

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, 173, 178, 179 and 180**

[Docket No. PHMSA-04-18683 (HM-218C)]

RIN 2137-AD87

**Hazardous Materials; Miscellaneous Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations by incorporating miscellaneous changes based on petitions for rulemaking and PHMSA initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

**DATES:** *Effective Date:* The effective date of these amendments is August 12, 2005.

*Incorporation by Reference Date:* The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of August 12, 2005.

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

**SUPPLEMENTARY INFORMATION:****I. Background**

This final rule reduces regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on PHMSA'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, PHMSA ("we" and "us") is eliminating, revising, clarifying and relaxing certain other regulatory requirements. On August 12, 2004, RSPA, the predecessor agency to PHMSA, published a notice of proposed rulemaking (NPRM) under Docket RSPA-04-18683 (HM-218C; 69 FR 49846). The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion. We received eight comments in response to the NPRM. These comments were submitted by trade associations, such as the Air

Transport Association (ATA), the Chlorine Institute (CI), and the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA); hazardous materials consulting firms; and providers of emergency response. Most commenters expressed support for various proposals, but some commenters raised concerns about certain provisions in the proposal that are discussed below. Certain commenters raised issues that are beyond the scope of this rulemaking; such comments will not be addressed.

The following is a section-by-section summary of changes, and, where applicable, a discussion of comments received.

*Section-by-Section Review*

## Part 171

## Section 171.7

In the NPRM, we proposed to incorporate by reference a document entitled "An Example of a Test Method for Vent Sizing—OPPSD/SPI Methodology," which described an alternative method to determine the vent size of emergency relief devices on portable tanks transporting organic peroxides. This document was added to the § 171.7(b) *List of informational materials not requiring incorporation by reference* in a final rule published December 20, 2004, under Docket No. RSPA-04-17036 (HM-215G; 69 FR 76061); therefore, the proposal is not adopted in this final rule.

Under the entry "American Society for Testing and Materials" (ASTM), we are incorporating by reference ASTM Standards A 1008/A 1008M-03 "Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High-Strength Low-Alloy with Improved Formability" and A 1011/A 1011M-03a "Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low-Alloy and High-Strength Low-Alloy with Improved Formability." We received a comment from the ASTM requesting we incorporate by reference ASTM Standards A1008/A1008M-04b and A1011/A1011M-04a to reflect the latest version of these standards. Because we did not propose to incorporate the newer edition of these standards in the NPRM, we are not incorporating them at this time. These standards may be considered for incorporation by reference in a future rulemaking.

We are updating the Compressed Gas Association "CGA Pamphlet C-6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders" from the 1995 edition to the

2002 edition. We proposed to update CGA Pamphlet C-6.1 in an NPRM published on September 10, 2003, under Docket No. RSPA-03-14405 (HM-220F; 68 FR 53318). Because of delay in finalizing HM-220F, we are incorporating the 2002 edition of CGA Pamphlet C-6.1 in this final rule. The 2002 edition of the standard has provisions discussing cleaning methods that may result in the removal of cylinder wall material. It also contains a new requirement that all aluminum cylinders be internally inspected for cracks in the neck region. Also see § 180.212 preamble discussion.

We are incorporating by reference the Department of Defense's (DOD) "Packaging of Hazardous Material, DLAD 4145.41/AR 700-143/AFJI 24-210/NAVSUPINST 4030.55B/MCO 4030.40B."

Also, we are updating the following documents which are incorporated by reference:

- Chlorine Institute instruction booklets entitled "Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders" (Edition 10, June 2003) and "Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers" (Edition 9, June 2003);
- Transport Canada "Transportation of Dangerous Goods Regulations (August 15, 2001)" edition.

In paragraph (b), we are removing the table entry "National Association of Corrosive Engineers (NACE)" and NACE Standard TM-01-69 which described an acceptable test for a liquid corrosive material. This entry is obsolete because the definition and testing methods for corrosive materials have been revised.

## Section 171.8

In the NPRM, we proposed to revise the definition for "Materials of trade" (MOTs) by removing the phrase "in direct support of a principal business that is other than transportation by motor vehicle." This would allow private carriage of qualified hazardous materials under the MOTs exception regardless of the principal business of the carrier. We received one comment in favor of this proposal. Since publication of the NPRM, we have identified additional issues pertaining to the transportation of hazardous materials under the MOTs exception that require further study; therefore, we are not adopting the proposal in this final rule.

## Section 171.12a

In paragraph (b)(2), we are clarifying that certain exceptions in Transport Canada's Transportation of Dangerous Goods (TDG) Regulations are not

recognized under the reciprocity provisions; specifically, materials subject to the 500 kg exception in paragraph 1.16 of the TDG Regulations may not be transported under the provisions of § 171.12a and are subject to the requirements of the HMR.

#### Section 171.14

We are removing paragraph (d)(3) because the transition period for use of the KEEP AWAY FROM FOOD label and placard has expired.

#### Part 172

##### Section 172.101

We are adding a statement in § 172.101(i)(3) and a new paragraph (i)(5) to clarify that some bulk packaging authorizations are found in column (8B) and the special provisions in column (7) of the HMT.

