(c) No station may transmit with a transmitter power output exceeding 200 W PEP:

* * * * *

(2) On the 3.525–3.60 MHz, 7.025–7.125 MHz, 21.025–21.20 MHz, and 28.0–28.5 MHz segment when the control operator is a Novice Class, Technician Class, or Technician Plus Class operator; or

* * * * *

(i) No station may transmit with an effective radiated power (ERP) exceeding 50 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a dipole or the equivalent calculation in decibels. A half-wave dipole antenna will be presumed to have a gain of 1. Licensees using other antennas must maintain in their station records either the antenna manufacturer data on the antenna gain or calculations of the antenna gain.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, 171, 173, 174, 176, 177, and 179

[Docket No. PHMSA–2009–0289 (HM–233A)]

RIN 2137–AE39

Hazardous Materials: Incorporation of Special Permits Into Regulations

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations so long as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

DATES: *Effective Dates:* The effective date of these amendments is October 1, 2010.

Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson or Dirk Der Kinderen, Office of Hazardous Materials Standards, (202) 366–8553, or Diane LaValle, Office of Hazardous Materials Special Permits and Approvals, (202) 366–4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations or that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into production and the transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Hazardous materials transported under the terms of a special permit must achieve a level of safety at least equal to the level of safety achieved when transported under the HMR. Implementation of new technologies and operational techniques enhances safety because the authorized operations or activities may achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for conversion into regulations of broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether or not a specific special permit is a candidate for regulatory action include the safety record for hazardous materials transported or operations conducted under a special permit; potential broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Several of the special permits addressed in this final rule have hundreds of party status grantees. Party status is granted to a person who would like to offer for transport or transport a hazardous material, or perform an operation in association with a hazardous material in the same manner as the original applicant. Several special permits addressed in this final rule provide for the manufacture, marking, sale and use of certain packagings for transportation of hazardous materials. These manufacturing special permits are issued to the packaging manufacturer and provide for use of the packagings by hundreds and possibly thousands of distributors and users.

The amendments in this final rule will eliminate the need for approximately 510 current grantees to reapply for renewal of 44 special permits every four years and for PHMSA to process those renewal applications. These amendments also apply to any special permits this agency issues during the development of this final rule whose provisions are identical in every respect to those described in the rulemakings issued under this docket. To emphasize this, we preface the

description of the affected special permits with the wording "include" or "includes" to clarify that additional special permits other than those specifically listed in this final rule may be incorporated under these amendments.

Incorporation of the special permits into the HMR also eliminates a significant paperwork burden. As a condition of a special permit issued by PHMSA and depending on the provisions of the special permit, a copy of each special permit must be: (1) Maintained at each facility where an operation is conducted or a packaging is manufactured under a special permit; (2) maintained at each facility where a package is offered or re-offered for transportation under a special permit; and (3) in some cases, carried aboard each transport vehicle used to transport a hazardous material under a special permit.

II. Notice of Proposed Rulemaking

On December 22, 2009, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 68004) proposing to incorporate a number of special permits into the HMR. The proposed revisions included the following:

- Authorize cargo vessel transportation for salvage cylinders containing damaged or leaking packagings under § 173.3.
- Allow liquid contents in quantities greater than 10% of the capacity in a mechanical displacement meter prover to the extent that draining of the meter prover is impracticable under § 173.5a.
- Authorize the transport of waste Division 4.2, Packing Group (PG) I material and Division 5.2 (organic peroxide) material in lab packs under § 173.12.
- Allow the use of alternative outer packagings for waste lab packs and require use of UN standard steel or plastic drums (at the PG I performance level) as the outer packaging for waste Division 4.2, PG I material and as an overpack for Division 6.1, PG I, Hazard Zone A material under § 173.12.
- Except waste hazardous materials, packaged in lab packs and meeting additional conditions, and Division 6.1 PG I (Hazard Zone A) material packaged in accordance with § 173.226(c) from certain segregation and marking requirements under § 173.12.
- Allow variation in the packing method for packagings prepared in accordance with § 173.13.
- Authorize, for certain hazardous materials, external visual inspection of the rupture disc in a non-reclosing pressure relief device of a rail tank car without requiring removal of the rupture disc § 173.31.
- Authorize the transportation of certain specially designed radiation detectors containing a Division 2.2 (non-flammable gas) material under a new section § 173.310.
- Allow a greater gross weight limitation for packages used for the transport of aerosols for purposes of recycling or disposal under § 173.306.
- Allow rail tank cars to exceed the gross weight on rail limitations upon approval from the Federal Railroad Administration (FRA) under § 179.13.
- Eliminate several requirements for submitting duplicate copies of applications for special permit, party status, or renewal when the applications are submitted electronically.
- Require certification of understanding of a special permit for persons submitting an application for party status to a special permit.

