Privacy Act.

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

List of Subjects

49 CFR Part 107

Hazardous material programs, Registration, Approvals, Enforcement.

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, Incorporation by Reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

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

49 CFR Part 175

Hazardous materials transportation, Air carriers, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Incorporation by reference, Motor carriers, Segregation requirements, Reporting and recordkeeping requirements.

49 CFR Part 178

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

49 CFR Part 180

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

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001; 49 CFR 1.45, 1.53.

■ 2. In § 107.305, paragraph (b) is revised to read as follows:

§ 107.305 Investigations.

* * * * *

(b) *Investigations and Inspections.* Investigations under 49 U.S.C. 5121(a) are conducted by personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49 U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists or Hazardous Materials Compliance Investigators, also known as "hazmat investigators" or "investigators," whom the Associate Administrator has designated for that purpose.

(1) An investigator will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An investigator may administer oaths and receive affirmations in any matter under investigation by the Associate Administrator.

(3) An investigator may gather information by reasonable means including, but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording.

(4) With concurrence of the Director, Office of Hazardous Materials Enforcement, Pipeline and Hazardous Materials Safety Administration, an investigator may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the investigator, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with § 105.50. A person to whom a subpoena is directed may seek review of the subpoena by applying to the Office of Chief Counsel in accordance with § 105.55(a). A subpoena issued under this paragraph may be enforced in accordance with § 105.55(b).

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

■ 4. In § 171.4, paragraph (c) is revised to read as follows:

§ 171.4 Marine Pollutants.

* * * * *

(c) *Exceptions.* Except when all or part of the transportation is by vessel, the requirements of this subchapter specific to marine pollutants do not apply to non-bulk packagings transported by motor vehicle, rail car or aircraft.

■ 5. In § 171.7, in the paragraph (a)(3) table, the following amendments are made:

a. Under the entry “Chlorine Institute, Inc.,” the entry “Type 1½ JQ 225, Dwg., H51970, Revision D April 5, 1989; or Type 1½ JQ 225, Dwg. H50155, Revision F, April 4, 1989” is revised;

b. Under the entry “Chlorine Institute, Inc.,” the entry “Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 3rd Edition, October 1997” is revised;

c. Under the entry “Chlorine Institute, Inc.,” the entry “Section 3, Pamphlet 166 Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002” is added;

d. Under the entry “Chlorine Institute, Inc.,” the entry “Typical Manway Arrangement Chlorine Cargo Tank, Dwg. 137–5, November 1996” is added;

e. Under the entry “Chlorine Institute, Inc.,” the entry “Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwgs. 137–1 and 137–2, September 1, 1982” is removed;

f. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet C–5 Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991” is revised;

g. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings of Compressed Gas Containers, appendix A, issued 1992 (6th Edition)” is revised;

h. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA

Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 (with the exception of paragraph 9.1.1.1), Ninth Edition” is removed;

i. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2003 (with the exception of paragraph 9.1.1.1), Eleventh Edition” is removed;

j. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition” is added;

k. Under the entry “Compressed Gas Association, Inc.,” the entry “CGA Pamphlet S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996” is revised;

l. Under the entry “International Organization for Standardization,” the entry “ISO 7225, Gas cylinders—Precautionary labels, First Edition, November 1994, (Corrected and reprinted August 1995), (E)” is revised; and

m. In paragraph (b), a new entry “Compressed Gas Association, Inc.,” 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151, “C–1.1—Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion, issued 2004 (1st Edition)” is added in alphabetical order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

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

Source and name of material

49 CFR reference

Source and name of material	49 CFR reference
Chlorine Institute, Inc.	
Type 1½ JQ 225, Dwg., H51970, Revision F, November 1996; or Type 1½ JQ 225, Dwg. H50155, Revision H, November 1996	173.315
Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, Edition 4, October 2003	177.840
Section 3, Pamphlet 166, Angle Valve Guidelines for Chlorine Bulk Transportation, 1st Edition, October 2002	178.337–9
Typical Manway Arrangement Chlorine Cargo Tank, Dwg 137–5, November 1996	178.337–10

