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The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Waianae, Channel 266C, and removing Channel 266C1 at Lahaina.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division Media Bureau.*

[FR Doc. 03-1200 Filed 1-17-03; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 02-3065; MB Docket No. 02-349, RM-10599; MB Docket No. 02-350, RM-10600]

##### Radio Broadcasting Services; Encinal and Sheffield, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes two allotments in Encinal and Sheffield, TX. The Commission requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 286A at Encinal, Texas, as potentially the community's third local aural broadcast service. Channel 286A can be allotted to Encinal in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.3 km (3.9 miles) north of Encinal. The coordinates for Channel 286A at Encinal are 28-05-37 North Latitude and 99-20-25 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border. See **SUPPLEMENTARY INFORMATION** *infra*.

**DATES:** Comments must be filed on or before February 24, 2003, and reply comments on or before March 11, 2003.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos 02-349 and 02-350; adopted November 6, 2002 and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202)863-2893.

The Commission further requests comment on a petition filed by Katherine Pyeatt proposing the allotment of Channel 224C2 at Sheffield, Texas, as the community's first local FM transmission service. Channel 224C2 can be allotted to Sheffield in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 km (9.8 miles) south of Sheffield. The coordinates for Channel 224C2 at Sheffield are 30-33-15 North Latitude and 101-52-09 West Longitude. The proposed allotment will require concurrence by Mexico because it is

located within 320 kilometers (199 miles) of the Mexican border.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 286A at Encinal and by adding Sheffield, Channel 224C2.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-1199 Filed 1-17-03; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### Research and Special Programs Administration

**49 CFR Parts 171, 172, 173, 177, 178, 179 and 180**

[Docket No. RSPA-02-13773 (HM-218B)]

RIN 2137-AD73

##### Hazardous Materials; Miscellaneous Amendments

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations based on petitions for rulemaking and RSPA

initiatives. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements.

**DATES:** Comments must be received by March 17, 2003.

**ADDRESSES:** Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590-0001. Identify the docket number, RSPA-02-13773 (HM-218B) 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 Web site 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 above address. You can view public dockets between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also view comments on-line at <http://dms.dot.gov>.

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

This NPRM is designed primarily to reduce regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on RSPA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. In a continuing effort to review the HMR for necessary revisions, RSPA ("we" and "us") is also proposing to eliminate, revise, clarify and relax certain other regulatory requirements.

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

**Section-by-Section Review**

*Part 171*

Section 171.7

The American Pyrotechnics Association (APA) petitioned us to update the incorporation by reference of APA Standard 87-1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, from the 1998 edition to the 2001 edition (P-1412). We agree with APA's request and, in this notice, are proposing to incorporate the 2001 edition of APA Standard 87-1. APA is a trade association of the fireworks industry that promotes safety standards for all aspects of fireworks. Its members include regulated and licensed manufacturers, distributors, wholesalers, retailers, importers and suppliers of firework and professional public display firms.

The Hazardous Material Regulations allow fireworks that are manufactured in accordance with APA Standard 87-1 to be classed, approved and assigned an EX-number by the Associate Administrator without prior laboratory examination. Because the 2001 edition of APA Standard 87-1 establishes a ten-inch limit on aerial shells for fireworks that may be classed as Division 1.3 explosives, our incorporating the 2001 APA standard would result in prohibiting shells greater than ten inches from being classed as Division 1.3 explosives. However, shells ten inches or greater could be classed and approved as Division 1.1 explosives without prior examination. We are proposing this change, but we invite comments on regulatory impacts, including any cost impact, of incorporating the 2001 APA Standard 87-1.

The Compressed Gas Association (CGA) petitioned us and we are proposing to update the incorporation by reference of the following:

- CGA Pamphlet C-6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, from the 1988 edition to the 1996 edition (P-1383);
- CGA Pamphlet C-11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, from the 1993 edition to the 2001 edition (P-1419);
- CGA Pamphlet C-13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, from the 1992 edition to the 2000 edition (P-1413); and
- CGA Pamphlet S-1.1, Pressure Relief Device Standards—Part 1—Cylinders

for Compressed Gases, from the 1994 edition to the 2001 edition (with the exception of paragraph 9.1.1.1) (P-1401).

The National Propane Gas Association (NPGA) petitioned us and we are proposing to update the incorporation by reference of the National Fire Protection Association (NFPA) Pamphlet—Standard for the Storage and Handling of Liquefied Compressed Gases, 1979 edition, to the NFPA 58—Liquefied Petroleum Gas Code, 2001 edition (P-1120).

Based on our own initiative, we are proposing to authorize the American Society for Testing and Materials (ASTM) E 114-95 test method for straight beam examination of the tubular surface of cylinders and tubes. ASTM E 114, in conjunction with ASTM E 213-98, is used to measure the wall thickness of a cylinder and to detect general corrosion and defects located in the path of the ultrasonic straight beam direction. ASTM E 213 is used to detect sidewall defects such as cracks, voids and pits in cylinders. We adopted ASTM E 213 for use in a final rule published in the **Federal Register** on August 8, 2002 (Docket HM-220D, 67 FR 51626), but inadvertently did not authorize the use of ASTM E 114.

We are also proposing to incorporate by reference the Chlorine Institute instruction booklets entitled "Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders" and "Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers". (See § 173.3 preamble discussion.)