The following companies and organizations submitted comments on the NPRM:

(1) Alcoa (Alcoa)
(2) All-Pak (All-Pak)
(3) Arkema, Inc. (Arkema)
(4) The Association of American Railroads (AAR)
(5) Baker Petrolite Corporation (BPC)
(6) The Chlorine Institute (CI)
(7) E.I. DuPont de Nemours and Company (Dupont)
(8) Fibre Box Association (FBA)
(9) National Association of Chemical Distributors (NACD)
(10) Utility Solid Waste Activities Group (USWG)
(11) Western Regional Group (WRG)

The commenters generally supported the proposals in the NPRM. Some commenters opposed the incorporation of certain special permits. A detailed discussion of the comments follows. (Note that comments beyond the scope of this rulemaking are not addressed in this final rule.)

III. Summary Review of Amendments

A. Salvage Cylinders

Damaged or leaking cylinders containing a Division 2.1, 2.2, 2.3, or 6.1, or Class 3 or 8 material may be overpacked in a salvage cylinder and transported by motor vehicle for repair or disposal (*see* § 173.3(d)). In the NPRM, PHMSA proposed to permit salvage cylinders to also be transported by cargo vessel for purposes of repair or disposal, consistent with the provisions of DOT–SP 14168. One commenter (CI) supported the proposal; no commenters opposed the proposal. We are adopting the amendment as proposed.

B. Meter Provers

A mechanical displacement meter prover (meter prover) is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Section 173.5a(b) excepts meter provers from specification packaging requirements in Part 178 of the HMR provided the meter provers conform to certain conditions. In a final rule published January 24, 2005, under Docket No. RSPA–03–16370 (HM–233) (70 FR 3302), the Research and Special Programs Administration, the predecessor agency to PHMSA, incorporated several special permits concerning meter provers into § 173.5a. As provided by § 173.5a(b), a meter prover is excepted from the specification packaging requirements when, among other criteria, the liquid content of the meter prover does not exceed 10% of capacity (see § 173.5a(b)(2)(i)). PHMSA subsequently issued a special permit to allow transport of meter provers containing flammable liquids in quantities greater than 10% of capacity when conditions make draining of the liquid impracticable. This special permit was based on information that (1) facilities or equipment used to drain and reinject the meter provers may not be readily available while in the field; (2) alternatives such as using DOT specification cargo tanks as meter provers or accompanying a meter prover with DOT specification cargo tanks filled with liquids drained from the meter prover are cost prohibitive; and (3) there is a record of safe transportation of meter provers under provisions from special permits previously adopted into the HMR. In the NPRM, PHMSA proposed to allow meter provers to retain flammable liquid contents in quantities greater than 10% of capacity to the extent that draining the contents to 10% or less is impracticable. The affected special permits include DOT–SP 14405. No commenters addressed this proposal; therefore, in this final rule, PHMSA is adopting the provision as proposed.

Additionally, for consistency with use of the acronym "MAWP" (meaning maximum allowable working pressure) in other provisions of the HMR, in § 173.5a, paragraph (b)(2)(iv), in this final rule, PHMSA is revising the wording "maximum service pressure" to read "MAWP." Finally, for greater understanding and use of the provisions

of § 173.5a(b), we are adding a definition for "Mechanical displacement meter prover" in § 171.8. The definition reads: "Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks."

C. Lab Packs

Certain waste materials are excepted from specification packaging requirements when transported in packagings ("lab packs") that conform to the requirements specified in paragraph (b) of § 173.12. Currently, the outer packaging of the lab packs must be a specification UN 1A2 or UN 1B2 metal drum, UN 1D plywood drum, UN 1G fiber drum, or UN 1H2 plastic drum tested to the PG III performance level. In the NPRM, PHMSA proposed to allow the use of a UN 4G fiberboard box made of at least 500 psig burst strength fiberboard that is tested and marked to at least the PG II performance level as an alternative outer packaging for a lab pack. The affected special permits include DOT–SP 10791, 12927, 13285, 13937, 14510, and 14817. PHMSA also proposed to allow the use of a UN 11G fiberboard intermediate bulk container (IBC) and a UN 11HH2 composite IBC (with a flexible plastic inner receptacle for solids loaded or discharged by gravity) as alternative outer packaging for a lab pack. The affected special permits include DOT–SP 12296, 12668, 12682, 12749, and 12826.