Source and name of material	49 CFR reference
Compressed Gas Association, Inc.	
CGA C-5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 (reaffirmed 1995)	173.302a
CGA C-7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, issued 2004 (8th Edition)	172.400a
CGA S-1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2005 (with the exception of paragraph 9.1.1.1), Twelfth Edition	173.301, 173.304a 178.75
CGA S-7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 2005	173.301
International Organization for Standardization	
ISO 7225, Gas cylinders—Precautionary labels, Second Edition, July 2005, (E)	178.71

(b) List of informational materials not requiring incorporation by reference. * * *

Source and name of material	49 CFR reference
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151	
CGA C-1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition	180.209

■ 6. In § 171.8, a new definition for “Household waste” is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Household waste means any solid waste (including garbage, trash, and sanitary waste from septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). This term is not applicable to consolidated shipments of household hazardous materials transported from collection centers. A collection center is

a central location where household waste is collected.

* * * * *

■ 7. In § 171.14, a new paragraph (h) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(h) The proper shipping name “Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol” in effect on January 28, 2008, may continue to be used until October 1, 2010.

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

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

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

■ 9. In § 172.101, the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:

Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, with more than 10% ethanol.	*	3	UN3475	....	II	*	3	*	144, 177, IB2, T4, TP1.	150	*	202	.....	242	.....	5 L	.....	*	60 L	.....	E.
Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol.	*	3	NA1203	....	II	*	3	*	144	150	*	202	.....	242	.....	5 L	.....	*	60 L	.....	E.
Gasoline includes with ethyl alcohol, with not more than 10% alcohol.	3	UN1203	....	II	.....	3	.....	144, B1, B33, T8.	50	.....	202	.....	242	.....	5 L	.....	.....	.....	60 L	.....	E.
Hydrazine aqueous solution, with more than 37% hydrazine, by mass.	*	8	UN2030	....	I	*	8, 6.1	*	B16, B53, T10, TP2, TP13.	None	*	201	.....	243	.....	Forbidden	.....	*	2.5 L	.....	D
					II	*	8, 6.1	*	B16, B53, IB2, T7, TP2, TP13.	None	.....	202	.....	243	.....	Forbidden	.....	.....	30 L	.....	D
					III	*	8, 6.1	*	B16, B53, IB3, T4, TP1.	154	.....	203	.....	241	.....	5 L	.....	.....	60 L	.....	D
Polyamines, flammable, corrosive, n.o.s. see Amines, flammable, corrosive, n.o.s.	*				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Polyamines, liquid, corrosive, n.o.s. see Amines, liquid, corrosive, n.o.s.	*				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Polyamines, liquid, corrosive, flammable, n.o.s. see Amines, liquid, corrosive, flammable, n.o.s.	*				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
[REVISE:]																					
Radioactive material, Type A package non-special form, non fissile or fissile-excepted.	*	7	UN2915	....	.....	*	7	*	A56, W7, W8.	None	.....	415, 418, 419.	.....	415, 418, 419.	.....	.....	.....	*	.....	.....	A
Sodium aluminate, solid.	*	8	UN2812	....	III	*	8	*	IB8, IP3, T1, TP33.	154	.....	213	.....	240	.....	25 kg	.....	*	100 kg	.....	A.

* * * * *

■ 10. In § 172.102, in paragraph (c)(1), Special provision 177 is added and in paragraph (c)(3), Special provision B69 is revised to read as follows.

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

177 Ethanol and gasoline mixtures for use in spark-ignition engines (e.g., in automobiles, stationary engines and other engines) must be assigned to this entry regardless of variations in volatility.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B69 Dry sodium cyanide or potassium cyanide may be shipped in the following sift-proof and weather-resistant packagings: metal covered hopper cars, covered motor vehicles, portable tanks, or non-specification bins.

* * * * *

■ 11. In § 172.203, paragraph (l)(4) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(l) * * *

(4) Except when all or part of transportation is by vessel, marine pollutants in non-bulk packagings are not subject to the requirements of paragraphs (l)(1) and (l)(2) of this section (see § 171.4 of this subchapter).

* * * * *

■ 12. In § 172.315, a new paragraph (c) is added as follows:

§ 172.315 Packages containing limited quantities.

* * * * *

(c) As applicable, the letters "RQ" must be marked in association with the square-on-point border containing the identification (ID) number.

■ 13. Section 172.324, is revised to read as follows:

§ 172.324 Hazardous substances in non-bulk packagings.