We are proposing to update the incorporation by reference of the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M-1002, from the January 1996 edition to the December 2000 edition. We are also proposing to remove the entry for the 1992 edition of this manual since Appendix Y was revised in the 2000 edition, thus making the 1992 edition obsolete.

Section 171.15

Currently the HMR require a shipper to notify the Bureau of Explosives (BOE) whenever a rail car containing a time-sensitive product is not received by the consignee within 20 days from shipment (see §§ 173.314(g)(1) and 173.319(a)(3)). We are proposing to move these requirements to § 171.15 by adding a new paragraph (d) and requiring notification to the Federal Railroad Administration instead of BOE.

## Part 172

## Section 172.101

In response to a petition from the NPGA [P-1265], we are proposing to amend the entry for "Butylene" by adding a limited quantity exception for compressed gases (*see* § 173.306) in column (8A) of the Hazardous Materials Table (HMT). This amendment would be consistent with the entries for "Petroleum gases, liquefied" and other hydrocarbons.

We are proposing to add a new domestic entry for "Cartridges power devices, ORM-D" to the HMT for consistency with the packaging exceptions authorized in § 173.63(b). This entry is limited to those cartridges, small arms and cartridges power devices which are authorized to be reclassified and shipped as ORM-D in § 173.63(b)(1).

For Zone B Toxic Inhalation Hazard entries with ID numbers UN3303, UN3304, UN3305, UN3306, UN3307, UN3308, UN3309, and UN3310, we would revise the entry in the HMT by adding Special Provisions B9 and B14; and for Zone C Toxic Inhalation Hazard entries with the same ID numbers, we would revise the entry in the HMT by adding Special Provision B14. The Special Provisions were inadvertently omitted in previous rulemakings.

For compressed gas entries with ID numbers UN 3304, UN 3305, and UN 3306 and liquefied gas entries with ID numbers UN 3308, UN 3309 and UN 3310, we propose to remove the letter "I" in column 1 of the HMT. The affected proper shipping names may be used in both domestic and in international transportation.

For the entry "Liquefied gas, toxic, oxidizing, corrosive, n.o.s." Hazard Zones B, C and D, we are proposing to correct a typographical error in the subsidiary labeling requirements by removing the Division 2.1 label and adding the Division 5.1 label in its place.

We are proposing to revise the entry for "Gas sample, non-pressurized, toxic, n.o.s." by adding Special Provision 6 in column (7) of the HMT. The entry is classed as a Division 2.3 (gas poisonous by inhalation) material and must be described as an inhalation hazard under the provisions of the HMR.

## Section 172.504

Currently, paragraph (d) excepts non-bulk packagings that contain only the residue of a hazardous material covered by table 2 from being included when determining placarding requirements. We are proposing to revise paragraph (d) to clarify that the exception does not

apply to poison inhalation hazard materials subject to the subsidiary placarding requirements in § 172.505.

## Part 173

## Section 173.3

We are proposing that a DOT 3A480 or 3AA480 specification cylinder containing Chlorine or Sulphur dioxide (both materials poisonous by inhalation) that has developed a leak in the valve or fusible plug may be temporarily repaired using a Chlorine Institute "A" kit and be transported by private or contract carrier one time, one way from the point of discovery to the appropriate facilities for discharge and examination. Repairs must be performed only by personnel who have been trained in the use of the devices and tools in the Chlorine Institute "A" kit and are knowledgeable concerning the properties of chlorine and sulphur dioxide. Similarly, we are proposing to permit a DOT 106A500 specification multi-unit tank car tank containing Chlorine or Sulphur dioxide that has developed a leak in the valve or fusible plug to be temporarily repaired using a Chlorine Institute "B" kit. We have authorized the use of the kits under the exemption program for several years with satisfactory shipping experience. Incorporating the exemption provisions into the regulations will facilitate the movement of affected containers to appropriate facilities.

## Section 173.12

Currently, § 173.12(c) authorizes the reuse of packagings for shipments of "hazardous waste" to designated facilities. In response to a petition from North American Transportation Consultants, Inc. (NATC) (P-1407), we are proposing to extend the exception in § 173.12(c) to shipments of all waste materials and not just to materials that meet the definition of "hazardous waste" and are subject to the Uniform Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency.

## Section 173.29

Currently, paragraph (c) excepts non-bulk packagings that contain only the residue of a hazardous material covered by Table 2 of § 172.504(e) from being included when determining placarding requirements and from shipping paper requirements. We are proposing to revise paragraph (c) to clarify that the exceptions do not apply to poison inhalation hazard materials subject to the subsidiary placarding requirements in § 172.505.

## Section 173.31

We are proposing to add a new paragraph authorizing the continued use of DOT 103 and 104 tank cars that may no longer be constructed. We are also proposing to revise paragraph (b)(2)(ii) for clarity by removing the reference to "Chloroprene, inhibited" since Special Provision B57 addresses the requirements for chloroprene in DOT 115A tank cars, and to remove the last sentence since "breather holes" are not authorized in the regulations. In addition, we are proposing to revise paragraph (b)(5) to reflect changes to Appendix Y of the AAR Specifications for Tank cars. This change would recognize the 2000 edition of Appendix Y in the AAR Tank Car Manual.

## Section 173.35

In paragraph (b), we are proposing to add, for purposes of clarification, a parenthetical cross-reference to § 180.352 that contains detailed requirements for retest and inspection of IBCs.

## Section 173.50

The definition of "explosive" in § 173.50 currently does not specifically include pyrotechnics. We are proposing to add a statement indicating that pyrotechnic substances and articles are considered explosives unless otherwise classed.

