

in the **Federal Register** later this summer.

The Board is not soliciting comments on the draft of the final guidelines, but has placed the document in the docket for public inspection to promote the harmonization of the Board's guidelines with the ICC/ANSI standards and the International Building Code. The ANSI Committee and the International Codes Council are currently in the process of revising the private sector accessibility provisions and proposed changes must be submitted during the Spring of 2002. Without taking this step, an important opportunity would have been missed to harmonize the Board's guidelines with those of the private sector.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 02-7884 Filed 4-1-02; 8:45 am]

**BILLING CODE 8150-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[WV001-1000b; FRL-7166-7]

#### Approval of Section 112(I) Authority for Hazardous Air Pollutants; State of West Virginia; Division of Environmental Protection

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve West Virginia Department of Environmental Protection's (WVDEP's) request for delegation of authority to implement and enforce its hazardous air pollutant regulations for perchloroethylene dry-cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, and secondary lead smelting which have been adopted by reference from the Federal requirements set forth in the Code of Federal Regulations. This proposed approval will automatically delegate future amendments to these regulations once WVDEP incorporates these amendments into its regulations. In addition, EPA is proposing to approve of WVDEP's mechanism for receiving delegation of future hazardous air pollutant regulations. This mechanism entails WVDEP's incorporation by reference of the unchanged Federal standard into its hazardous air pollutant regulation and WVDEP's notification to EPA of such incorporation. This action pertains only to affected sources, as defined by the

Clean Air Act hazardous air pollutant program, which are not located at major sources, as defined by the Clean Air Act operating permit program. In the Final Rules section of this **Federal Register**, EPA is approving the State's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before May 2, 2002.

**ADDRESSES:** Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and John A. Benedict, West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE, Charleston, WV 25304-2943. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE, Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:**

Dianne J. McNally, 215-814-3297, at the EPA Region III address above, or by e-mail at [mcnally.dianne@epa.gov](mailto:mcnally.dianne@epa.gov). Please note that any formal comments must be submitted, in writing, as provided in the **ADDRESSES** section of this document.

**SUPPLEMENTARY INFORMATION:** For further information on this action, pertaining to approval of WVDEP's delegation of authority for the hazardous air pollutant emission standards for perchloroethylene dry-cleaning facilities, hard and decorative chromium electroplating and chromium anodizing tanks, ethylene oxide sterilization facilities, halogenated solvent cleaning, and secondary lead smelting (Clean Air Act section 112), please see the information provided in

the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 21, 2002

**Judith M. Katz,**

*Director, Air Protection Division, Region III.*

[FR Doc. 02-7940 Filed 4-1-02; 8:45 am]

**BILLING CODE 6560-50-U**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 171, 172, 173, and 175

[Docket No. RSPA-02-11989 (HM-224C)]

RIN 2137-AD48

#### Hazardous Materials; Transportation of Lithium Batteries

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** RSPA (we) proposes to amend the Hazardous Materials Regulations (HMR) regarding the transportation of lithium batteries. These proposals are consistent with changes recently made to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). They would increase the level of safety associated with the transportation of lithium batteries and facilitate the transport of these materials in international commerce.

**DATES:** Comments must be received by June 14, 2002.

**ADDRESSES:** Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590-0001. Identify the docket number, RSPA-02-11989 (HM-224C) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Docket Management System website at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically.

The Docket Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You can view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also view comments on-line at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** John Gale, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the HMR, 49 CFR parts 171-180, most lithium batteries and equipment containing or packed with lithium batteries are regulated as Class 9 materials. Lithium batteries have to be tested in accordance with the UN Manual of Tests and Criteria, and, among other things, must be equipped with an effective means of preventing short circuits, packaged in Packing Group II performance level packagings, and identified on shipping papers and package markings and labels. 49 CFR 173.185(e). However, § 173.185 contains two significant exceptions for lithium batteries. The first exception, in 173.185(b), excepts from the requirements of the HMR:

(1) Liquid cathode cells containing no more than 0.5 grams of lithium or lithium alloy per cell;

(2) Liquid cathode batteries containing an aggregate quantity of no more than 1 gram of lithium or lithium alloy;

(3) Solid cathode cells containing no more than 1 gram of lithium or lithium alloy per cell;

(4) Solid cathode batteries containing an aggregate quantity of no more than 2 grams of lithium or lithium alloy;

(5) Lithium ion cells containing no more than 1.5 grams of equivalent lithium content; and

(6) Lithium ion batteries containing no more than 8.0 grams of equivalent lithium content.

