

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is

being regulated under section 111 or 112 of the Act; or

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[Docket No. PHMSA-2009-0238 (HM-224G)]

RIN 2137-AE49

#### Hazardous Materials: Chemical Oxygen Generators

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

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** PHMSA is confirming the effective date of its direct final rule, published under Docket No. PHMSA-2009-0238 (HM-224G) on October 15, 2009, to amend the Hazardous Materials Regulations by revising the quantity limitation from 25 kg “gross” to 25 kg “net” for packages of chemical oxygen generators transported aboard cargo aircraft only. The direct final rule stated that it would become effective on November 16, 2009 unless an adverse comment or notice of intent to file an adverse comment was received by November 16, 2009. PHMSA did not receive any adverse comments or notice of intent to file an adverse comment to its October 15, 2009 direct final rule.

**DATES:** The November 16, 2009 effective date of the direct final rule published on October 15, 2009 (74 FR 52896), is confirmed.

**FOR FURTHER INFORMATION CONTACT:** T. Glenn Foster, (202) 366-8553, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Standards, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

On January 31, 2007, PHMSA issued a final rule under Docket No. RSPA-04-17664 (HM-224B) to enhance the safety standards for transportation by air of compressed oxygen, other oxidizing gases, and chemical oxygen generators (72 FR 4442). Specifically, the final rule amended the HMR to require cylinders of compressed oxygen and chemical oxygen generators to be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire.

In response to a petition, PHMSA determined it was necessary to revise the quantity limitation for packages of chemical oxygen generators transported aboard cargo aircraft only from 25 kilograms “gross” to 25 kilograms “net,” and published a direct final rule in the **Federal Register** on October 15, 2009.

PHMSA stated in the direct final rule that it would consider as adverse comments only those comments that explain why a rule would be inappropriate, or would be ineffective or unacceptable without a change. PHMSA did not receive an adverse comment or notice of intent to file an adverse comment in response to the direct final rule. In this present notice, PHMSA is confirming that the effective date for the October 15, 2009 direct final rule is November 16, 2009.

#### List of Subjects in 49 CFR Part 172

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

Issued in Washington, DC, on December 7, 2009 under authority delegated in 49 CFR part 106.

**Cynthia L. Quarterman,**  
Administrator.

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