We are revising the entry for “Bromine” and adding two new entries, one for bromine solution, PIH Zone A and one for bromine solution, PIH Zone B. This recognizes that some bromine solutions do not meet the criteria for a PIH Zone A material and are, in fact, in Hazard Zone B. Also, for the entry “Bromine” we are adding stowage category “D” for vessel transportation in column (10A) of the HMT. In the NPRM, we proposed to remove Special provisions A3 and A6 in column (7) for the entry “Bromine.” Special provisions A3 and A6 were removed in a final rule published December 20, 2004, under Docket No. RSPA-04-17036 (HM-215G; 69 FR 76075).

We are reinstating the entry “Denatured Alcohol, NA 1987” in response to a petition by the Renewable Fuels Association (P-1430). We are also adding a new Special provision 172 for the entries “Denatured Alcohol, NA 1987” and “Alcohols, n.o.s., UN 1987” to allow solutions of alcohol and petroleum products to be described as either “Denatured Alcohol” or “Alcohols, n.o.s.” provided the solution contains no more than 5% petroleum products.

For the entries “sec-Butyl chloroformate, NA 2742” and “Isobutyl chloroformate, NA 2742” we are adding the word “Forbidden” in columns (9A) and (9B). These materials are poisonous by inhalation in Hazard Zone B and are forbidden on passenger and cargo only aircraft.

For the entry “Refrigerating machines, containing flammable, non-toxic, liquefied gas, UN 3358” we are adding a reference to § 173.307 in column (8A) of the HMT. This will except refrigerating machines containing 12 kg (25 pounds) or less of a flammable, non-

toxic gas from the HMR, except when offered or transported by air or vessel. We are also correcting inconsistencies with the International Maritime Dangerous Goods (IMDG) Code pertaining to vessel stowage for this entry.

In the NPRM, we proposed to add a reference to the limited quantity exception for flammable liquids in Column (8A) of the HMT for the entry “1,3,5-Trimethylbenzene, UN 2325.” We revised the entry “1,3,5-Trimethylbenzene, UN 2325” in a final rule published December 20, 2004, under Docket No. RSPA-04-17036 (HM-215G; 69 FR 76145) to include the limited quantity exception.

##### Section 172.102

We are revising Special provision 53 to provide relief from the subsidiary hazard class/division entry on the shipping paper if the material is excepted from the subsidiary label requirements. We are also adding a new Special provision 172 for alcohol mixtures containing up to 5% petroleum products.

##### Section 172.203

We are adding a new paragraph (l)(4) that cross-references the requirements and exceptions for marine pollutants in § 171.4. A commenter suggests that the language proposed in the NPRM might suggest “the consignor who packs the freight container or other cargo transport unit and offers it in intermodal transportation has no obligation to declare the marine pollutant on the shipping paper, or mark the inner packages and the CTU with the MARINE POLLUTANT mark since the initial transport is by road or rail.” The commenter asks us to exclude shipments that are “intended for vessel transportation” from the exception in § 171.4. We disagree. Marine pollutants in non-bulk packagings transported domestically by rail or motor vehicle are not subject to the HMR. If subsequent transportation is by vessel, the shipment must be brought into compliance. The HMR do not prescribe how this is to be accomplished; it is left to the shippers’ discretion. Mandating compliance with the vessel transportation requirements of the HMR or the IMDG Code from the original point of origin may impose additional burdens and costs to the offeror. We did not consider such burdens and associated costs and consider this comment beyond the scope of this rulemaking. We disagree with the commenter that the proposed language creates difficulties for the shipper; it is a cross-reference to existing language in § 171.4 and does

not impose additional burdens. We are adopting the paragraph as proposed.

##### Section 172.205

We are adding a new paragraph (i) alerting the user that the word “Waste” must precede the proper shipping name as provided by § 172.101(c)(9).

##### Section 172.504

We are amending § 172.504(g)(2) to clarify that explosives articles of compatibility groups C, D, or E when transported with explosives articles in compatibility group N may be placarded with a Class 1 compatibility group D placard. The display of only one placard bearing one compatibility letter when certain Class 1 materials of different compatibility groups are transported together in a single transport vehicle or container is authorized in the HMR.

##### Section 172.519

We are editorially revising paragraph (f) by adding the parenthetical phrase “(IBR, see § 171.7 of this subchapter),” after the wording “ICAO Technical Instructions, the IMDG Code, or the TDG Regulations.”

#### Part 173

##### Section 173.7

We are authorizing military shipments of hazardous materials to be packaged in accordance with the procedures prescribed in the DOD document “Packaging of Hazardous Material, DLAD 4145.41/AR 700-143/AFJI 24-210/NAVSUPINST 4030.55B/MCO 4030.40B” as an alternative to the HMR. This document replaces the packaging standards in the document “Performance Oriented Packagings of Hazardous Material, DLAR 4145.41/AR 700-143/AFR 71-5/NAVSUPINST 4030.55/MCO 4030.40.”

##### Section 173.28

In paragraph (b)(3), we are clarifying that packagings made of fiberboard are authorized for reuse.