Certain hazardous materials packaged in lab packs conforming to § 173.12(b) are excepted from segregation requirements in Parts 174, 176, and 177 of the HMR provided the materials conform to the segregation requirements in § 173.12(e). In the NPRM, PHMSA proposed to except certain additional waste hazardous materials in lab packs and non-bulk packagings from segregation and overpack marking requirements consistent with the provisions of DOT–SP 13192. We first issued DOT–SP 13192 in 2001 to consolidate earlier special permits that allowed different combinations of incompatible materials, including waste materials, to be transported together on the same transport vehicle. The waste materials are subject to safety control measures designed to mitigate the risks presented by these materials, such as quantity limitations, additional packaging, and segregation requirements. Revised editions of DOT–SP 13192 have authorized the transport of additional hazardous materials not currently authorized for transport under § 173.12. These hazardous materials include Division 4.2 PG I material (subject to more stringent outer packaging requirements), Division 5.2 (organic peroxide) material, and Division 6.1 PG I (Hazard Zone A) material (for purposes of exception from segregation requirements only). Experience with DOT–SP 13192 suggests that when certain incompatible hazardous materials are properly packaged in lab packs and other authorized non-bulk packages, the possibility of these materials commingling in an incident is greatly reduced, if not eliminated, because of the integrity of the packagings and, for liquids, because of the requirement to include a sufficient amount of chemically compatible absorbent material to absorb the contents.

Two commenters (Dupont, NACD) supported adoption of these amendments. Thus, in this final rule, PHMSA is authorizing the transport of Division 4.2 PG I material and Division 5.2 (organic peroxide) material in lab packs, and the transport of waste Division 6.1 PG I (Hazard Zone A) material with other waste materials if packaged in accordance with § 173.226(c) of the HMR and further packaged in an overpack of a specification UN steel or plastic drum at the PG I performance level. In addition, for greater clarity, we are making several conforming amendments to the segregation requirements in Parts 174, 176, and 177 to specify that the requirements do not apply to Division 6.1 PG I (Hazard Zone A) material transported in conformance with § 173.12(e).

D. Excepted Packaging

Conditions for transport of hazardous materials in non-specification packaging are outlined in § 173.13. Currently, for packaging of liquids, the liquid must be placed in an inner packaging which is then placed in a hermetically sealed barrier bag that is wrapped in chemically compatible absorbent material and then placed in a metal can. PHMSA has issued a number of special permits that allow an alternative configuration in which the inner packaging for liquids is first wrapped in chemically compatible absorbent material and then placed in a hermetically sealed barrier bag which is then placed in a metal can. In the NPRM, PHMSA proposed to incorporate this alternative method of packing inner packagings for liquids into § 173.13. This proposal was drawn from the same provision in the following special permits: DOT–SP 7891, 8249, 9168, 10672, 10962, 10977, 11248, 12401, 13355.

One commenter (All-Pak) opposed adoption of this amendment. All-Pak's understanding from the preamble of the December 2009 NPRM is that a number of existing special permits would be cancelled through the adoption of this brief amendment into § 173.13. All-Pak does not support termination of the affected special permits and believes the special permits should remain in effect because they include additional provisions, such as stronger packaging requirements and authorization to transport additional materials.

All-Pak is correct that the provisions outlined in the listed special permits are broader in scope and more varied than the requirements of § 173.13. In this final rule, PHMSA is amending § 173.13 to allow the alternative packaging configuration in which the inner packaging for liquids may first be wrapped in absorbent material and then placed in a hermetically sealed barrier bag prior to placement in a metal can. Based on the comments presented and our review of this section, the affected special permits are not being incorporated in total under this final rule.