For each non-bulk package that contains a hazardous substance—

(a) Except for packages of radioactive material labeled in accordance with § 172.403, if the proper shipping name of a material that is a hazardous substance does not identify the hazardous substance by name, or if the package contains a limited quantity

marked in accordance with § 172.315, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name or the identification number as applicable. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

(b) The letters "RQ" must be marked on the package in association with the proper shipping name or the identification number displayed in accordance with § 172.315.

■ 14. In § 172.336, paragraph (c)(4) is revised, paragraph (c)(6) is redesignated as paragraph (c)(7) and a new paragraph (c)(6) is added to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(c) * * *

(4) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol, in a compartmented cargo tank or tank car, if the identification number is displayed for the distillate fuel having the lowest flash point. After October 1, 2010, if a compartmented cargo tank or tank car contains such fuels together with a gasoline and alcohol fuel blend containing more than ten percent ethanol, the identification number "3475" or "1987" must also be displayed as appropriate in addition to the identification number for the liquid petroleum distillate fuel having the lowest flash point.

* * * * *

(6) For each of the different liquid petroleum distillate fuels, including gasoline and gasohol, transported in a cargo tank, if the identification number is displayed for the liquid petroleum distillate fuel having the lowest flash point. After October 1, 2010, if a cargo tank is used to transport a gasoline and alcohol fuel blend containing more than ten percent ethanol, the identification number "3475" must also be displayed in addition to the identification number for the liquid petroleum distillate fuel having the lowest flash point.

* * * * *

■ 15. In § 172.400a, paragraph (a)(1)(ii) is revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) * * *

(ii) Durably and legibly marked in accordance with CGA C-7, Appendix A (IBR; see § 171.7 of this subchapter).

* * * * *

■ 16. In § 172.406, paragraphs (e)(4) and (e)(5) are revised and a new paragraph (e)(6) is added to read as follows:

§ 172.406 Placement of labels.

* * * * *

(e) * * *

(4) Each portable tank of less than 3,785 L (1000 gallons) capacity;

(5) Each freight container or aircraft unit load device having a volume of 1.8 m³ (64 cubic feet) or more, but less than 18 m³ (640 cubic feet). One of each required label must be displayed on or near the closure; and

(6) An IBC having a volume of 1.8 m³ (64 cubic feet) or more.

* * * * *

§ 172.704 [Amended]

■ 17. In § 172.704, in paragraph (a)(2)(ii), the wording "§§ 171.11 and 171.12 of this subchapter" is correctly revised to read "§§ 171.22 through 171.25 of this subchapter".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

■ 19. In § 173.4, a new paragraph (e) is added to read as follows:

§ 173.4 Small quantity exceptions.

* * * * *

(e) Packing Group II and III materials in Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9 do not meet the definition of a hazardous material in § 171.8 of this subchapter when packaged in accordance with this paragraph (e) and, therefore, are not subject to the requirements of this subchapter.

(1) The maximum quantity of material per inner receptacle or article is limited to—

(i) One (1) mL (0.03 ounce) for authorized liquids; and

(ii) One (1) g (0.04 ounce) for authorized solid materials;

(2) Each inner receptacle with a removable closure has its closure held securely in place with wire, tape, or other positive means;

(3) Unless equivalent cushioning and absorbent material surrounds the inside packaging, each inner receptacle is securely packed in an inside packaging

with cushioning and absorbent material that:

(i) Will not react chemically with the material, and

(ii) Is capable of absorbing the entire contents (if a liquid) of the receptacle;

(4) The inside packaging is securely packed in a strong outside packaging;

(5) The completed package is capable of sustaining—

(i) Each of the following free drops made from a height of 1.8 m (5.9 feet) directly onto a solid unyielding surface without breakage or leakage from any inner receptacle and without a substantial reduction in the effectiveness of the package:

(A) One drop flat on bottom;

(B) One drop flat on top;

(C) One drop flat on the long side;

(D) One drop flat on the short side;

and

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

(ii) A compressive load as specified in § 178.606(c) of this subchapter. Each of the tests in this paragraph (e)(5) may be performed on a different but identical package; that is, all tests need not be performed on the same package.

(6) Placement of the material in the package or packing different materials in the package does not result in a violation of § 173.21;

(7) The aggregate quantity of hazardous material per package does not exceed 100 g (0.22 pounds) for solids or 100 mL (3.38 ounces) for liquids;

(8) The gross mass of the completed package does not exceed 29 kg (64 pounds);

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) For transportation by aircraft:

(i) The hazardous material is authorized to be carried aboard passenger-carrying aircraft in Column

9A of the § 172.101 Hazardous Materials Table;

(ii) The hazardous material may not be carried in checked or carry-on baggage.