##### Section 173.31

We are amending paragraph (b) to except tank cars transporting elevated temperature materials and molten sulfur from retrofit bottom discontinuity protection requirements. Based on past risk-analysis evaluations conducted by the Federal Railroad Administration (FRA) and industry, it was determined that tank cars transporting elevated temperature materials and molten sulfur do not require retrofit protection.

##### Section 173.150

In the NPRM, we proposed to remove paragraph (f)(1), which contains the

definition of "combustible liquid." The definition is also found in § 173.120 Class 3—Definitions. VOHMA requested we reconsider this proposal because of problems that are encountered in intermodal transportation. Combustible liquids in non-bulk packagings are not subject to the HMR when transported domestically. VOHMA states that when these shipments are subsequently offered for international transportation, re-shippers may be unaware that these materials are regulated in international commerce and may fail to comply with the applicable regulations. VOHMA suggests that retaining the classification criteria for a combustible liquid in § 173.150 may alert shippers to the classification differences between the HMR and international regulations and prevent undeclared hazardous materials from entering the transportation system. We agree, and are not adopting this proposal.

#### Section 173.225

In the NPRM, we proposed to revise the Note to paragraph (e)(3)(vi) by authorizing an alternative method to determine the size of emergency-relief devices on portable tanks. In a final rule published on December 20, 2004, under Docket No. RSPA 04–17036 (HM–215G; 69 FR 76172), we redesignated paragraph (e) as paragraph (h) and authorized this alternative method of an emergency-relief device sizing.

#### Section 173.241

For clarity, in paragraph (c), we are adding a reference to certain additional requirements in § 176.340 that apply when offering combustible liquids in portable tanks for transportation by vessel.

#### Section 173.301

In the NPRM, we proposed to revise the requirement in paragraph (a)(9) that a strong outer packaging containing specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must conform to the requirements in § 173.25. Instead of referencing § 173.25, we proposed to require the outside of the combination packaging to be marked with an indication that the inner packagings conform to the prescribed specification. Our intention was to clarify that the outer packaging is not an overpack and, thus, each inner cylinder must comply with the Part 172 marking and labeling requirements. The Air Transport Association (ATA) objects to marking the outer packaging with a statement indicating that the inner packagings conform to the prescribed specifications because it implies "that the outer packagings are in fact

overpacks and would create inconsistency with the International Civil Aviation Organization's Technical Instructions, where, beginning in 2005, an overpack must be marked with the word 'Overpack.'" ATA also requests that we delete the reference to an overpack in Special provision A52. ATA states that air carriers use many thin walled DOT 3HT cylinders that are required to be placed in outer packagings meeting the ATA specification 300 standard and meet the strong outer packaging requirement in § 173.302a(a)(2) of the HMR. ATA states that, should the proposed marking be finalized, air carriers will be forced to use separate marked packagings for their DOT 3HT cylinders. Also, ATA suggests that operational confusion regarding the appropriate use or reuse of outer packagings marked with the proposed marking instead of the "Overpack" marking could lead to unwarranted actions by enforcement personnel.

We disagree with ATA that a marking indicating the inner packagings conforming to the prescribed specification implies the packaging is an overpack. There are other instances in the HMR where this marking is required, e.g., in § 173.306 where DOT 2P and 2Q containers must be in a combination packaging and the outer packaging is a non-specification packaging. Because the outer packaging does not have specification markings, the proposed marking alerts anyone coming into contact with the package that the inner container is a specification packaging.

We also disagree with ATA that Special provision A52 should be revised to remove the word "overpack." The special provision requires an oxygen cylinder that is loaded into a passenger-carrying aircraft or into an inaccessible cargo location on a cargo-only aircraft to be placed in an overpack or an outer packaging meeting the performance criteria in ATA specification 300 for Category I. The current HMR requirements authorize compressed oxygen to be packaged in DOT 3, 3A, 3AA, 3AL, 3B, 3E, 3HT, 4B, 4BA and 4BW cylinders. Of these cylinders, only the DOT 3E, 3HT and spherical 4BA cylinders are considered to be inner packagings. The other cylinders must be properly marked and labeled individually in accordance with Part 172 and, when offered for air transportation, placed in an overpack conforming to § 173.25.

In this final rule, we are revising paragraph (a)(9) to require an outer packaging containing specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders to be marked to

indicate that the inner packagings conform to the prescribed specifications, as proposed in the NPRM. Consistent with this change, we are also revising the last sentence in § 173.302a(a)(2) and Note 7 following the table in § 173.304a(a)(2) by adding a reference to § 173.301(a)(9).

In paragraph (l)(2), we are revising the wording to state clearly that foreign cylinders filled for export, in addition to meeting the maximum filling density and service pressure requirements, must be fitted with pressure relief devices when required by the HMR for the gas contained within the cylinder.

We are editorially revising paragraph (m) by adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" after the first occurrence of the term "Canadian Transport of Dangerous Goods (TDG) Regulations."

#### Section 173.302a

In paragraph (a)(2), we are removing the reference to the overpack provisions in § 173.25 and adding a reference to § 173.301(a)(9).

We are editorially revising paragraph (a)(3).

In paragraph (d), we are authorizing use of a DOT 3AL1800 cylinder for the transportation of diborane and diborane mixtures.