E. Visual Inspection of Rail Tank Cars

The HMR specify requirements for use of rail tank cars transporting hazardous materials in § 173.31. Paragraph (d) of this section requires an offeror to perform an external visual inspection of a rail tank car containing a hazardous material or a residue of a hazardous material prior to offering it for transportation. As part of the examination, paragraph (d)(1)(vi) requires a careful inspection of the rupture (frangible) disc in non-reclosing pressure relief devices for corrosion or damage that may alter the intended operation of the device. Under special permits DOT–SP 11761 and 11864, the rupture disc is not required to be removed prior to visual inspection if the tank car contains residue of a Class 8 (corrosive), PG II or III material with no subsidiary hazard (at no more than three percent of capacity of the tank car) or the residue of Class 9 molten sulfur. Based on the safety record of use of the special permits, in the December 2009 NPRM, we proposed to revise paragraph (d)(1)(vi) to exclude inspection of the underside of the rupture disc on rail tank cars containing residue of a Class 8 (corrosive), PG II or III material with no subsidiary hazard or containing the residue of a Class 9 elevated temperature material. For purposes of

the HMR, "residue" means the hazardous material remaining in a packaging after its contents have been unloaded to the maximum extent possible (*see* § 171.8). Additionally, PHMSA has interpreted "unloaded to the maximum extent possible" to mean that the hazardous material has ceased to flow out of the packaging's unloading device. Operations under these special permits have demonstrated these materials are present in the tank car in insufficient quantity and physical form to present a risk from a release of the material through a rail tank car pressure relief device due to the failure of a rupture disc during transportation.

Two commenters (CI, Dupont) supported the adoption of this proposal. One commenter (AAR) opposed the adoption of this provision on the basis that if the rupture disc is not removed, there is no way to tell whether: (1) A gasket is present; (2) the seats of the disc and the safety vent mounting flange are in proper condition; and (3) the fitting has the required surge protection. AAR provided a summary of data on non-accident releases involving rail tank cars with residue Class 8, PG II or III material (with no subsidiary hazard) and Class 9 material over a five-year period (January 2005 to January 2010). Analysis of the data indicates six non-accident releases in which the cause listed is the corrosion of the rupture disc. AAR noted these six non-accident releases could have been prevented had the rupture disc been inspected before the residue tank car was returned.

AAR added that:

> some discs have their ratings on their side and some have rating[s] around the outer top circumference, which * * * can be hidden by the retainer device. How does one insure the disc is rated properly? The current regulations require the shipper to ensure that all fittings are in proper condition for transportation and it is not clear how that is possible without an inspection of the rupture disc.

PHMSA appreciates AAR's concern regarding the risks of transporting these materials in rail cars with pressure relief devices that may have corroded components. However, there are other measures for identifying possible corrosion problems, including conducting a thorough inspection of the pressure relief device and rupture disc prior to loading of the rail tank car and implementing operating procedures for maintenance and inspection of the components. PHMSA's review of hazardous materials incident reports for the five-year period January 2005–January 2010 identified one report of an incident involving release of a hazardous material due to the corrosion of a rupture disc associated with the transport of a residue amount of corrosive material (hydrochloric acid solution). PHMSA and the Federal Railroad Administration (FRA) continue to believe that there is only a small possibility of release from a tank car transporting a residue amount of a Class 8, PG II or III or Class 9 elevated temperature material caused by corrosion of the rupture disc. Therefore, in this final rule, PHMSA is adopting the amendment as proposed.

F. Radiation Detectors

Radiation detectors are used for measuring the intensity of ionizing radiation. The devices typically contain a gas filled tube or ion chamber where radiation converts the gas into ions and the rate at which these ions are collected is measured as electric current. These radiation detectors are often used as integral parts of medical test equipment, such as a dose calibrator. The HMR require the pressurized gas contained in these devices to be transported in DOT specification cylinders or non-specification containers conforming to § 173.302 or § 173.306.

In the NPRM, PHMSA proposed to authorize in new § 173.310 the transportation of radiation detectors (also described as radiation sensors, electron tube devices, and ionization chambers) containing a gas, specifically, certain Division 2.2 (non-flammable) compressed gases contained in electron tubes that are non-DOT specification, metal, single trip, inside containers that may or may not be hermetically sealed or equipped with a pressure relief device, based on the use of several special permits. As proposed, the inside metal containers must be welded and designed to prevent fragmentation upon impact. The electron tubes may have up to a maximum design pressure of 4.83 MPa (700 psig) and up to a maximum water capacity of 355 fluid ounces (641 cubic inches); and must have a burst pressure of not less than three times the design pressure if equipped with a pressure relief device, and not less than four times the design pressure if not equipped with a pressure relief device. Each radiation detector must be placed in a strong outer packaging capable of withstanding a minimum drop test of 1.2 meters (4 feet) without breaking the device or rupturing the outer packaging, or if shipped as part of equipment, that the equipment provide equivalent protection. Also, each shipment of these devices must be accompanied by emergency response information that must identify those receptacles not fitted with a pressure relief device, and provide guidance on how to manage all the detectors if they are exposed to fire. When transported in conformance with these conditions, PHMSA proposed to except radiation detectors from the specification packaging requirements of the HMR and, except when transported by air, from labeling and placarding requirements of the HMR. The affected special permits include DOT–SP 9030, 9940, 10407, 12131, 12415, 13026, 13109 and 13244.