■ 20. In § 173.5, paragraph (b)(2) is revised to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(b) * * *

(2) The total amount of agricultural product being transported on a single motor vehicle does not exceed:

(i) 7,300 kg (16,094 lbs.) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 1900 L (502 gallons) for liquids or gases, or 2,300 kg (5,070 lbs.) for solids, of any other agricultural product;

* * * * *

■ 21. In § 173.12, paragraph (e)(1)(ii) is revised and a new paragraph (f) added to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(e) * * *

(1) * * *

(ii) The 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;

* * * * *

(f) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter.

■ 22. In § 173.22, paragraph (b) is added to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(b) No person may offer a motor carrier any hazardous material specified

in 49 CFR 385.403 unless that motor carrier holds a safety permit issued by the Federal Motor Carrier Safety Administration.

* * * * *

■ *COM048*23. In § 173.24, paragraph (g)(1) is revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(g) * * *

(1) Except for shipments of cryogenic liquids as specified in § 173.320(c) and of carbon dioxide, solid (dry ice), transportation by aircraft is not involved;

* * * * *

■ 24. In § 173.61, paragraph (c) is revised to read as follows:

§ 173.61 Mixed packaging requirements.

* * * * *

(c) The following explosives may not be packed together with other Class 1 explosives: UN 0029, UN 0030, UN 0073, UN 0106, UN 0107, UN 0255, UN 0257, UN 0267, UN 0350, UN 0360, UN 0361, UN 0364, UN 0365, UN 0366, UN 0367, UN 0408, UN 0409, UN 0410, UN 0455, UN 0456, and UN 0500. These explosives may be mix-packed with each other in accordance with the compatibility requirements prescribed in paragraph (e) of this section.

* * * * *

■ 25. In § 173.62, in paragraph (c), the "Table of Packing Methods," the entry for packing instruction 134 is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	* * *	* * *	* * *
134	Bag water resistant Receptacles fibreboard metal plastics wood Sheets fibreboard, corrugated Tubes fibreboard	Not necessary	Boxes steel (4A). aluminium (4B). wood, natural, ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fibreboard (4G). plastics, expanded (4H1). plastics, solid (4H2). Drums fibreboard (1G). plastics, removable head (1H2). steel, removable head (1A2). aluminium, removable head (1B2).