We are adding new paragraph (e) to reinstate the requirement that a cylinder containing fluorine may not be charged to over 400 psig at 21 °C (70 °F) and may not contain more than 2.7 kg (6 lbs) of gas.

#### Section 173.304a

In the paragraph (a)(2) table, in column 3, we are removing several references to DOT specification 4, 4A, 9, 38, 40 and 41 cylinders that are no longer authorized for use. Also, for the entry Bromotrifluoromethane, in column 3, we are correcting the reference "DOT–3AL40" to read "DOT–3AL400." We are revising the last sentence in Note 7 following the table to reference the packaging provisions in § 173.301(a)(9). We are also correcting a typographical error in Note 8.

#### Sections 173.314 and 173.319

In the NPRM, we proposed to require notification of delayed rail cars containing a time-sensitive product to the FRA instead of the Bureau of Explosives (BOE). Two commenters, the Chlorine Institute and the BOE, support moving the reporting requirements to FRA. The Chlorine Institute also states that the carrier, not the shipper, should be reporting the delay since the carrier knows where the rail car is. In the NPRM, we did not propose to transfer

this requirement from the shipper to the carrier. At this time, we prefer to retain the reporting requirement as a shipper responsibility and are adopting the change as proposed.

We also received a comment from the AAR regarding our statement in the Regulatory Analyses and Notices section of this rule that "BOE no longer exists." We apologize for this misstatement. Since 1997 the Bureau of Explosives Field Force and associated activities have been under the direction of The Transportation Technology Center, Inc., which is a wholly owned subsidiary of the AAR.

#### Section 173.315

In the paragraph (a) table, column 4, we are adding a reference to Note 27 for the entry "Ammonia, anhydrous or Ammonia solutions, with greater than 50 percent ammonia," and following the table, we are adding a new Note 27 to authorize the use of non-specification cargo tanks.

#### Section 173.337

In the introductory text, we are reinstating a requirement that a cylinder containing nitric oxide may be charged to a pressure of not more than 5,170 kPa (750 psig) at 21° C (70° F).

#### Part 178

##### Sections 178.338–2 and 178.345–2

We are removing the reference to ASTM Standard A 607 and adding ASTM Standards A 1008/A 1008M and A 1011/A 1011M in its place.

#### Section 178.606

In paragraph (c)(2), we are correcting the formula for calculating the pressure to be applied when a packaging containing a solid is subjected to a dynamic compression test.

#### Part 179

##### Section 179.200–7

In paragraph (e), we are adding a reference to § 171.7 for a standard that is incorporated by reference.

#### Part 180

##### Section 180.205

In paragraph (c)(2), we are adding a reference to new § 180.212. See § 180.212 preamble discussion. Also, we are broadening the provisions in paragraph (i)(2) to allow a composite cylinder that is condemned to have the wording "CONDEMNED" displayed instead of stamped on the cylinder. The use of a label is currently authorized in some exemptions.

#### Section 180.212

We are adding a new section allowing repairs to a DOT 3-series cylinder under the terms of an approval issued by the Associate Administrator under Subpart I of Part 107. In addition, the person who performs the repair work must have an approval as currently required under Subpart H of Part 107. An approval will not be required for the removal and replacement of non-pressure components on a DOT 3-series cylinder, such as a neck ring or foot ring; the replacement material must be equivalent to that used at the time of original manufacture.

Additionally, in the NPRM, we proposed that an approval would not be required for the repair of worn or damaged cylinder neck threads when performed by the original cylinder manufacturer in accordance with the cylinder's specification requirements and under the supervision of an independent inspection agency. We are relaxing this provision to permit re-threading to be performed by any manufacturer of these types of cylinders. CGA Pamphlets C–6 and C–6.1 contain guidelines for inspection of the cylinder neck areas for damaged threads. The cylinder must be rejected if the required number of effective threads are not engaged to provide a gas-tight seal. The rejected cylinder may qualify for repair to restore the effectiveness of the threads. If the threads cannot be repaired, the cylinder must be condemned. We proposed to update the reference to CGA Pamphlet C–6.1 from the 1995 to the 2002 edition in an NPRM published on September 10, 2003 (HM–220F; 68 FR 53318). The 2002 edition contains criteria for inspection of cylinder neck threads for abnormal thread conditions resulting from structural defects, corrosion, or damage. Because of delay in finalizing HM–220F, we are incorporating the 2002 edition of CGA Pamphlet C–6.1 in this final rule. Currently CGA is updating CGA Pamphlet C–6 to better address inspection for neck areas on high pressure and low pressure steel cylinders. We will consider adopting the revised pamphlet in a future rulemaking.

#### Section 180.417

In paragraph (b)(2)(v), we are reinstating the requirement that each test or inspection report completed for a repaired cargo tank must include the ASME or National Board Certificate of Authorization number of the facility performing the repairs.

#### Regulatory Analyses and Notices

##### A. Statutory/Legal Authority for This Rulemaking

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

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

This final rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the U.S. Department of Transportation (44 FR 11034). The costs and benefits of this rule are considered to be so minimal as to not warrant preparation of a regulatory evaluation.