One commenter (USWAG) specified support for incorporation of DOT–SP 9940. PHMSA is adopting the amendment as proposed.

G. Aerosols for Recycling or Disposal

Exceptions from the requirements of the HMR to transport a material as a fully regulated compressed gas are specified for limited quantities of compressed gases (including in aerosol containers) in § 173.306. Conditions for exception include a 30 kg (66 pound) gross weight limitation for outer packagings. Under DOT–SP 12842, PHMSA authorized the transport of limited quantities of certain Division 2.1 (flammable) and Division 2.2 (non-flammable) gases in aerosol containers packaged in strong outer packagings with gross weights of up to 500 kg (1,100 pounds). PHMSA allowed the increase in gross weight for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility. As part of the conditions for the special permit, each aerosol container must be fitted with a cap to protect the valve stem or the valve stem must be removed to prevent the accidental discharge of the contents. Based on the safe record of transportation of these aerosol containers under this special permit; and based on the condition that some limited quantity materials reclassed as ORM–D material, as authorized under § 173.306, are not subject to the 30 kg (66 pound) gross weight limitation when unitized in packages and offered for transportation in accordance with § 173.156 of the HMR, in the December 2009 NPRM, PHMSA proposed, in § 173.306(k), to authorize the highway transport of aerosol containers conforming to § 173.306 in strong outer packagings not to exceed 500 kg (1,100 pounds) when transported for the purpose of recycling or disposal. The affected special permits include DOT–SP 12842.

Two commenters (Alcoa, USWAG) supported this amendment. Additionally, Alcoa suggested revising paragraph (k)(2) relating to the requirement to protect against

accidental discharge to more closely align with DOT–SP 12842. Alcoa stated:

> we believe it preferable to take a more "performance based" approach to the provision requiring protection from accidental discharge in order to allow other equally effective means (as compared to only protective caps or removal of the valve stem) to be employed. In this regard, we suggest that the provision concerned should instead read: "Each aerosol container is protected against accidental discharge, such as by a protective cap over the valve stem, or, if without a protective cap, by removal of the valve stem, or any other measure that prevents accidental discharge."

Alcoa also suggested removing the limitation that motor vehicle transport must be by private or contract motor carrier or common carrier under exclusive use found in paragraph (k)(3) so there no longer is a need for DOT–SP 11396.

The proposed requirement to protect against accidental discharge is based on the specific conditions outlined in DOT–SP 12842, that each aerosol container must be shipped with a protective cap to protect the valve stem, or if no protective cap is available, the valve stem must be removed from the can. The safe history of use of the special permit is due in large part to the conditions of the special permit. Alcoa did not provide specific examples of alternative methods to protect against accidental discharge. Without evidence of other measures to prevent accidental discharge that provide an equivalent level of safety to protective caps or removal of the valve stem, PHMSA is reluctant to adopt a performance standard.

PHMSA also disagrees with the suggestion to remove the limitation for private or contract motor carrier or common carrier under exclusive use, thereby eliminating the need for DOT–SP 11396. The modal limitation provides a greater level of safety by requiring a greater level of control over shipments.

In this final rule, PHMSA is adopting the provision as proposed in the NPRM. Note that PHMSA is revising the language in § 173.306(k)(1) to clarify that the gross weight limitation of 500 kg (1,100 pounds) applies to the strong outer packaging and its contents, not just the strong outer packaging as written in the NPRM.

H. Rail Tank Car Gross Weight Limitation

The HMR include limitations on rail tank car capacity and gross weight in § 179.13. Currently, this section limits rail tank cars to a maximum capacity of 34,500 gallons (130,597 L) and a gross weight of 263,000 pounds (119,295 kg). PHMSA has granted several special permits to allow tank cars to transport up to 286,000 pounds (129,727 kg) gross weight on rail subject to certain conditions. In the NPRM, PHMSA proposed to revise this section to provide rail carriers with relief from the rail tank car gross weight limitation subject to review of an approval application submitted to the Associate Administrator for Safety, FRA. Providing for an approval process will expedite movement of rail tank cars by simplifying regulatory procedures and eliminating the time constraints associated with the mandatory comment period required for special permit applications. The affected special permits include DOT–SP 11241, 11654, 11803, 12423, 12561, 12613, 12768, 12858, 12903, 13856, 13936, 14004, 14038, 14442, 14505, 14520, 14570, and 14619.