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
			Plywood (1D).
<p>* * * * *</p> <p>■ 26. In § 173.134, paragraph (b)(13)(i) is revised to read as follows:</p>	<p>dioxide gas to prevent a dangerous build up of pressure, and be identified to the operator.</p>	<p>A DOT 39 cylinder, UN non-refillable cylinder, or a UN composite cylinder certified to ISO-11119-3 may not be used for a toxic gas or toxic gas mixture meeting the criteria for Division 2.3, Hazard Zone A or B.</p>	
<p>§ 173.134 Class 6, Division 6.2-Definitions and exceptions.</p>	<p>(4) Dry ice is excepted from the shipping paper requirements of subpart C of part 172 of this subchapter provided alternative written documentation is supplied containing the following information: proper shipping name (Dry ice or Carbon dioxide, solid), class 9, UN number 1845, the number of packages, and the net quantity of dry ice in each package. The information must be included with the description of the materials.</p>	<p>(f) * * *</p> <p>(1) Except as provided in paragraphs (f)(5), (f)(6), and (l)(2) of this section, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S-1.1 (compliance with paragraph 9.1.1.1 is not required) and CGA S-7. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA C-14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA C-12 (IBR, see § 171.7 of this subchapter).</p>	
<p>(b) * * *</p> <p>(13) * * *</p> <p>(i) Household waste as defined in § 171.8;</p>	<p>(5) Carbon dioxide, solid (dry ice), in quantities not exceeding 2.5 kg (5.5 pounds) per package and used as a refrigerant for the contents of the package is excepted from all other requirements of this subchapter if the requirements of paragraph (a) of this section are complied with and the package is marked “Carbon dioxide, solid” or “Dry ice”, is marked with the name of the contents being cooled, and is marked with the net weight of the dry ice or an indication that the net weight is 2.5 kg (5.5 pounds) or less.</p>	<p>(g) * * *</p> <p>(1) Cylinder manifolding is authorized only under conditions prescribed in this paragraph (g). Manifolder cylinders must be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves that otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section, except that pressure relief devices on manifolded horizontal cylinders that are mounted on a motor vehicle or framework may be selected as to type, location, and quantity according to the lowest marked pressure limit of an individual cylinder in the manifolded unit. The pressure relief devices selected for the manifolded unit must have been tested in accordance with CGA S-1.1 and CGA S-7. Pressure relief devices on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure</p>	
<p>* * * * *</p> <p>■ 27. Section 173.217 is revised to read as follows:</p>	<p>(d) Carbon dioxide, solid (dry ice), when used to refrigerate materials being shipped for diagnostic or treatment purposes (e.g., frozen medical specimens), is excepted from the shipping paper and certification requirements of this subchapter if the requirements of paragraphs (a) and (c)(2) of this section are met and the package is marked “Carbon dioxide, solid” or “Dry ice” and is marked with an indication that the material being refrigerated is being transported for diagnostic or treatment purposes.</p>	<p>* * * * *</p>	
<p>§ 173.217 Carbon dioxide, solid (dry ice).</p>	<p>■ 28. In § 173.301, paragraphs (c), (f)(1) and (g)(1) are revised to read as follows:</p>	<p>(c) <i>Toxic gases and mixtures.</i> Cylinders containing toxic gases and toxic gas mixtures meeting the criteria of Division 2.3 Hazard Zone A or B must conform to the requirements of § 173.40 and CGA S-1.1 (compliance with paragraph 9.1.1.1 is not required) (IBR; see § 171.7 of this subchapter) and CGA S-7 (IBR; see § 171.7 of this subchapter).</p>	
<p>(a) Carbon dioxide, solid (dry ice), when offered for transportation or transported by aircraft or water, must be packed in packagings designed and constructed to permit the release of carbon dioxide gas to prevent a buildup of pressure that could rupture the packagings. Packagings must conform to the general packaging requirements of subpart B of this part but need not conform to the requirements of part 178 of this subchapter.</p>	<p>§ 173.301 General requirements for shipping of compressed gases in cylinders and spherical vessels.</p>		
<p>(b) For transportation by vessel:</p> <p>(1) Each transport vehicle and freight container containing solid carbon dioxide must be conspicuously marked on two sides “WARNING CO₂ SOLID (DRY ICE).”</p>	<p>(c) <i>Toxic gases and mixtures.</i> Cylinders containing toxic gases and toxic gas mixtures meeting the criteria of Division 2.3 Hazard Zone A or B must conform to the requirements of § 173.40 and CGA S-1.1 (compliance with paragraph 9.1.1.1 is not required) (IBR; see § 171.7 of this subchapter) and CGA S-7 (IBR; see § 171.7 of this subchapter).</p>		
<p>(2) Other packagings containing solid carbon dioxide must be marked “CARBON DIOXIDE, SOLID—DO NOT STOW BELOW DECKS.”</p>			
<p>(c) For transportation by aircraft:</p> <p>(1) In addition to the applicable marking requirements in subpart D of part 172, the net mass of the carbon dioxide, solid (dry ice) must be marked on the outside of the package. This provision also applies to unit load devices (ULDs) when the ULD contains dry ice and is considered the packaging.</p>			
<p>(2) The shipper must make arrangements with the operator for each shipment.</p>			
<p>(3) The quantity limits per package shown in Columns (9A) and (9B) of the Hazardous Materials Table in § 172.101 are not applicable to dry ice being used as a refrigerant for other than hazardous materials loaded in a unit load device or other type of pallet. In such a case, the unit load device or other type of pallet must allow the venting of the carbon</p>			

relief devices (PRDs) must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders. Valves and pressure relief devices on manifolded cylinders filled with a compressed gas must be protected from damage by framing, a cabinet or other method. Manifolding is authorized for cylinders containing the following gases:

(i) Nonliquefied (permanent) compressed gases authorized by § 173.302.

(ii) Liquefied compressed gases authorized by § 173.304. Each manifolded cylinder containing a liquefied compressed gas must be separately filled and means must be provided to ensure no interchange of cylinder contents can occur during transportation.