In this final rule, we are amending 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 and add references to standards that are incorporated in the HMR. These clarifications and updates of the HMR will enhance safety while reducing the compliance burden on the regulated industry. In the NPRM, we invited public comment on any impacts of the proposed changes. We did not receive any comments regarding the impacts of these changes.

##### C. Executive Order 13132

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

Federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects:

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

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

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, content, 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, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous material.

This final rule addresses covered subject items (1), (2), and (5) described above and preempts any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” (see 49 CFR 107.202(d)) as the Federal requirements.

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

#### D. Executive Order 13175

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

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends

miscellaneous provisions in the HMR to clarify provisions based on our own initiatives and also on petitions for rulemaking. While maintaining safety, it relaxes certain requirements that are overly burdensome and updates references to consensus standards that are incorporated in the HMR. These amendments are intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. The changes proposed in this Notice will enhance safety while reducing the compliance burden on the regulated industry. I certify that this final rule does not have a significant economic impact on a substantial number of small entities.

#### F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0559, “Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail” with 2,759 burden hours, and an expiration date of May 31, 2006. This final rule will result in a minimal increase in information collection and recordkeeping burden under OMB Control Number 2137–0559, due to editorial changes to §§ 173.314 and 173.319. We are removing references to BOE in §§ 173.314 and 173.319, and replacing them with references to FRA. Therefore, this final rule will result in a minimal increase in burden since FRA instead of BOE will now be notified if a rail car containing a time-sensitive product is not received within 20 days from shipment.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule.

PHMSA has developed burden estimates to reflect changes in this final rule. The revised burden indicated below includes revisions in this final rule and corrections of previous mathematical errors discovered during the review process. PHMSA estimates the net total of information and

recordkeeping burden in this final rule as: “Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail” OMB Number 2137–0559:

*Total Annual Number of Respondents:* 266.

*Total Annual Responses:* 16,781.

*Total Annual Burden Hours:* 2,689.

*Total Annual Burden Cost:* \$102,586.25.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB approval for this information collection request when approved by OMB.

In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, OMB, at fax number 202–395–6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

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

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

#### H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of this final rule on the environment and have concluded that there would be no

significant environmental impacts associated with this final rule.

#### J. Privacy Act

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

#### List of Subjects

##### 49 CFR Part 171

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

##### 49 CFR Part 172

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

##### 49 CFR Part 173

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

##### 49 CFR Part 178

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

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

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

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

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

#### ■ 2. In § 171.7:

■ a. In the paragraph (a)(3) table:

■ (1) Under the entry “American Society for Testing and Materials,” two new standards are added in appropriate numerical order;

■ (2) Under the entry “Chlorine Institute, Inc.,” the address for the Chlorine Institute and the entries for Chlorine Institute Emergency Kit “A” and “B” are revised;

■ (3) Under the entry “Compressed Gas Association, Inc.,” the entry for pamphlet C–6.1 is revised;

■ (4) Under the entry “Department of Defense (DOD),” a new entry is added in appropriate alphabetical order; and

■ (5) Under the entry “Transport Canada,” the entry is revised.

■ b. In the paragraph (b) table, the entry “National Association of Corrosion Engineers,” is removed.

The revisions and additions read as follows:

#### § 171.7 Reference material.

(a) \* \* \*

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

Source and name of material	49 CFR reference
<i>American Society for Testing and Materials.</i>	
ASTM A 1008/A 1008M—03 Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability.	178.338–2; 178.345–2
ASTM A 1011/A 1011M—03a Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low Alloy and High Strength Low-Alloy with Improved Formability.	178.338–2; 178.345–2
<i>Chlorine Institute, Inc.</i> , 1300 Wilson Boulevard, Arlington, VA 22209	
Chlorine Institute Emergency Kit “A” for 100-lb. & 150 lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 10, June 2003.	173.3
Chlorine Institute Emergency Kit “B” for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks), Edition 9, June 2003.	173.3
<i>Compressed Gas Association, Inc.</i> , CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002, Fourth Edition.	180.205; 180.209
<i>Department of Defense (DOD),</i>	
Packaging of Hazardous Material, DLAD 4145.41/ AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B, January 14, 2000.	173.7
<i>Transport Canada,</i>	
Transportation of Dangerous Goods (TDG) Regulations, August 2001 including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2002–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; and Amendment 3 (SOR/2003–400) December 3, 2003.	171.12a; 172.401; 172.502; 172.519; 172.602; 173.301.

Source and name of material					49 CFR reference
*	*	*	*	*	*

■ 3. In § 171.12a, paragraph (b)(2) is revised to read as follows:

**§ 171.12a Canadian shipments and packagings.**

\* \* \* \*

(b) \* \* \*

(2) A material designated as a hazardous material under this subchapter which is not subject to the requirements of the TDG Regulations or is afforded hazard communication or packaging exceptions not authorized in this subchapter (*e.g.*, paragraph 1.16 of the TDG Regulations excepts quantities of hazardous materials less than or equal to 500 kg gross transported by highway or rail) may not be transported under the provisions of this section.

\* \* \* \*

**§ 171.14 [Amended]**

■ 4. In § 171.14, paragraph (d)(3) is removed and reserved.