Though these batteries and cells need to meet some additional requirements, such as being protected against short circuits and packaged in strong outer packagings, the batteries are not required to be tested in accordance with UN Manual of Tests and Criteria and there are no requirements for markings or labels on packages or shipping documents to communicate to a carrier, emergency response personnel or the public the presence of lithium batteries. The second exception, in § 173.185(c), excepts from the HMR those lithium batteries and cells where the anode of each cell, when fully charged, does not contain more than 5 grams of lithium content and the aggregate lithium content of the anodes of each battery, when fully charged, is not more than 25 grams. These batteries and cells must be tested in accordance with UN Manual of

Tests and Criteria and be designed or packed in such a way as to prevent short circuits under conditions normally incident to transportation. A package containing these batteries and cells is also not required to be marked or labeled and a shipping document is not required to accompany a shipment to communicate the presence of lithium batteries.

The requirements in the HMR relative to the transportation of lithium batteries are generally consistent with those in the UN Recommendations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Dangerous Goods Code (IMDG Code). Recently, in order to maintain consistency with the international regulations and in particular the 11th Edition of the UN Recommendations, RSPA revised § 173.185 (Docket HM-215D; June 21, 2001, 66 FR 33316) to include a definition for equivalent lithium content for lithium ion cells and batteries and to provide the applicable aggregate lithium quantities relevant to excepting lithium ion cells and batteries from the requirements of the HMR. In December 2000, the 12th Edition of the UN Recommendations relative to the transportation lithium batteries was again revised. It is anticipated that the ICAO Technical Instructions and IMDG Code will also be revised in the near future to reflect these changes. Therefore, the amendments being proposed today would, in addition to increasing the level of safety associated with the transport of lithium batteries, maintain the consistency of the HMR with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and, thus, facilitate the transport of these materials in international commerce.

The changes adopted into UN Recommendations were a result of an incident involving lithium batteries that occurred on April 28, 1999, at Los Angeles International Airport (LAX). In that incident a shipment of two pallets of lithium batteries that were excepted from the HMR caught fire and burned after being off-loaded from a Northwest Airlines flight from Osaka, Japan. While the pallets were being handled by cargo handling personnel, the packages were damaged. This is believed to have initiated the subsequent fire. The fire was initially fought by Northwest employees with portable fire extinguishers and a fire hose. Each time the fire appeared to be extinguished, it flared up again. The two pallets

involved in the fire contained 120,000 non-rechargeable lithium batteries. Because of the exceptions in § 173.185(b), these batteries were not required to be tested in accordance with UN Manual of Tests and Criteria and the packages were excepted from hazard communication requirements (i.e., marking, labeling and shipping papers). On November 7, 2000, another incident occurred involving lithium batteries. In this incident, which involved a declared shipment of lithium sulfur dioxide batteries, a battery short circuited causing a small fire and rupture of the battery. The battery burned through its inner packaging and charred an adjoining package.

On November 16, 1999, also in response to the LAX incident, the National Transportation Safety Board (NTSB) issued five recommendations to RSPA on the transportation of lithium batteries. A copy of those recommendations and a copy of our response to the NTSB can be found in the public docket.

On September 7, 2000, we published a Safety Advisory in the **Federal Register** (65 FR 54366) to:

(1) Inform persons of the LAX incident and the potential hazards that shipments of lithium batteries may present while in transportation;

(2) Recommend actions to offerors and transporters to ensure the safety of such shipments;

(3) Provide information concerning the current requirements for the transportation of lithium batteries;

(4) Inform persons of recommendations we received from the NTSB on the transportation of lithium batteries and our response to those recommendations;

(5) Inform persons of the actions we have taken to date and plan to take in the future to address the hazards of these batteries; and

(6) Provide information concerning initiatives being taken by members of the battery manufacturing and distribution industry to address concerns relating to transportation of these batteries.