(iii) Acetylene as authorized by § 173.303.

* * * * *

■ 29. In § 173.304a, paragraph (e)(1)(ii) is revised to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

* * * * *

(e) * * *
(1) * * *

(ii) Each cylinder must be protected with at least one pressure relief device and at least one frangible disc conforming to § 173.301(f) and paragraph (a)(2) of this section. The relieving capacity of the pressure relief device system must be equal to or greater than that calculated by the applicable formula in paragraph 5.8.3 of CGA S-1.1 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 30. In § 173.306, paragraphs (i) and (j) are revised and a new paragraph (k) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) A limited quantity which conforms to the provisions of paragraph (a)(1), (a)(3), or (b) of this section and is a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “consumer commodity” and reclassified as ORM-D material. Each package may not exceed 30 kg (66 pounds) gross weight. In addition to the exceptions provided by paragraphs (a) and (b) of this section—

(1) Outside packagings are not required to be marked “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS”;

(2) Shipments of ORM-D materials are not subject to the shipping paper

requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, a hazardous waste, or a marine pollutant or unless offered for transportation or transported by aircraft; and

(3) Shipments of ORM-D materials are eligible for the exceptions provided in § 173.156.

(j) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles small, containing gas, with a capacity not exceeding 50 mL (1.7 oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter. The pressure limit may be increased to 2000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This paragraph does not apply to a self-defense spray (e.g., pepper spray).

(k) For additional exceptions, also see § 173.307.

§ 173.335 [Removed]

■ 31. Section 173.335 is removed and reserved.

PART 175—CARRIAGE BY AIRCRAFT

■ 32. The authority citation for part 175 continues to read as follows:

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

■ 33. In § 175.10, paragraph (a)(10) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

* * * * *

(a) * * *

(10) Dry ice (carbon dioxide, solid):

(i) in quantities not exceeding 2.5 kg (5.5 pounds) per person in carry-on baggage, when used to pack perishables not subject to the HMR. The package must permit the release of carbon dioxide gas; and/or

(ii) in checked baggage, with the approval of the operator(s), when each package is marked “DRY ICE” or “CARBON DIOXIDE, SOLID”, and marked with the net mass of dry ice or an indication the net weight is 2.5 kg (5.5 pounds) or less.

* * * * *

■ 34. A new § 175.900 is added to read as follows:

§ 175.900 Handling requirements for carbon dioxide, solid (dry ice).

Carbon dioxide, solid (dry ice) when shipped by itself or when used as a refrigerant for other commodities, may be carried only if the operator has made suitable arrangements based on the aircraft type, the aircraft ventilation rates, the method of packing and stowing, whether animals will be carried on the same flight and other factors. The operator must ensure that the ground staff is informed that the dry ice is being loaded or is on board the aircraft. For arrangements between the shipper and operator, see § 173.217 of this subchapter. Where dry ice is contained in a unit load device (ULD) or other type of pallet prepared by a single shipper in accordance with § 173.217 and the operator after the acceptance adds additional dry ice, the operator must ensure that the information provided to the Pilot-in-Command and the marking on the ULD when used as a packaging reflects that revised quantity of dry ice.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

■ 36. In § 177.848, paragraph (a)(1) is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

(a) * * *

(1) In packages that must be labeled or placarded in accordance with part 172 of this subchapter;

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

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

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

■ 38. In § 178.75, paragraph (f)(1) is revised to read as follows:

§ 178.75 Specifications for MEGCs.

* * * * *

(f) * * *

(1) The size of the pressure relief devices: CGA S-1.1 (IBR, see § 171.7 of this subchapter) must be used to determine the relief capacity of individual pressure receptacles.

* * * * *

■ 39. In § 178.274, in paragraph (b)(1), the first sentence is revised to read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(b) * * *

(1) The design temperature range for the shell must be -40 °C to 50 °C (-40 °F to 122 °F) for hazardous materials transported under normal conditions of transportation, except for portable tanks used for refrigerated liquefied gases where the minimum design temperature must not be higher than the lowest (coldest) temperature (for example, service temperature) of the contents during filling, discharge or transportation. * * *

* * * * *

■ 40. In § 178.337-9, paragraph (b)(8) is revised to read as follows:

§ 178.337-9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(8) Chlorine cargo tanks. Angle valves on cargo tanks intended for chlorine service must conform to the standards of the Chlorine Institute, Inc., Dwg. 104-8 or "Section 3, Pamphlet 166, Angle Valve Guidelines for Chlorine Bulk Transportation." (IBR, see § 171.7 of this subchapter). Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

* * * * *

■ 41. In § 178.337-10, paragraph (d) is revised to read as follows:

§ 178.337-10 Accident damage protection.