Three commenters (AAR, CI, Dupont) supported adoption of this amendment. However, the commenters suggested that the final rule should include specific procedures for obtaining the specified approval.

We disagree. FRA has established guidelines for applications for authority to transport rail tank cars that are over specified gross weight limitations in a document entitled "Maximizing Safety and Weight." The document instructs applicants to consider safety-related items for both new construction and for existing equipment that include the following topics: (1) Puncture resistance; (2) controlling longitudinal loading; (3) structural-worthiness; (4) track-worthiness; (5) service equipment; (6) service reliability and maintenance management; and (7) maximizing safety and weight. This document may be reviewed at *http://www.fra.dot.gov/Pages/1800.shtml.* In addition, FRA plans to develop risk-based guidance for persons applying for an approval to authorize a gross weight greater than 263,000 pounds and up to 286,000 pounds.

Therefore, in this final rule, PHMSA is adopting the amendment as proposed.

I. Revisions to Procedures

Procedures for serving documents in PHMSA proceedings are established in 49 CFR Part 105. In accordance with these procedures, a non-resident of the United States must designate an agent and file the designation with PHMSA. In this final rule, the phrase "agent for service of process" is added as a synonym for the word "agent" in paragraph (b) of § 105.40(b) to clarify that this term includes an agent for service of process as this phrase is used elsewhere in PHMSA's procedural regulations in 49 CFR Parts 105, 106, and 107. In addition, in this final rule, we revise the definition for "Special Permit" in 49 CFR Part 107 to permit the Associate Administrator of Hazardous Materials Safety to delegate signature authority at the Office Director level. The same revision to the definition for "Special Permit" is made in § 171.8.

Currently, an application for a special permit must be submitted in duplicate no matter the method of submission, whether mail, fax, or e-mail (see § 107.105). In this final rule, PHMSA is revising § 107.105(a)(1) to clarify that a duplicate copy of the application for a special permit is not required when the application is submitted electronically by e-mail. PHMSA is also revising § 107.105(a)(2) to require an e-mail address if available and the DOT registration number, if applicable. Application procedures for party status to a special permit are set forth in § 107.107. In this final rule, PHMSA is revising § 107.107(b)(1) to clarify that a duplicate copy of the application for party status is not required when the application is submitted electronically by e-mail and is revising paragraph § 107.107(b)(3) to require an e-mail address if available and the DOT registration number, if applicable. In addition, PHMSA will require an applicant for party status to provide a justification of the need for party status to the special permit and to certify that the applicant has read and understands the provisions of the special permit for party status.

Application procedures for renewal of a special permit are set forth in § 107.109. In this final rule, PHMSA is revising § 107.109(a)(1) to state that a duplicate copy of an application to renew a special permit is not required when the application is submitted electronically by e-mail.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least

equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The final rule amends the regulations by incorporating provisions from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

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). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

In this final rule, PHMSA amends the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the final rule will reduce the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

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 would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

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

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

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

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

(5) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard. 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. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption will be 90 days from publication of the final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This final rule was 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 on Indian tribal governments, 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 incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, PHMSA certifies this rule will not have a significant economic impact on a substantial number of 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.

F. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements." This final rule may result in a decrease in the annual burden and costs under this information collection due to proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. 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 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. PHMSA estimates that the information collection and recordkeeping burden of this final rule is as follows:

OMB Control No. 2137–0051:

Net Decrease in Annual Number of Respondents: 520.

Net Decrease in Annual Responses: 55.

Net Decrease in Annual Burden Hours: 560.

Net Decrease in Annual Burden Costs: $22,400.

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, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

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 contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and to prepare a detailed statement on actions that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to class a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups (PGs) based upon its degree of hazard, from a high hazard PG I material to a low hazard PG III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each PG are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation accidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene.

There are no significant environmental impacts associated with the amendments in this final rule. We are making clarifications and changes to certain HMR requirements to include methods for packaging and transporting hazardous materials that are currently permitted under widely used special permits with established safety records for inclusion in the HMR. The process through which safety permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of the special permits as regulations of general applicability maintains the existing environmental protections built into the HMR.