As noted in the Safety Advisory, we are currently reevaluating the hazards posed by lithium batteries in transportation. Information is being collected from lithium battery manufacturers, shippers, and Federal agencies with extensive experience in testing and the use of lithium batteries. DOT is also conducting other evaluations to obtain additional information. We stated in the Safety Advisory that upon completion of our evaluation of lithium batteries, we would initiate any additional actions

necessary to address the hazards posed by the transportation of lithium batteries. Though we have not completed our reevaluation of the hazards posed by lithium batteries in transportation, we believe that it is in the best interest of safety and international commerce to amend the HMR at this time based on the amendments to the UN Recommendations.

On July 9, 2001, we received a petition (P-1417) from the Portable Rechargeable Battery Association (PRBA) requesting that this NPRM allow aircraft passengers and crew to carry in checked or carry-on baggage certain lithium ion and lithium polymer rechargeable batteries and to provide an exception from the testing requirements in the UN Manual of Tests and Criteria for certain lithium and lithium ion cells and batteries manufactured prior to January 1, 2003. Our response to P-1417 is discussed below.

## II. Proposed Amendments

The changes being proposed in this notice can be summarized into the following categories: (1) Changes to test methods for lithium batteries; (2) revisions to exceptions for small batteries (e.g., those of 1 gram or less of lithium content); (3) elimination of an exception for larger batteries (e.g., cells up to 5 grams of lithium content and batteries up to 25 grams of lithium content); (4) exceptions for aircraft passengers and crew; and (5) editorial changes. The following paragraphs discuss these changes in detail.

### A. Changes to the Test Methods for Lithium Batteries

The test methods for lithium batteries and cells in the UN Manual of Tests and Criteria were revised to provide more precise descriptions of the procedures and criteria. The revised test method consists of eight tests compared to six in the previous test method series. The tests are designed to measure the ability of the cells or batteries to maintain their construction integrities against internal or external shorts in normal transport environments. Parameters considered for the transport environments include temperature, altitude, vibration, shock, impact, overcharge, forced discharge and intentional short. The test criteria were developed to minimize the probability that lithium cells or batteries will become an ignition (fire) source during transport by all modes.

### B. Revisions to the Exceptions for Small Batteries

We believe that in order for small batteries to be excepted from most of the

requirements of the HMR, they should be shown to demonstrate that they are significantly robust and can withstand conditions of transport. Therefore, in order for these batteries and cells to continue to be excepted from the HMR, we are proposing that they be tested in accordance with the UN Manual of Tests and Criteria. The LAX incident highlighted the need for some kind of hazard communication to appear on the outside of the packages and on shipping documents and to increase the integrity of packages containing lithium batteries and cells. Therefore, we are proposing that each package containing more than 24 cells or 12 batteries: (1) Be marked to indicate that it contains lithium batteries, and that special procedures be followed in the event that the package is damaged; (2) be accompanied by a document indicating that the package contains lithium batteries and that special procedures be followed in the event that the package is damaged; (3) weigh no more than 30 kilograms (gross weight); and (4) be capable of withstanding a 1.2 meter drop test in any orientation without shifting of the contents that would allow short circuiting, and without release of package contents. We are not proposing to impose these requirements on packages that contain either 12 or fewer lithium batteries or 24 or fewer cells, so as to minimize potential cost impacts on aircraft passengers, small retail outlets, and similar small volume shippers. We are also proposing to adopt one quantity limit for these cells and batteries in place of the limits that currently depend on cathode type (i.e., liquid or solid). These proposed changes are consistent with the recent amendments to the UN Recommendations and the ICAO TI. The hazard communication and packaging provisions are also consistent with the industry-adopted voluntary program that was discussed in the Advisory Notice.

PRBA requested that we include in the proposed rule a provision that will clarify when all lithium and lithium ion cells and batteries will be subject to the new UN testing requirements. PRBA requested that testing not be required on those lithium cells and batteries that are manufactured prior to January 1, 2003 and that:

- (1) For lithium metal or lithium alloy cells, contain no more than 1 gram of lithium;
- (2) For lithium ion cells, contain no more than 1.5 grams of equivalent lithium content;
- (3) For lithium metal or lithium alloy batteries, contain no more than an aggregate lithium content of 2 grams; and

(4) For lithium ion batteries, contain no more than 8 grams of equivalent lithium content. PRBA stated that these exceptions are necessary to allow sufficient time to exhaust current inventories and for implementation of testing procedures.