## Section 173.54

Section 173.54 currently forbids offering a leaking or damaged package of explosives for transportation. We propose to clarify that leaking or damaged articles, even if not in a package, are also prohibited.

## Section 173.62

We are proposing to revise paragraph (c), in the table of Packing Methods, to clarify that Packing Instruction 132(a) applies to articles with closed casings and Packing Instruction 132(b) applies to articles without closed casings.

## Section 173.314

We are proposing to remove the wording "safety relief" and add the wording "reclosing pressure relief" in paragraphs (k) and (m) for consistency. Also, we are proposing to move the reporting requirements in paragraph (g)(1) to § 171.15(d) and, therefore, are proposing to remove and reserve paragraph (g)(1).

## Section 173.315

On May 24, 1999, we published a final rule (Docket HM-225A; 64 FR 28030) to require cargo tank motor vehicles (CTMVs) used to transport

liquefied compressed gases to be equipped with emergency discharge control equipment, including passive systems that will shut down the unloading operation without human intervention and remote control devices that enable an attendant to stop the unloading process at a distance from the vehicle. These requirements are keyed to the degree of risk associated with the transportation of specific liquefied compressed gases. Among other requirements, the regulation requires a CTMV in metered delivery service transporting a Division 2.2 material with a subsidiary hazard, a Division 2.1 material, or anhydrous ammonia in a cargo tank with a capacity of 3,500 gallons or less to be equipped with an off-truck remote means to close the internal self-closing stop valve and shut off all motive and auxiliary power equipment. Metered delivery service means a cargo tank unloading operation conducted at a metered flow rate of 100 gallons per minute or less through an attached delivery hose with an inside diameter of 1 $\frac{3}{4}$  inches or less. A CTMV transporting a Division 2.2 material with a subsidiary hazard, a Division 2.1 material, or anhydrous ammonia in other than metered delivery service must be equipped with a passive emergency discharge control system that will shut down the unloading operation within 20 seconds of a complete separation or rupture of the delivery hose.

Since our adoption of the above requirements in 1999, it has come to our attention that there are CTMVs that transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in both metered and other than metered delivery service. A strict reading of the current regulatory requirements applicable to emergency discharge control equipment in § 173.315(n) would appear to require these CTMVs to be equipped with both a passive and an off-truck remote means of emergency discharge control. It was never our intention to require a CTMV to meet both requirements. If a CTMV operating in both metered and non-metered delivery service is equipped with a passive means of shut-down that meets the requirements in § 173.315(n)(2) and functions for both metered and non-metered deliveries, then it need not also be equipped with an off-truck remote means of shut down. In this NPRM, we propose to clarify the emergency discharge control requirements by adding a specific entry in the chart in § 173.315(n)(1) to address CTMVs that operate in both metered and other than

metered delivery service. Proposed § 173.315(n)(1)(vi) would permit CTMVs in both metered and other than metered delivery service, with capacities of more than 3,500 water gallons, used to transport Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia to be equipped with a passive means of emergency discharge control, provided that the system functions for both metered and non-metered deliveries. If the system functions only for non-metered deliveries, then the CTMV also would have to be equipped with an off-truck remote emergency discharge control system.

#### Section 173.319

We are proposing to move the reporting requirements in paragraph (a)(3) to § 171.15(d) and, therefore, are proposing to remove and reserve paragraph (a)(3). (See § 171.15 preamble discussion.)

#### Section 173.320

Currently, cryogenic liquids are not subject to the requirements of the HMR when transported by motor vehicle or railcar if they meet certain conditions such as complying with the requirements in Subparts A, B, C and D of part 172. We are proposing to amend paragraph (a)(2) by adding the requirements in subparts G (Emergency Response Information) and H (Training) of part 172 for transportation by rail or highway. We never intended to except shipments of cryogenic liquids from these requirements.

#### Part 177

##### Section 177.834

Currently, § 177.834(a) requires packagings not permanently attached to the motor vehicle and containing Classes 2, 3, 7, and 8 and Division 6.1 and 6.2 materials to be secured against movement within the vehicle. Section 177.834(g) currently requires packages of Class 1, 2, 3, 4, 5, 8 and Division 6.1 and 6.2 materials to be braced to prevent relative motion between themselves. In response to a petition for rulemaking from the Georgia Public Service Commission [P-1100], we are proposing to amend § 177.834(a) to require that any packaging containing a hazardous material, regardless of class or division, be secured against movement if the packaging is not permanently attached to a motor vehicle. Additionally, we are proposing to incorporate into paragraph (a) the closely related requirements in § 177.834(g), to prevent relative motion between the hazardous material packages themselves and the vehicle

and to ensure that packages that have valves or other fittings be loaded in a manner that minimizes the likelihood that the valves or other fittings will be damaged during transportation. Subsequently, paragraph (g) will be reserved. RSPA agrees with the petitioner that securement of packages containing hazardous materials to prevent movement in transit will reduce damage to packages and thus, enhance driver and public safety.

Based on our own initiative and to be consistent with a similar requirement in Parts 174, 175, and 176, we are proposing to add a new paragraph (b) requiring packages bearing orientation markings to be loaded in such a way that they remain in the correct position indicated by the markings.