J. Privacy Act

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 at *http://www.regulations.gov.*

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

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

49 CFR Part 173

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

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 176

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

49 CFR Part 177

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

49 CFR Part 179

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

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

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 is revised to read as follows:

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

§ 105.40 [Amended]

■ 2. In § 105.40, in the paragraph (b), introductory text, after the word "agent", add the words and punctuation ", also known as "agent for service of process"."

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.1, revise the definition of "Special permit" to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms "special permit" and "exemption" have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

■ 5. In § 107.105, revise paragraph (a) to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit must be written in English and submitted for timely consideration at least 120 days before the requested effective date and must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

(2) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(4) For a manufacturing special permit, include a statement of the name and street address of each facility when manufacturing under the special permit will occur.

* * * * *

■ 6. In § 107.107, revise paragraphs (b)(1), (b)(3), (b)(4), and (b)(5) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

* * * * *

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

■ 7. Revise § 107.109 to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or renewal of party status to a special permit must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

(2) Identify by number the special permit for which renewal is requested;

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement should indicate the approximate number of shipments made

or packages shipped, as the case may be, and number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C; and

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for renewal of party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(b) If at least 60 days before an existing special permit expires the grantee files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

■ 9. In § 171.8, add a new definition for "Mechanical displacement meter prover" and revise the definition for "Special permit" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms "special permit" and "exemption" have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

■ 11. In § 173.3, revise paragraph (d)(6) to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) * * *

(6) Transportation is authorized by motor vehicle and cargo vessel only.

* * * * *

■ 12. In § 173.5a, revise paragraph (b) to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

* * * * *

(b) *Mechanical displacement meter provers.* (1) A mechanical displacement meter prover, as defined in § 171.8 of this subchapter, permanently mounted on a truck chassis or trailer and transported by motor vehicle is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Division 2.1 (flammable gas) or Class 3 (flammable liquid) material. For liquids, the meter prover must be drained to not exceed 10% of its capacity or, to the extent that draining of the meter prover is impracticable, to the maximum extent practicable. For gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with chapters II, III, IV, V and VI of ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the MAWP determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(c) of this subchapter and 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(2) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase "RESIDUE: LAST CONTAINED * * * " before the basic description.

(3) *Periodic test and inspection.* (i) Each meter prover must be externally visually inspected once a year. The external visual inspection must include at a minimum: checking for leakage, defective fittings and welds, defective closures, significant dents and other defects or abnormalities which indicate a potential or actual weakness that could render the meter prover unsafe for transportation; and

(ii) Each meter prover must be pressure tested once every 5 years at not less than 75% of design pressure. The pressure must be held for a period of time sufficiently long to assure detection of leaks, but in no case less than 5 minutes.

(4) In addition to the training requirements in subpart H, the person who performs the visual inspection or pressure test and/or signs the inspection report must have the knowledge and ability to perform them as required by this section.

(5) A meter prover that fails the periodic test and inspection must be rejected and removed from hazardous materials service unless the meter prover is adequately repaired, and thereafter, a successful test is conducted in accordance with the requirements of this section.

(6) Prior to any repair work, the meter prover must be emptied of any hazardous material. A meter prover containing flammable lading must be purged.

(7) Each meter prover successfully completing the external visual inspection and the pressure test must be marked with the test date (month/year), and the type of test or inspection as follows:

(i) V for external visual inspection; and

(ii) P for pressure test.

The marking must be on the side of a tank or the largest piping component in letters 32 mm (1.25 inches) high on a contrasting background.

(8) The owner must retain a record of the most recent external visual inspection and pressure test until the next test or inspection of the same type is successfully completed. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as "Meter Prover returned to service" or "Meter Prover removed from service".

■ 13. In § 173.12, revise paragraphs (b) and (e), redesignate paragraph (f) as new paragraph (g), and add new paragraph (f) to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) *Lab packs.* (1) Waste materials prohibited by paragraph (b)(3) of this section are not authorized for transport in packages authorized by this paragraph (b). Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combination packagings if packaged in accordance with this paragraph (b) and transported for disposal or recovery by highway, rail or cargo vessel. In addition, a generic description from the § 172.101 Hazardous Materials Table may be used in place of specific chemical names, when two or more chemically compatible waste materials in the same hazard class are packaged in the same outside packaging.