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

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

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

■ 6. In § 172.101, the first and second sentences in paragraph (i)(3) are revised and a new paragraph (i)(5) is added to read as follows:

**§ 172.101 Purpose and use of the hazardous materials table.**

\* \* \* \*

(i) \* \* \*

(3) \* \* \* Column (8C) specifies the section in part 173 of this subchapter that prescribes packaging requirements for bulk packagings, subject to the

limitations, requirements, and additional authorizations of Columns (7) and (8B). A “None” in Column (8C) means bulk packagings are not authorized, except as may be provided by special provisions in Column (7) and in packaging authorizations Column (8B).

\* \* \* \*

(5) *Cylinders.* For cylinders, both non-bulk and bulk packaging authorizations are set forth in Column (8B). Notwithstanding a designation of “None” in Column (8C), a bulk cylinder may be used when specified through the section reference in Column (8B).

\* \* \* \*

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

## § 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger air-craft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
[REMOVE:]													
+	Bromine or Bromine solutions	8	UN1744 ..	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	227	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
[ADD:]													
+	Bromine	8	UN1744 ..	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine solutions	8	UN1744 ..	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine solutions	8	UN1744 ..	I	8, 6.1	2, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	227	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
D	Denatured alcohol	3	NA1987 ..	II III	3	172, T8, T31 172, B1, T7, T30	150 150	202 203	242 242	5 L 60 L	60 L 220 L	B. A.	
[REVISE:]													
*	Alcohols, n.o.s.	3	UN1987 ..	1	3	172, T11, TP1, TP8, TP27. 172, IB2, T7, TP1, TP8, TP28. 172, B1, IB3, T4, TP1, TP29.	None 150 150	201 202 203	243 242 242	1 L 5 L 60 L	30 L 60 L 220 L	E. B. A.	
D	sec-Butyl chloroformate	6.1	NA2742 ..	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100
D	Isobutyl chloroformate	6.1	NA2742 ..	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100



§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.*.*)			(9) Quantity limitations		(10) Vessel stowage	
							Excep- tions	Non-bulk	Bulk	Passenger air- craft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* Refrigerating machines, containing flammable, non-toxic, liquefied gas.	2.1	UN3358	..	2.1	.....	306, 307	306	306	Forbidden	Forbidden	D	40
	*		*		*	*		*	*	*	*		*

■ 8. In § 172.102, in paragraph (c)(1), in Special provision 53, the first sentence is revised and new Special provision 172 is added in appropriate numerical order to read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

**Code/Special Provisions**

\* \* \* \* \*

53 Packages of these materials must bear the subsidiary risk label, "EXPLOSIVE", and the subsidiary hazard class/division must be entered in parentheses immediately following the primary hazard class in the shipping description, unless otherwise provided in this subchapter or through an approval issued by the Associate Administrator, or the competent authority of the country of origin. \* \* \*

172 This entry includes alcohol mixtures containing up to 5% petroleum products.

\* \* \* \* \*

■ 9. In § 172.203, a new paragraph (l)(4) is added to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(1) \* \* \*

(4) Except when transported aboard vessel, marine pollutants in non-bulk packagings are not subject to the requirements of this subchapter (see § 171.4 of this subchapter).

\* \* \* \* \*

■ 10. In § 172.205, a new paragraph (i) is added to read as follows:

**§ 172.205 Hazardous waste manifest.**

\* \* \* \* \*

(i) The shipping description for a hazardous waste must be modified as required by § 172.101(c)(9).

■ 11. In § 172.504, paragraph (g)(2) is revised to read as follows:

**§ 172.504 General placarding requirements.**

\* \* \* \* \*

(g) \* \* \*

(2) Explosive articles of compatibility groups C, D, or E, when transported with those in compatibility group N, may be placarded displaying compatibility group D.

\* \* \* \* \*

**§ 172.519 [Amended]**

■ 12. In § 172.519, in paragraph (f), the wording "the ICAO Technical Instructions, the IMDG Code, or the TDG

Regulations," is removed and the wording "the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations (IBR, see § 171.7 of this subchapter)," is added in its place.

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

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

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

**§ 173.7 [Amended]**

■ 14. In § 173.7, in paragraph (a) introductory text, the wording "Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40" is removed and the wording "Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B (IBR, see § 171.7 of this subchapter)" is added in its place.

■ 15. In § 173.28, paragraph (b)(3) is revised to read as follows:

**§ 173.28 Reuse, reconditioning and remanufacture of packagings.**

\* \* \* \* \*

(b) \* \* \*

(3) Packagings made of paper (other than fiberboard), plastic film, or textile are not authorized for reuse;

\* \* \* \* \*

■ 16. In § 173.31, in paragraph (b)(5), the second sentence is revised to read as follows:

**§ 173.31 Use of tank cars.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \* Tank cars not requiring bottom-discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of July 1, 1996, must conform to these requirements no later than July 1, 2006, except that tank cars transporting a material that is hazardous only because it meets the definition of an elevated temperature material or because it is molten sulfur do not require bottom discontinuity protection. \* \* \*

\* \* \* \* \*

■ 17. In § 173.241, paragraph (c) is amended by adding a new last sentence to read as follows:

**§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.**

\* \* \* \* \*

(c) \* \* \* For transportation of combustible liquids by vessel,

additional requirements are specified in § 176.340 of this subchapter.