##### Section 177.835

Section 177.835 prohibits carrying a Division 1.1 or Division 1.2 explosive material in a combination of vehicles if the other vehicle is transporting a Division 2.3 or Division 6.1 material. This requirement is more restrictive than the "Segregation Table for Hazardous Materials" in § 177.848(d), which restricts loading and transporting of Division 1.1 or 1.2 explosives with materials in Division 2.3, Hazard Zone A or B, and in Division 6.1, PG I, Hazard Zone A. For consistency with the provisions in § 177.848(d), we are proposing to revise § 177.835(c)(4)(iii) to limit the segregation restriction to Division 2.3 materials in Hazard Zone A or B and to Division 6.1, PG I materials in Hazard Zone A.

##### Section 177.837

Currently, § 177.837 does not permit the engine of a cargo tank motor vehicle to be running during loading and unloading of Class 3 materials. In response to a petition from Monsanto [P-1276], we are proposing to amend paragraph (a) to permit the diesel engine of a cargo tank motor vehicle to be running during loading and unloading of Class 3 materials if the ambient temperature is at or below -12 °C (10 °F). The petitioner states that a motor vehicle's diesel engine is very difficult to restart if the engine is turned off in extremely cold weather for loading or unloading of product. The petitioner believes that the operating benefits of leaving a motor vehicle engine running in ambient temperatures of below -12 °C (10 °F) outweigh the flammability risks. We concur and are proposing to amend § 177.837 accordingly.

##### Section 177.841

We are proposing to revise paragraph (e) to expand the prohibition of

transporting packagings bearing or required to bear a POISON or POISON INHALATION HAZARD label to include packagings that are placarded or required to be placarded POISON or POISON INHALATION HAZARD.

Section 172.514(c) permits placarding in lieu of labeling for certain bulk packagings.

#### Part 178

##### Section 178.45

We are proposing to revise paragraph (h) to authorize use of the ASTM E 114 test method for straight beam examinations on the tubular surface of cylinders and tubes as we stated earlier in this preamble in the discussion to § 171.7.

#### Part 179

New construction of specification DOT103 and 104 tank cars is no longer authorized; therefore, we propose to remove the specifications and all references to DOT 103 and 104 tanks cars from this part. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

##### Section 179.1

Paragraph (a) implies that only tanks transporting hazardous materials are subject to the jurisdiction of DOT. We are proposing to revise paragraph (a) to clarify that DOT specification tanks, even when they are transporting non-regulated commodities, are subject to the jurisdiction of DOT, at least as to the tank itself.

##### Section 179.3

We are proposing to revise § 179.3 for clarity.

##### Section 179.5

We are proposing to revise this section by removing an obsolete requirement to furnish a Certificate of Construction to the Department.

##### Section 179.7

We are proposing to revise paragraph (f) by removing an outdated compliance date.

##### Section 179.100–13

In paragraphs (b) and (c), we are proposing to add, for purposes of clarification, a reference to § 173.314(j), which contains excess flow valve requirements for flammable gases.

#### Part 179 Subpart D

We are proposing to revise the heading for Subpart D by removing the reference to DOT–103 and DOT–104 tank cars.

##### Section 179.200

We are proposing to revise the section heading by removing the reference to DOT–103 and DOT–104 tank cars.

##### Section 179.200–14

We are proposing to revise paragraph (a) by removing the reference to DOT–103 and DOT–104 tank cars.

##### Section 179.200–23

We are proposing to revise the section heading by removing the words “safety relief” and adding “pressure relief” in their place.

##### Section 179.200–24

We are proposing to revise the table by removing the reference to a DOT–103–W tank car and adding a reference to DOT–111A tank car in its place.

##### Section 179.201–1

We are proposing to revise the table by removing the entries for spec DOT–103 and DOT–104 tank cars because new construction of specification DOT103 and 104 tank cars is no longer authorized. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

##### Section 179.201–2

Section 179.201–2 addresses minimum plate thickness for DOT specification tank cars that may no longer be constructed. Therefore, we are proposing to remove and reserve § 179.201–2.

##### Section 179.201–3

We are proposing to revise paragraph (b) by removing the reference to DOT–103 tank cars.

#### Part 180

##### Section 180.507

We are proposing to add a new paragraph authorizing the continued use of DOT 103 and 104 tank cars, which may no longer be constructed.

#### Regulatory Analyses and Notices

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

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

Analysis under the DOT order is not required.

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update references to standards that are incorporated in the HMR. For example, the American Pyrotechnics Association petitioned us to incorporate the 2001 edition of APA Standard 87–1. (See § 171.7 preamble discussion.) These clarifications and updates of the HMR will enhance safety.

Because the proposed changes clarify the requirements and respond to requests from industry, we believe the impact of these proposed changes to be so minimal that the proposal does not warrant a regulatory evaluation. However, we invite public comments on any impacts of proposed changes and may revise this determination as a result of comments.

##### B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). Federal law expressly preempts State, local, and Indian tribe requirements, applicable to the transportation of hazardous materials, that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These 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, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, 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 proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. 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. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects.

#### 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, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on our own initiative and also on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and would update references to consensus standards that are incorporated in the HMR.

These proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities. In addition, we propose to update references to standards that are incorporated in the HMR; industry associations, representing large and small entities, requested this change.