RSPA agrees that a period of time should be provided to manufacturers of lithium batteries to test those battery designs that are currently on the market. RSPA believes that it would be unreasonable to require these manufacturers to test these designs immediately or in just a few months after the effective date of a final rule. However, RSPA does not agree that these batteries should be allowed to be transported for an indefinite period of time without being subject to the tests in the UN Manual of Tests and Criteria. Therefore, consistent with changes recently adopted into the ICAO Technical Instructions, we are proposing that those lithium battery designs manufactured before January 1, 2003, not be required to be tested until January 1, 2005.

### C. Elimination of the Exception for Larger Batteries

Currently in the HMR, cells that contain 5 grams or less of lithium or lithium alloy and not more than 25 grams of lithium or lithium alloy per battery are excepted from the HMR if they pass tests specified in the UN Manual of Tests and Criteria. Cells and batteries that do not meet the test requirements and cells and batteries that contain lithium and lithium alloys above these limits are subject to the HMR as a Class 9 material and must be packed in UN performance-oriented packagings, and marked, labeled, and described on shipping papers in accordance with the HMR. We no longer believe that these cells or batteries containing relatively large quantities of lithium should be excepted from the hazard communication and packaging requirements of the HMR and, therefore, are proposing to eliminate the exception found in § 173.185(c).

### D. Exceptions for Aircraft Passengers and Crew

Consistent with the amendments recently adopted into the ICAO Technical Instructions, RSPA is also proposing to except from the HMR the carriage aboard an aircraft of consumer electronic devices by passengers and crew. In addition, RSPA would allow passengers and crew to carry spare batteries for such devices subject to limits as to lithium content and number for larger batteries. These proposed amendments are also consistent with a

PRBA petition for rulemaking requesting that we allow aircraft passengers and crew to carry up to three lithium ion or lithium polymer rechargeable batteries that contain between 8 and 25 grams of equivalent lithium content, provided they pass the tests in the UN Manual of Tests and Criteria. PRBA states that under the current HMR, passengers using these batteries in electronic devices can transport these items unregulated but that under the changes adopted by UN Recommendations, and consequently proposed in this NPRM, they would have to be transported as Class 9 materials. Though RSPA agrees that we should continue to allow aircraft passengers and crew to transport consumer electronic devices containing such lithium or lithium ion cells or batteries and their spares as unregulated, RSPA does not agree that the exception provided for lithium ion batteries should also be provided for lithium polymer batteries. First, for lithium polymer batteries, the exception in § 173.185(c) only allows those lithium polymer batteries that contain between 5 and 25 grams of lithium, not equivalent lithium content. Second, lithium polymer batteries are the same as lithium metal or lithium alloy batteries for purposes of compliance with the requirements of § 173.185; there are no provisions for determining equivalent lithium content for these batteries.

#### *E. Editorial Changes*

We are proposing to make several editorial changes to § 173.185 to help users better understand their responsibilities. First, we are proposing to move the definition of "lithium content" from § 173.185(a) to § 171.8 and eliminate the first sentence of § 173.185(a) because it is unnecessary. We would move the provisions of paragraph (e) to paragraph (a) and move all the exceptions into paragraph (d). The exceptions would also be revised for clarity. We would also remove Special Provision 29 because it is unnecessary.

We are also proposing to add provisions to § 173.220, consistent with recent changes adopted in the ICAO Technical Instruction, for the shipment of vehicles and engines that contain lithium batteries. These provisions would require that such lithium batteries be of the same type that has passed the UN Tests, be securely packed in a battery holder and be protected against short circuits.