\* \* \* \* \*

■ 18. In § 173.301, paragraphs (a)(9), (l)(2) and (m) introductory text are revised to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.**

(a) \* \* \*

(9) Specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

\* \* \* \* \*

(1) \* \* \*

(2) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved.

\* \* \* \* \*

(m) *Canadian cylinders in domestic use.* A Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Canadian Transport of Dangerous Goods (TDG) Regulations (IBR, see § 171.7 of this subchapter) is authorized for the transportation of a hazardous material to, from or within the United States under the following conditions:

\* \* \* \* \*

■ 19. In § 173.302a, the last sentence in paragraph (a)(2), paragraph (a)(3) and the first sentence in paragraph (d) are revised, and a new paragraph (e) is added to read as follows:

**§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.**

(a) \* \* \*

(2) \* \* \* Specification 3HT cylinders may be offered for transportation only when packaged in accordance with § 173.301(a)(9).

(3) *DOT 39 cylinders.* When the cylinder is filled with a Division 2.1 material, the internal volume of the cylinder may not exceed 1.23 L (75 in<sup>3</sup>).

\* \* \* \* \*

(d) \* \* \* Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AL1800 or 3AA1800 cylinder. \* \* \*

(e) *Fluorine.* Fluorine must be shipped in specification 3A1000,

3AA1000, or 3BN400 cylinders without pressure relief devices and equipped with valve protection cap. The cylinder may not be charged to over 400 psig at 21°C (70° F) and may not contain over 2.7 kg (6 lbs) of gas.

■ 20. In § 173.304a, in the paragraph (a)(2) table,

■ a. For the entry “Methyl acetylene-propadiene, mixtures, stabilized”, in column 1, the wording “DOT–3A240” is removed;

■ b. In column 3, make the following changes:

■ i. For the entry “Anhydrous ammonia”, remove the phrases “DOT–4;” and “DOT–4A480;”;

■ ii. For the entry “Bromotrifluoromethane”, remove the phrase “DOT–4A400;” and revise “DOT–3AL40” to read “DOT–3AL400.”;

■ iii. For the entry “Chlorodifluoromethane R–22”, remove the phrase “DOT–41;”;

■ iv. For the entry “Chloropentafluoromethane R–115”, remove the phrase “DOT–4A225;”;

■ v. For the entry “Cyclopropane”, remove the phrase “DOT–4A225;”;

■ vi. For the entry “Dichlorodifluoromethane R–12”, remove the phrases “DOT–4A225;”, “DOT–9;” and “DOT–41;”;

■ vii. For the entry “Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500)”, remove the phrases “DOT–4A240;” and “DOT–9;”;

■ viii. For the entry “Hydrogen sulfide”, remove the phrase “DOT–4A480;”;

■ ix. For the entry “Insecticide, gases liquefied”, remove the phrase “DOT–9; DOT–40; DOT–41;”;

■ x. For the entry “Methyl acetylene-propadiene, mixtures, stabilized”, remove the phrase “DOT–4; DOT–41;”;

■ xi. For the entry “Methyl chloride”, remove the phrases “DOT–4A225;” and “DOT–4; DOT–38;” and “DOT–4A150;”;

■ xii. For the entry “Refrigerant gas, n.o.s. or Dispersant gas, n.o.s.”, remove the phrases “DOT–4A240;” and “DOT–9;”;

■ xiii. For the entry “Sulfur dioxide”, remove the phrases “DOT–4A225;” “DOT–4; DOT–38;”;

■ xiv. For the entry “Trifluorochloroethylene, stabilized”, remove the phrase “DOT–4A300;” and

■ c. In Note 7 following the table, the last sentence is revised to read as set forth below;

■ d. In Note 8, the phrase “§ 173.301(a)(8)” is revised to read

“§ 173.301(a)(9)”.

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

(a) \* \* \*

(2) \* \* \*

**Note 7:** \* \* \* Cylinders may be offered for transportation only when packaged in accordance with § 173.301(a)(9).

\* \* \* \* \*

■ 21. In § 173.314, paragraph (g)(1) is revised to read as follows:

#### § 173.314 Compressed gases in tank cars and multi-unit tank cars.

\* \* \* \* \*

(g) \* \* \*

(1) The shipper shall notify the Federal Railroad Administration whenever a tank car is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to *Hmassist@fra.dot.gov* or telephone call to (202) 493–6229.

\* \* \* \* \*

■ 22. In § 173.315, in the paragraph (a) table, in column 4, the entry “Ammonia, anhydrous or Ammonia solutions with greater than 50% ammonia” is amended by removing the wording “Notes 12 and 17” and adding the wording “Notes 12, 17 and 27” in its place; and following the table, a new Note 27 is added in the appropriate numerical order to read as follows:

#### § 173.315 Compressed gases in cargo tanks and portable tanks.

(a) \* \* \*

**Note 27:** Non-specification cargo tanks may be used for transportation of Ammonia, anhydrous and ammonia solutions with greater than 50% ammonia, subject to the conditions prescribed in paragraph (m) of this section.