One proposed change may have a cost impact. The APA, a trade association of the fireworks industry, filed a petition requesting that we update a reference to incorporate the 2001 edition of APA Standard 87-1. Because the 2001 edition of the APA Standard establishes a limit of ten inches on aerial shells for

fireworks that may be classed as Division 1.3 explosives, our incorporating the 2001 APA standard would result in prohibiting shells greater than ten inches from being classed as Division 1.3 explosives. However, shells greater than ten inches could be classed and approved by RSPA as Division 1.1 explosives without prior examination. Therefore, it may be more expensive to transport shells larger than ten inches; those shells, however, are used only in very large shows. The entities that may be affected by this change are five manufacturers of shells over ten inches and approximately fifty importers of shells over ten inches. Some of these fifty importers are small businesses.

The changes proposed in this Notice will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

#### E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This NPRM does not propose any new information collection burdens.

#### F. Unfunded Mandates Reform Act

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

#### G. Environmental Assessment

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

#### H. Regulation Identifier Number (RIN)

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

#### List of Subjects

##### 49 CFR Part 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 177

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

##### 49 CFR Part 178

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

##### 49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 180

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

In consideration of the foregoing, 49 CFR Chapter I 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:

a. Under the entry “American Pyrotechnics Association (APA),” the entry would be revised;  
 b. Under the entry “American Society for Testing and Materials,” a new entry would be added in appropriate alphabetical order;  
 c. Under the entry “Association of American Railroads,” the first entry

would be removed and the second entry would be revised;  
 d. Under the entry “Chlorine Institute, Inc.,” two new entries would be added in appropriate alphabetical order;  
 e. Under the entry “Compressed Gas Association, Inc.,” the address and four entries would be revised;

f. Under the entry “National Fire Protection Association,” the entry would be revised.  
 The revisions and additions would read as follows:

**§ 171.7 Reference material.**  
 (a) \* \* \*  
 (3) *Table of material incorporated by reference.* \* \* \*

Source and name of material	49 CFR reference
* * * * *	
American Pyrotechnics Association (APA)	
APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version.	173.56
* * * * *	
American Society for Testing and Materials	
ASTM E 114–95 Standard Practice for Ultrasonic Pulse-Echo Straight-Beam Examination by the Contact Method.	178.45
* * * * *	
Association of American Railroads	
AAR Manual of Standards and Recommended Practices, Section C–Part III, Specification for Tank Cars, Specification M–1002, December 2000.	173.31, 174.63, 179.6, 179.7, 179.12, 179.15, 179.16, 179.20, 179.22, 179.100, 179.101, 179.102, 179.103, 179.200, 179.201, 179.220, 179.300, 179.400, 180.509, 180.513, 180.515, 180.517.
* * * * *	
Chlorine Institute, Inc.	
Chlorine Institute Emergency Kit “A” for 100-lb. & 150-lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks).	173.3
Chlorine Institute Emergency Kit “B” for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks).	173.3
* * * * *	
Compressed Gas Association, Inc., 4221 Walney Road, Chantilly, VA 20151–2923	
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996.	173.34
* * * * *	
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001.	178.35
* * * * *	
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000.	173.34, 173.303.
* * * * *	
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).	173.34
* * * * *	
National Fire Protection Association	
NFPA 58-Liquefied Petroleum Gas Code, 2001— .....	173.315
* * * * *	

3. In § 171.15, a new paragraph (d) would be added to read as follows:

**§ 171.15 Immediate notification of certain hazardous materials incidents.**

\* \* \* \* \*

(d) *Special reporting requirements for railroad transportation.* Whenever a tank car containing hydrogen chloride refrigerated liquid or flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment, the person with knowledge (shipper or carrier) shall notify the Federal Railroad Administration,

Hazardous Materials Division, U.S. Department of Transportation, Washington, DC 20590-0001, 202-493-6247 or 202-493-6244 (day); 202-267-2100 (night).

**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.

5. In § 172.101, the Hazardous Materials Table would be amended by adding and revising, in the appropriate alphabetical sequence, the following entries to read as follows:



§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Nos.	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
							(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[ADD:]	*	*	*	*	*	*	*	*				
D	Cartridges power devices (used to project fastening devices).	ORM-D			None		63	None	None	30 kg gross ..	30 kg gross ..	A	
	[REVISE:]	*	*	*	*	*	*	*	*				
	Butylene see also Petroleum gases, liquefied	2.1	UN1012		2.1	19, T50	306	304	314, 315	Forbidden	150 kg	E	40
G	Compressed gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3304		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone B.	2.3	UN3304		2.3, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone C.	2.3	UN3304		2.3, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone D.	2.3	UN3304		2.3, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3305		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone B.	2.3	UN3305		2.3, 2.1, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone C.	2.3	UN3305		2.3, 2.1, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone D.	2.3	UN3305		2.3, 2.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	17, 40
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3306		2.3, 5.1, 8	1	None	192	244	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. Inhalation Hazard Zone B.	2.3	UN3306		2.3, 5.1, 8	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. Inhalation Hazard Zone C.	2.3	UN3306		2.3, 5.1, 8	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, corrosive, n.o.s. Inhalation Hazard Zone D.	2.3	UN3306		2.3, 5.1, 8	4	None	302, 305	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Compressed gas, toxic, oxidizing, n.o.s. Inhalation Hazard Zone B.	2.3	UN3303		2.3, 5.1	2, B9, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
G	Compressed gas, toxic, oxidizing, n.o.s. Inhalation Hazard Zone C.	2.3	UN3303		2.3, 5.1	3, B14	None	302, 305	314, 315	Forbidden	Forbidden	D	40
	Gas sample, non-pressurized, toxic, n.o.s., not refrigerated liquid.	2.3	UN3169		2.3	6	306	302, 304	None	Forbidden	1 L	D	
G	Liquefied gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3308		2.3, 8	1	None	192	245	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone B.	2.3	UN3308		2.3, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone C.	2.3	UN3308		2.3, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, corrosive, n.o.s. Inhalation Hazard Zone D.	2.3	UN3308		2.3, 8	4	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3309		2.3, 2.1, 8	1	None	192	245	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone B.	2.3	UN3309		2.3, 2.1, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone C.	2.3	UN3309		2.3, 2.1, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, flammable, corrosive, n.o.s. Inhalation Hazard Zone D.	2.3	UN3309		2.3, 2.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D	17, 40
G	Liquefied gas, toxic, oxidizing, corrosive, n.o.s. Inhalation Hazard Zone A.	2.3	UN3310		2.3, 5.1, 8	1	None	192	245	Forbidden	Forbidden	D	40, 89, 90