### **III. Rulemaking Analysis and Notices**

#### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule, if adopted, would not be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The hazard communication and packaging provisions proposed in this NPRM are consistent with a voluntary program implemented by the lithium battery industry following the LAX incident and, therefore, would impose no appreciable new cost on the industry. The testing of currently manufactured batteries or cells would not be required until January 1, 2005, thus, providing two years to test current designs of batteries or cells. In addition, (1) these tests have been adopted in the ICAO Technical Instruction; (2) the vast majority of these cells and batteries are manufactured outside the U.S. and subsequently transported by aircraft into the U.S. under the ICAO Technical Instructions; and (3) the small number of cells and batteries manufactured in the U.S. are subsequently transported by aircraft in the U.S. under the ICAO Technical Instructions. For these reasons, the costs associated with these proposals are negligible. Benefits resulting from this proposal include enhanced transportation safety by decreasing the likelihood and severity of a transportation incident involving lithium cells and batteries and consistency of domestic and international standards. Interested persons are invited to provide comments on RSPA's preliminary regulatory evaluation which is available for review in the public docket. We are particularly interested in receiving well-documented comments that substantiate or refute our understanding that the costs associated with this proposal are negligible.

#### *B. Executive Order 13132*

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

levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

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

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

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

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

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

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to incorporate changes recently adopted in international standards and increase the level of safety associated with the transportation of lithium batteries.

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

#### *C. Executive Order 13175*

This proposed 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 proposed rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The provisions of this proposal would apply to lithium battery manufacturers and other persons who offer lithium batteries for transportation in commerce, some whom are small entities. However, it is anticipated that the costs associated with the more stringent requirements of this proposal, such as the testing of lithium batteries, would be incurred by lithium battery manufacturers, which are not small businesses. In addition, an exception from the new hazard communication system has been provided for small shipments of lithium batteries. It is our belief that most small businesses that offer lithium batteries for transportation would be able to utilize that exception. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*E. Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

*F. Paperwork Reduction Act*

RSPA believes that this proposed rule may result in a modest increase in annual burden and costs based on a new information collection requirement. The proposals regarding the shipment of lithium batteries that result in a new information collection requirement have been submitted to OMB for review and approval.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the

public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request (i.e., the requirement to indicate on shipping documents that packages contain lithium batteries) that RSPA has submitted to OMB for approval based on the requirements in this proposed rule. RSPA has developed burden estimates to reflect changes in this proposed rule. RSPA estimates that the total information collection and recordkeeping burden proposed in this rule would be as follows:

- OMB No. 2137-xxxx:
- Total Annual Number of Respondents: 1,000.
- Total Annual Responses: 100,000.
- Total Annual Burden Hours: 834.
- Total Annual Burden Cost: \$10,000.

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

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590-0001, Telephone (202) 366-8553.

Written comments should be addressed to the Docket Management System as identified in the ADDRESSES section of this rulemaking. Comments should be received prior to the close of the comment period identified in the DATES section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to or comply with an information collection requirement unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the information collection and recordkeeping requirements to the Office of Management and Budget for approval.

*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 may be used to cross-reference this action with the Unified Agenda.

**List of Subjects**

*49 CFR Part 171*

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

*49 CFR Part 172*

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

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and Recordkeeping Requirements, Uranium.

*49 CFR Part 175*

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

In consideration of the foregoing, 49 CFR Chapter I would be amended as follows:

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

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

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

2. In § 171.7, in the paragraph (a)(3) table, under the entry “United Nations”, the second entry would be revised to read as follows:

**§ 171.7 Reference material.**

- (a) \* \* \*
- (3) \* \* \*

Source and name of material	49 CFR reference
* * * * *	* * * * *
United Nations	
* * * * *	* * * * *
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Third Revised Edition (1999) including the revisions contained in the Report of the Committee of Experts on its Twenty-First Session “Amendments to Third Revised Edition of the UN Manual of Tests and Criteria, ST/SG/AC.10/27 Add.2”	172.102; 173.21; 173.56; 173.57; 173.124; 173.128; 173.166; 173.185

\* \* \* \* \*

3. In § 171.8, a definition for “Equivalent lithium content” and “Lithium content” would be added in appropriate alphabetical order to read as follows:

**§ 171.8 Definitions and abbreviations.**

\* \* \* \* \*

*Equivalent lithium content* means, for a lithium ion cell, the product of the rated capacity, in ampere-hours, of a lithium ion cell times 0.3. The equivalent lithium content of a battery equals the sum of the grams of equivalent lithium content contained in the component cells of the battery.

\* \* \* \* \*

*Lithium content* means the mass of lithium in the anode of a lithium metal or lithium alloy cell. For a lithium ion cell see the definition for “equivalent lithium content”.