\* \* \* \* \*

■ 23. In § 173.319, paragraph (a)(3) is revised to read as follows:

#### § 173.319 Cryogenic liquids in tank cars.

(a) \* \* \*

(3) The shipper shall notify the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to *Hmassist@fra.dot.gov* or telephone call to (202) 493–6229.

\* \* \* \* \*

■ 24. In § 173.337, in the introductory text, the first sentence is revised to read as follows:

#### § 173.337 Nitric oxide.

Nitric oxide must be packed in DOT 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinders charged to a pressure of not more than 5,170 kPa (750 psig) at 21 °C

(70 °F) and conforming to the requirements in § 173.40. \* \* \*

\* \* \* \* \*

### PART 178—SPECIFICATIONS FOR PACKAGINGS

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

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

■ 26. In § 178.338–2, in paragraph (a), the last sentence is revised to read as follows:

#### § 178.338–2 Material.

(a) \* \* \* All material used for evacuated jacket pressure parts must conform to the chemistry and steelmaking practices of one of the material specifications of Section II of the ASME Code or the following ASTM Specifications (IBR, see § 171.7 of this subchapter): A 242, A 441, A 514, A 572, A 588, A 606, A 633, A 715, A 1008/A 1008M, A 1011/A 1011M.

\* \* \* \* \*

#### § 178.345–2 [Amended]

■ 27. In § 178.345–2, in paragraph (a)(1), the wording “ASTM A 607” is removed and the wording “ASTM A 1008/ A 1008M, ASTM A 1011/A 1011M” is added in the appropriate numerical order.

#### § 178.606 [Amended]

■ 28. In § 178.606, in paragraph (c)(2)(ii), the following changes are made:

■ a. In the formula, the wording “Solids:  $A = (N - 1) [w + (s \times v \times 8.3 \times .95) \times 1.5]$ ” is removed and the wording “Solids:  $A = (N - 1) (m \times 1.5)$ ” is added in its place;

■ b. In the definitions following the formula, the wording “m = the certified maximum gross mass for the container in kilograms;” is added in appropriate alphabetical order.

### PART 179—SPECIFICATIONS FOR TANK CARS

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

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

■ 30. In § 179.200–7, in paragraph (e), the first sentence is revised to read as follows:

#### § 179.200–7 Materials.

\* \* \* \* \*

(e) *Nickel plate:* Nickel plate must comply with the following specification (IBR, see § 171.7 of this subchapter):

\* \* \*

\* \* \* \* \*

## PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

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

■ 32. In § 180.205, paragraphs (c)(2)(i), (i)(2) and (i)(3) are revised to read as follows:

### § 180.205 General requirements for requalification of cylinders.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or § 180.212, as appropriate; or

\* \* \* \* \*

(i) \* \* \*

(2) When a cylinder must be condemned, the requalifier must—

(i) Stamp a series of X's over the DOT specification number and the marked pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp;

(ii) For composite cylinders, securely affix to the cylinder a label with the word "CONDEMNED" overcoated with epoxy near, but not obscuring, the original cylinder manufacturer's label; or

(iii) As an alternative to the stamping or labeling as described in this paragraph (i)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

(3) No person may remove or obliterate the "CONDEMNED" marking. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and

offered for transportation in commerce where use of a specification packaging is required.

■ 33. A new section 180.212 is added to read as follows:

### § 180.212 Repair of DOT–3 series specification cylinders.

(a) *General requirements for repair of DOT 3 series cylinders.* (1) No person may repair a DOT 3-series cylinder unless—

(i) The repair facility holds an approval issued under the provisions of subpart I of part 107 of subchapter A of this chapter; and

(ii) Except as provided in paragraph (b) of this section, the repair and the inspection are performed under the provisions of an approval issued under subpart H of part 107 of subchapter A of this chapter and conform to the applicable cylinder specification contained in Part 178 of this subchapter.

(2) The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA, or 3B cylinder that does not affect a pressure part of the cylinder when the repair is performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and any defective cylinder must be rejected. The heat treatment, testing and inspection of the repair must be performed under the

supervision of an inspector and in accordance with the original specification.

(2) External re-threading of a DOT 3AX, 3AAX or 3T cylinder or internal re-threading of a DOT–3 series cylinder to restore the total number of neck threads engaged to the condition specified in the applicable specification. The repair work must be performed by a manufacturer of these types of cylinders. Upon completion of the re-threading, the threaded opening must be inspected by an independent inspection agency and gauged in accordance with Federal Standard H–28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the word "RETHREAD" on the shoulder, head, or neck. No cylinder may be re-threaded more than one time without approval of the Associate Administrator.

■ 34. In § 180.417, paragraph (b)(2)(v) is revised to read as follows:

### § 180.417 Reporting and record retention requirements.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) ASME or National Board Certificate of Authorization number of facility performing repairs, if applicable;

\* \* \* \* \*

Issued in Washington, DC on June 6, 2005 under authority delegated in 49 CFR part 1.

**Stacey L. Gerard,**

*Acting Assistant Administrator/Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.*

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