G	Liquefied gas, toxic, oxidizing, corrosive, 2.3 n.o.s. <i>Inhalation Hazard Zone B.</i>	UN3310	2.3, 5.1, 8	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, 2.3 n.o.s. <i>Inhalation Hazard Zone C.</i>	UN3310	2.3, 5.1, 8	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, 2.3 n.o.s. <i>Inhalation Hazard Zone D.</i>	UN3310	2.3, 5.1, 8	4	None	304	314, 315	Forbidden	Forbidden	D	40, 89, 90
G	Liquefied gas, toxic, oxidizing, corrosive, 2.3 n.o.s. <i>Inhalation Hazard Zone B.</i>	UN3307	2.3, 5.1	2, B9, B14	None	304	314, 315	Forbidden	Forbidden	D	40
G	Liquefied gas, toxic, oxidizing, corrosive, 2.3 n.o.s. <i>Inhalation Hazard Zone C.</i>	UN3307	2.3, 5.1	3, B14	None	304	314, 315	Forbidden	Forbidden	D	40

\* \* \* \* \*

6. In § 172.504, paragraph (d) would be revised to read as follows:

§ 172.504 General placarding requirements.

\* \* \* \* \*

(d) Exception for empty non-bulk packages. Except for hazardous materials subject to § 172.505, a non-bulk packaging that contains only the residue of a hazardous material covered by Table 2 of paragraph (e) of this section need not be included in determining placarding requirements.

\* \* \* \* \*

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. 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.

8. In § 173.3, a new paragraph (d) would be added to read as follows:

§ 173.3 Packaging and exceptions.

\* \* \* \* \*

(d) Emergency transportation of DOT 3A480 or 3AA480 specification cylinders and DOT 105A500 multi-unit tank car tanks. (1) A DOT 3A480 or DOT 3AA480 specification cylinder containing Chlorine or Sulphur dioxide that has developed a leak in a valve or fusible plug may be repaired temporarily by trained personnel using a Chlorine Institute Kit “A” and be transported by private or contract carrier one time, one way from the point of discovery to a proper facility for discharge and examination.

(2) A DOT 106A500 specification multi-unit tank car tank containing Chlorine or Sulphur dioxide that has developed a leak in the valve or fusible plug may be temporarily repaired by trained personnel using a Chlorine Institute Kit “B” and be transported by private or contract carrier one time, one way from the point of discovery to a proper facility for discharge and examination.

(3) Training for personnel making the repairs in paragraphs (d)(1) and (d)(2) of this section must include:

(i) Proper use of the devices and tools in the applicable kits;

(ii) Use of respiratory equipment and all other safety equipment; and

(iii) Knowledge of the properties of chlorine and sulphur dioxide.

9. In § 173.12, paragraph (c) introductory text would be revised to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

\* \* \* \* \*

(c) Reuse of packagings. A previously used packaging may be reused for the shipment of waste material transported for disposal or recovery, not subject to the reconditioning and reuse provisions contained in § 173.28 and part 178 of this subchapter, under the following conditions:

\* \* \* \* \*

10. In § 173.29, paragraph (c) introductory text would be revised to read as follows:

§ 173.29 Empty packagings.

\* \* \* \* \*

(c) Except for hazardous materials subject to § 172.505, a non-bulk packaging containing only the residue of a hazardous material covered by table 2 of § 172.504 of this subchapter—

\* \* \* \* \*

11. In § 173.31, a new paragraph (a)(7) would be added and paragraph (b)(2)(ii) and the last sentence of paragraph (b)(5) would be revised to read as follows:

§ 173.31 Use of tank cars.

(a) \* \* \*

(7) A DOT 103 or DOT 104 tank car may continue to be used for the transportation of a hazardous material if it meets the requirements of this subchapter; however, no new construction is authorized.

(b) \* \* \*

(2) \* \* \*

(ii) A single-unit tank car transporting a Division 6.1 PG I or II, or Class 2, 3, or 4 material must have a reclosing pressure relief device. However, a single-unit tank car built before January 1, 1991, and equipped with a non-reclosing pressure relief device may be used to transport a Division 6.1 PG I or II material or a Class 4 liquid provided such materials do not meet the definition of a material poisonous by inhalation.

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \* Tank cars modified before July 1, 1996, may conform to the bottom-discontinuity protection requirements of Appendix Y, instead of paragraphs E9.00 or E10.00 of the AAR Specifications for Tank Cars.