\* \* \* \* \*

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

4. The authority citation for part 172 would continue to read as follows:

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

**§ 172.102 [Amended]**

5. In § 172.102(c)(1), special provision “29” would be removed.

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

6. The authority citation for part 173 would continue to read as follows:

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

7. Section 173.185 would be revised to read as follows:

**§ 173.185 Lithium cells and batteries.**

(a) *Cells and batteries.* A lithium cell or battery, including a lithium polymer cell or battery and a lithium ion cell or battery, must meet the following requirements:

(1) Be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria, Third Revised Edition (1999), Part III, subsection 38.3. A cell or battery and equipment containing a cell or battery which was first transported prior to [effective date of the final rule] and is of a type proven to meet the criteria of Class 9 by testing in accordance with the tests in the UN Manual of Tests and

Criteria, Second Edition, 1990 is not required to be retested in accordance with the UN Manual of Tests and Criteria, Third Revised Edition (1999), Part III, subsection 38.3;

(2) Incorporate a safety venting device or otherwise be designed in a manner that will preclude a violent rupture under conditions normally incident to transportation;

(3) For a battery containing cells or series of cells that are connected in parallel, be equipped with an effective means to prevent dangerous current flow (e.g., diodes, fuses, etc.);

(4) Be packed in inner packagings in such a manner as to prevent short circuits, including movement which could lead to short circuits;

(5) Be packaged in combination packagings conforming to the requirements of part 178 of this subchapter at the Packing Group II performance level. Inner packagings must be packed within metal boxes (4A or 4B), wooden boxes (4C1, 4C2, 4D, or 4F), fiberboard boxes (4G), solid plastic boxes (4H2), fiber drums (1G), metal drums (1A2 or 1B2), plywood drums (1D), plastic jerricans (3H2), or metal jerricans (3A2 or 3B2);

(6) Be equipped with an effective means of preventing external short circuits; and

(7) Not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts or is less than  $\frac{2}{3}$  of the voltage of the fully charged cell, whichever is less.

(b) *Cells or batteries packed with equipment.* Cells or batteries packed with equipment may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (a) of this section, except paragraph (a)(5) of this section. The cells or batteries must be packed in an inner packaging that is further packed with the equipment in a strong outer packaging.

(c) *Equipment containing cells and batteries.* Cells and batteries contained in equipment may be transported as items of Class 9 if the batteries and cells meet all the requirements of paragraph (a) of this section, except paragraphs (a)(4) and (a)(5) of this section, and the equipment is packed in a strong outer packaging that is waterproof or is made waterproof through the use of a liner unless the equipment is made waterproof by nature of its construction. The equipment and cells or batteries must be secured within the outer packaging and be packed as to effectively prevent movement, short circuits, and accidental operation during transport.

(d) *Exceptions.* (1) *Small cells and batteries.* A lithium cell or battery, including a cell or battery packed with or contained in equipment, is not subject to any other requirements of this subchapter if it meets the following requirements:

(i) For a lithium metal or lithium alloy cell, the lithium content is not more than 1.0 g. For a lithium-ion cell, the equivalent lithium content is not more than 1.5 g;

(ii) For a lithium metal or lithium alloy battery, the aggregate lithium content is not more than 2.0 g. For a lithium-ion battery, the aggregate equivalent lithium content is not more than 8 g;

(iii) The cell or battery is of the type that meets the lithium battery testing requirements in the UN Manual of Tests and Criteria, Part III, subsection 38.3. A cell or battery that was manufactured before January 1, 2003 is not required to be tested until January 1, 2005;

(iv) Cells or batteries are separated so as to prevent short circuits and are packed in a strong outer packaging or are contained in equipment; and

(v) Each package containing more than 24 lithium cells or 12 lithium batteries must be:

(A) Marked to indicate that it contains lithium batteries, and that special procedures should be followed in the event that the package is damaged;

(B) Accompanied by a document indicating that the package contains lithium batteries and that special procedures should be followed in the event that the package is damaged;

(C) Capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

(D) Except in the case of lithium cells or batteries packed with or contained in equipment, in packages not exceeding 30 kg gross mass.