* * * * *

(d) Chlorine tanks. A chlorine tank must be equipped with a protective housing and a manway cover to permit the use of standard emergency kits for controlling leaks in fittings on the dome cover plate. For tanks manufactured on or after October 1, 2009, the housing and manway cover must conform to the Chlorine Institute, Inc., Dwg. 137-5 (IBR, see § 171.7 of this subchapter).

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

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

■ 43. In § 180.205, a new paragraph (g)(6) added to read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(g) * * *

(6) Training materials (e.g., CGA publication C-1.1) may be used for training persons who requalify cylinders using the volumetric expansion test method.

* * * * *

Issued in Washington, DC, on January 16, 2008 under authority delegated in 49 CFR part 1.

Krista L. Edwards, Deputy Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-009; 92220-1113-0000; ABC Code: C3]

RIN 1018-AV39

Endangered and Threatened Wildlife and Plants; Revision of Special Regulation for the Central Idaho and Yellowstone Area Nonessential Experimental Populations of Gray Wolves in the Northern Rocky Mountains

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have revised the 2005 special rule for the central Idaho and Yellowstone area nonessential experimental population (NEP) of the gray wolf (Canis lupus) in the northern Rocky Mountains. Specifically, we have modified the definition of "unacceptable impact" to wild ungulate populations so that States and Tribes with Service-approved post-delisting wolf management plans (hereafter, referred to as wolf management plans) can better address the impacts of a recovered wolf population on ungulate herds and populations while wolves remain listed. We made other minor revisions to clarify the requirements and processes for submission of proposals to control wolves for unacceptable ungulate impacts. We also modified the 2005 special rule to allow persons in States or on Tribal lands with wolf management plans to take wolves that are in the act of attacking their stock animals or dogs. All other provisions of the special rule remain unchanged. As under the existing terms of the 2005 special rule, these modifications do not apply to States or Tribes without wolf management plans or to wolves outside

the Yellowstone or central Idaho NEP areas.

DATES: The effective date of this rule is February 27, 2008.

ADDRESSES: This final rule is available on the Internet at http://www.regulations.gov. Once the complete decision file for this rule is completed it will be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Office of the Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601. Call 406-449-5225 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Western Gray Wolf Recovery Coordinator, at the above address or telephone 406-449-5225, extension 204, at ed_bangs@fws.gov, or on our Web site at http://westerngraywolf.fws.gov/.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

In 1974, four subspecies of gray wolf were listed as endangered, including the NRM gray wolf (Canis lupus irremotus), the eastern timber wolf (C. l. lycaon) in the northern Great Lakes region, the Mexican wolf (C. l. baileyi) in Mexico and the southwestern United States, and the Texas gray wolf (C. l. monstabilis) of Texas and Mexico (50 CFR 17.11(h)). In 1978, we relisted the gray wolf as endangered at the species level (C. lupus) throughout the conterminous 48 States and Mexico, except for Minnesota where it was reclassified as threatened (50 CFR 17.11(h)). In 2007, we delisted the Western Great Lakes distinct population segment of wolves that includes all of Minnesota, Wisconsin, Michigan, and parts of North and South Dakota, Iowa, Illinois, Indiana, and Ohio (72 FR 6051, February 8, 2007). The Northern Rocky Mountain Wolf Recovery Plan was approved in 1980 (U.S. Fish and Wildlife Service 1980, p. i) and revised in 1987 (U.S. Fish and Wildlife Service 1987, p. i).

On November 22, 1994, we designated unoccupied portions of Idaho, Montana, and Wyoming as two nonessential experimental population (NEP) areas for the gray wolf under section 10(j) of the Endangered Species Act of 1973, as amended (Act) (50 CFR 17.84(i)). One area is the Greater Yellowstone Area experimental population, which includes all of Wyoming and parts of southern Montana and eastern Idaho. The other is the central Idaho experimental population area, which includes most of Idaho and parts of southwestern Montana. In 1995 and 1996, we reintroduced wolves from