\* \* \* \* \*

§ 173.35 [Amended]

12. In § 173.35, in paragraph (b), the wording “Initial use and reuse of IBCs.” would be removed and the wording “Initial use and reuse of IBCs. (Also see § 180.352 of this subchapter.)” would be added in its place.

13. In § 173.50, paragraph (a) would be revised to read as follows:

§ 173.50 Class 1—Definitions.

(a) Explosive. For the purposes of this subchapter, an explosive means any substance or article, including a device, which is designed to function by explosion (i.e., an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the provisions of this subchapter. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of this subchapter.

14. In § 173.54, paragraph (c) would be revised to read as follows:

§ 173.54 Forbidden explosives.

\* \* \* \* \*

(c) A leaking or damaged package or article containing an explosive.

\* \* \* \* \*

15. In § 173.62, paragraph (c) introductory text and in the Table of Packing Methods, in column 1, Packing Instructions 132(a) and 132(b) would be revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

\* \* \* \* \*

(c) Explosives must be packaged in accordance with the following table:

\* \* \* \* \*

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
---------------------	------------------	-------------------------	------------------

TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
132(a) For articles consisting of closed metal, plastics or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives..	Not necessary .....	Not necessary .....	Boxes—steel (4A); aluminum (4B); wood, natural, ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).
132(b) For articles without closed casings .....	Receptacles fiber-board metal plastics Sheets paper plastics.	Not necessary .....	Boxes steel (4A); aluminum (4B); wood, natural, ordinary (4C1); wood, natural, sift proof walls (4C2); plywood (4D); reconstituted wood (4F); fiberboard (4G); plastics, solid (4H2).

**§ 173.314 [Amended]**

16. In § 173.314, the following changes would be made:*a. Paragraph (g)(1) would be removed and reserved;*  
*b. In paragraph (k), the wording “safety relief” would be removed and the wording “reclosing pressure relief” added in its place;*  
*c. In paragraph (m), the wording “safety relief” would be removed and the wording “reclosing pressure relief” added each place it appears, and in the last sentence, the wording “Safety*

relief” would be removed and the wording “Reclosing pressure relief” added in its place.  
 17. In § 173.315, paragraphs (j)(2) and (k)(4) would be revised and in the paragraph (n)(1) table, paragraph (vi) would be added to read as follows:  
**§ 173.315 Compressed gases in cargo tanks and portable tanks.**  
 (j) \* \* \*  
 (2) Each container must be equipped with safety devices in compliance with

the requirements for safety devices on containers as specified in NFPA 58.  
 \* \* \* \* \*  
 (k) \* \* \*  
 (4) It must conform to the applicable provisions of NFPA 58, except to the extent that provisions in NFPA 58 are inconsistent with requirements in parts 178 and 180 of this subchapter.  
 \* \* \* \* \*  
 (n) *Emergency discharge control for cargo tank motor vehicles in liquefied compressed gas service.—(1) \* \* \**

§ 173.315(n)(1)(*)	Material	Delivery service	Required emergency discharge control capability
(vi) .....	Division 2.2 materials with a subsidiary hazard, Division 2.1 materials, and anhydrous ammonia in a cargo tank with a capacity of greater than 13,247.5L (3,500 water gallons).	Both metered delivery and other than metered delivery service.	Paragraph (n)(2) of this section, provided the system operates for both metered and other than metered deliveries; otherwise, paragraphs (n)(2) and (n)(3) of this section.

**§ 173.319 [Amended]**

18. In § 173.319, paragraph (a)(3) would be removed and reserved.  
 19. In § 173.320, paragraph (a)(2) would be revised to read as follows:

**§ 173.320 Cryogenic liquids, exceptions.**

(a) \* \* \*  
 (2) Subparts A, B, C, D, G and H of part 172, (§§ 174.24 for rail and 177.817 for highway) and in addition, part 172 in its entirety for oxygen.  
 \* \* \* \* \*

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

20. The authority citation for part 177 would continue to read as follows:  
**Authority** :49 U.S.C. 5101–5127; 49 CFR 1.53.

21. In § 177.834, paragraph (a) would be revised, a new paragraph (b) would be added, and paragraph (g) would be reserved, to read as follows:  
**§ 177.834 General requirements.**  
 (a) *Packages secured in a motor vehicle.* Any package containing any hazardous material, not permanently attached to a motor vehicle, must be secured against movement, including relative motion between packages, within the vehicle on which it is being transported, under conditions normally incident to transportation. Packages having valves or other fittings must be loaded in a manner to minimize the likelihood of their damage during transportation.  
 (b) Each package containing a hazardous material bearing package orientation markings prescribed in § 172.312 of this subchapter must be loaded on a transport vehicle or within

a freight container in accordance with such markings and must remain in the correct position indicated by the markings during transportation.  
 \* \* \* \* \*  
 (g) [Reserved]  
 \* \* \* \* \*  
 22. In § 177.835, the section heading and paragraph (c)(4)(iii) would be revised to read as follows:  
**§ 177.835 Class 1 materials.**  
 \* \* \* \* \*  
 (c) \* \* \*  
 (4) \* \* \*  
 (iii) Division 2.3, Hazard Zone A or Hazard Zone B materials or Division 6.1, PG I, Hazard Zone A materials, or  
 \* \* \* \* \*  
 23. In § 177.837, the section heading and paragraph (a) would be revised to read as follows:

§ 177.837 Class 3 materials.

\* \* \* \* \*

(a) Engine stopped. Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, Class 3 material may not be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running. The diesel engine of a cargo tank motor vehicle may be left running during the loading and unloading of a Class 3 material if the ambient temperature is at or below -12 °C (10 °F).