(2) *Cells and batteries, for disposal.* A lithium cell or battery offered for transportation or transported to a permitted storage facility or disposal site by motor vehicle is excepted from the specification packaging requirements of this subchapter and the requirements of paragraphs (a)(1) and (a)(7) of this section when protected against short circuits and packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a.

(3) *Shipments for testing.* A lithium cell or battery is excepted from the requirement of (a)(1) of this section when transported by motor vehicle for

purposes of testing. The cell or battery must be individually packed in an inner packaging, surrounded by cushioning material that is non-combustible, and nonconductive.

(e) A lithium cell or battery that does not comply with the provisions of this section may be transported only under conditions approved by the Associate Administrator.

8. In § 173.220, paragraph (b)(5) would be added to read as follows:

**§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles and equipment.**

\* \* \* \* \*

(b) \* \* \*

(5) *Lithium batteries.* Lithium batteries contained in vehicles or engines must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria, Part III, subsection 38.3, be securely fastened in the battery holder of the vehicle or engine, and be protected in such a manner as to prevent damage and short circuits. Equipment, other than vehicles or engines, containing lithium batteries must be transported in accordance with § 173.185.

\* \* \* \* \*

**PART 175—CARRIAGE BY AIRCRAFT**

9. The authority citation for part 175 would continue to read as follows:

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

10. In § 175.10, paragraph (a)(27) would be added to read as follows:

**§ 175.10 Exceptions.**

(a) \* \* \*

(27) Consumer electronic devices (watches, calculating machines, cameras, cellular phones, lap-top computers, camcorders, etc.) containing lithium or lithium ion cells or batteries when carried by passengers or crew member for personal use. Each spare battery must be individually protected so as to prevent short circuits and carried in carry-on baggage only. In addition, each spare battery must not exceed the following:

(i) For a lithium metal or lithium alloy battery, a lithium content of not more than 2 grams per battery; or

(ii) For a lithium ion battery, an aggregate equivalent lithium content of not more than 8 grams per battery, except that up to two batteries with an aggregate equivalent lithium content of more than 8 grams but not more than 25 grams may be carried.

\* \* \* \* \*

Issued in Washington, DC, on March 28, 2002, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

[I.D. 031802B]

**Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow up to three vessels to conduct fishing operations otherwise restricted by the regulations governing the fisheries of the Northeastern United States. EFPs would allow for exemptions to the minimum fish size requirements of the FMP. The experiment proposes to collect approximately 50 lb (22.68 kg) of juvenile black sea bass smaller than the current 11–inch (27.94–cm) minimum commercial fish size from Federal waters during the winter months, while the commercial black sea bass fishing season is open. The samples would be obtained with commercial handline tackle during the course of regular commercial fishing activity. The samples would be used by researchers at

the Virginia Institute of Marine Science (VIMS) for population studies.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before April 17, 2002.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Black Sea BASS EFP Proposal.” Comments may also be sent via facsimile (fax) to (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

**SUPPLEMENTARY INFORMATION:** The Virginia Institute of Marine Science submitted an application for EFPs on January 18, 2002, with final revisions received on February 19, 2002. The EFPs would facilitate the collection of data on the age, growth, and population structure of the black sea bass (*Centropristis striata*) population in the Mid-Atlantic region.

The experiment proposes to collect approximately 50 lb (22.68 kg) per month of sublegal juvenile black sea bass (<11 inches (27.94 cm)). The collection of undersized black sea bass would occur within Federal waters off the coasts of Maryland, Virginia and North Carolina. All sample collections would be conducted while the commercial fishing season is open, principally during the winter months. There would not be observers or researchers on every participating vessel. The samples would be collected by three federally permitted commercial vessels during the course of regular commercial fishing activity and would consist of sublegal fish that would otherwise have to be discarded. The juvenile black sea bass would be obtained using commercial handline tackle and kept on ice until landed. Upon landing, VIMS personnel would retrieve the samples and take them to the VIMS laboratory for analysis. None of the juvenile black sea bass would be sold. The participating vessels would be required to report the landings in their Vessel Trip Reports. The catch levels of approximately 50 lb (22.67 kg) per month are expected to have very little detrimental impact on the black sea bass resource.

The purpose of the VIMS study is to investigate the age, growth and