\* \* \* \* \*

24. In § 177.841, the section heading and paragraph (e)(1) would be revised to read as follows:

§ 177.841 Division 6.1 and Division 2.3 materials.

\* \* \* \* \*

(e) \* \* \*

(1) Except as provided in paragraph (e)(3) of this section, bearing or required to bear a POISON or POISON INHALATION HAZARD label or placard in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

\* \* \* \* \*

PART 178—SPECIFICATIONS FOR PACKAGINGS

25. The authority citation for part 178 would continue to read as follows:

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

26. In § 178.45, in paragraph (h) introductory text, the first sentence would be revised to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

\* \* \* \* \*

(h) Ultrasonic examination. After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard E 213 for shear wave and E 114 for straight beam (see § 171.7 of this subchapter.)

\* \* \* \* \*

\* \* \* \* \*

PART 179—SPECIFICATION FOR TANK CARS

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

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

28. In § 179.1, paragraph (a) would be revised to read as follows:

§ 179.1 General.

(a) This part prescribes the specifications for tanks that are to be mounted on or form part of a tank car and which are to be marked with a DOT specification.

\* \* \* \* \*

29. In 179.3, paragraphs (b) and (c) would be revised to read as follows:

§ 179.3 Procedure for securing approval.

\* \* \* \* \*

(b) When, in the opinion of the Committee, such tanks or equipment are in compliance with the requirements of this subchapter, the application will be approved.

(c) When such tanks or equipment are not in compliance with the requirements of this subchapter, the Committee may recommend service trials to determine the merits of a change in specifications. Such service trials may be conducted only if the builder or shipper applies for and obtains an exemption.

30. § 179.5 would be amended as follows:

a. In paragraph (a), the wording “owner, the Department, and” would be removed and the wording “owner and” added in its place;

b. In paragraph (b), the last sentence would be removed;

c. In paragraph (d), in the first sentence, the word “Secretary” would be removed and the wording “Executive Director—Tank Car Safety, AAR” added in its place and in the second sentence, the wording “Bureau of Explosives” would be removed and the wording “Executive Director—Tank Car Safety, AAR” added in its place; and

d. Paragraph (c) would be revised to read as follows:

§ 179.5 Certificate of construction.

\* \* \* \* \*

(c) If the owner elects to furnish service equipment, the owner shall furnish the Executive Director—Tank Car Safety, AAR, a report in prescribed form, certifying that the service equipment complies with all the requirements of the specifications.

\* \* \* \* \*

31. In § 179.7, paragraph (f) would be revised to read as follows:

§ 179.7 Quality assurance programs.

\* \* \* \* \*

(f) No tank car facility may manufacture, repair, inspect, test, qualify or maintain tank cars subject to requirements of this subchapter, unless it is operating in conformance with a quality assurance program and written procedures required by paragraphs (a) and (b) of this section.

§ 179.100–13 [Amended]

32. In § 179.100–13, in paragraphs (b) and (c), the wording “except as prescribed in § 179.102 or § 179.130” would be removed and the wording “except as prescribed in §§ 173.314(j), 179.102 or 179.103” added in its place.

33. In Subpart D, the heading for Subpart D would be revised to read as follows:

Subpart D—Specifications for Non-pressure Tank Car Tanks (Classes DOT–111AW and 115AW)

\* \* \* \* \*

34. In § 179.200, the section heading would be revised to read as follows:

§ 179.200 General specifications applicable to non-pressure tank car tanks (Class DOT–111).

\* \* \* \* \*

§ 179.200–14 [Amended]

35. In § 179.200–14, in paragraph (a), the wording “, or in a dome for Class DOT–103 and 104 type cars” would be removed and paragraph (f) would be removed.

§ 179.200–23 [Amended]

36. In § 179.200–23, the section heading would be amended by removing the word “safety” and adding the word “pressure” in its place.

§ 179.200–24 [Amended]

37. In § 179.200–24, in the table, column 2 would be amended by removing the wording “DOT–103–W” and adding the wording “DOT 111A” in its place.

§ 179.201–1 [Amended]

38. In § 179.201–1, the table would be amended by removing the entries for DOT specification 103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, 103W, and 104W tank cars.

§ 179.201–2 [Removed and Reserved]

39. Section 179.201–2 would be removed and reserved.

§ 179.201–3 [Amended]

40. In § 179.201–3, in paragraph (b), the wording “DOT–103B, 103BW, 111A60W5” would be removed and the wording “DOT–111A60W5” added in its place.

41. In § 179.201–6, the following changes would be made:

a. In paragraph (a), the wording “103ALW, 103DW, 103W,” would be removed;

b. In paragraph (b), the wording “103BW,” would be removed;

c. In paragraph (c), the wording “DOT–103CW, 103DW, 103EW,” would

be removed and the word "DOT" added in its place; and  
d. Paragraph (d) would be removed.

**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. 5151–5127; 49 CFR 1.53.

43. In § 180.507, a new paragraph (b)(5) would be added to read as follows:

**§ 180.507 Qualification of tank cars.**

\* \* \* \* \*

(b) \* \* \*

(5) Specification DOT 103A–ALW, 103AW, 103ALW, 103ANW, 103BW, 103CW, 103DW, 103EW, and 104W tank

cars may continue in use, but new construction is not authorized.

Issued in Washington, DC on January 7, 2003, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

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