(2) Combination packaging requirements:

(i) *Inner packagings.* The inner packagings must be either glass, not exceeding 4 L (1 gallon) rated capacity, or metal or plastic, not exceeding 20 L (5.3 gallons) rated capacity. Inner packagings containing liquid must be surrounded by a chemically compatible absorbent material in sufficient quantity to absorb the total liquid contents.

(ii) *Outer packaging.* Each outer packaging may contain only one class of waste material. The following outer packagings are authorized except that Division 4.2 Packing Group I materials must be packaged using UN standard steel or plastic drums tested and marked to the Packing Group I performance level for liquids or solids; and bromine pentafluoride and bromine trifluoride may not be packaged using UN 4G fiberboard boxes:

(A) A UN 1A2 or UN 1B2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum, tested and marked to at least the Packing Group III performance level for liquids or solids;

(B) At a minimum, a double-walled UN 4G fiberboard box made out of 500 pound burst-strength fiberboard fitted with a polyethylene liner at least 3 mils (0.12 inches) thick and when filled during testing to 95 percent capacity with a solid material, successfully passes the tests prescribed in §§ 178.603 (drop) and 178.606 (stacking), and is capable of passing the tests prescribed in § 178.608 (vibration) to at least the Packing Group II performance level for liquids or solids; or

(C) A UN 11G fiberboard intermediate bulk container (IBC) or a UN 11HH2 composite IBC, fitted with a polyethylene liner at least 6 mils (0.24 inches) thick, that successfully passes the tests prescribed in Subpart O of Part 178 and § 178.603 to at least the Packing Group II performance level for liquids or solids; a UN 11HH2 is composed of multiple layers of encapsulated corrugated fiberboard between inner and outer layers of woven coated polypropylene.

(iii) The gross weight of each completed combination package may not exceed 205 kg (452 lbs).

(3) *Prohibited materials.* The following waste materials may not be packaged or described under the provisions of this paragraph (b): a material poisonous-by-inhalation, a Division 6.1 Packing Group I material, chloric acid, and oleum (fuming sulfuric acid).

* * * * *

(e) *Segregation requirements.* Waste materials packaged according to paragraph (b) of this section and transported in conformance with this paragraph (e) are not subject to the segregation requirements in §§ 174.81(d), 176.83(b), and 177.848(d) if blocked and braced in such a manner that they are separated from incompatible materials by a minimum horizontal distance of 1.2 m (4 feet) and the packages are loaded at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle, or rail car. The following conditions specific to incompatible materials also apply:

(1) *General restrictions.* The freight container, unit load device, transport vehicle, or rail car may not contain any Class 1 explosives, Class 7 radioactive material, or uncontainerized hazardous materials;

(2) *Waste cyanides and waste acids.* For waste cyanides stored, loaded, and transported with waste acids:

(i) The cyanide or a cyanide mixture may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; a cyanide solution may not exceed 2 L (0.6 gallon) per inner packaging and may not exceed 10 L (3.0 gallons) per outer packaging; and

(ii) The acids must be packaged in lab packs in accordance paragraph (b) of this section or in single packagings authorized for the acid in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(3) *Waste Division 4.2 materials and waste Class 8 liquids.* For waste Division 4.2 materials stored, loaded, and transported with waste Class 8 liquids:

(i) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; and

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(4) *Waste Division 6.1 Packing Group I, Hazard Zone A material and waste Class 3, Class 8 liquids, or Division 4.1, 4.2, 4.3, 5.1 and 5.2 materials.* For waste Division 6.1 Packing Group I, Hazard Zone A material stored, loaded, and transported with waste Class 8 liquids, or Division 4.2, 4.3, 5.1 and 5.2 materials:

(i) The Division 6.1 Packing Group I, Hazard Zone A material must be packaged in accordance with § 173.226(c) of this subchapter and overpacked in a UN standard steel or plastic drum meeting the Packing Group I performance level;

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(iii) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging;

(iv) The Division 5.1 materials may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 100 kg (220 pounds);

(v) The Division 5.2 material may not exceed 1 kg (2.2 pounds) net weight per inner packaging and may not exceed 5 kg (11 pounds) net weight per outer packaging. Organic Peroxide, Type B material may not exceed 0.5 kg (1.1 pounds) net weight per inner packaging and may not exceed 2.5 kg (5.5 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 50 kg (110 pounds).

(f) *Additional exceptions.* Lab packs conforming to the requirements of this section are not subject to the following:

(1) The overpack marking and labeling requirements in § 173.25(a)(2) of this subchapter when secured to a pallet with shrink-wrap or stretch-wrap except that labels representative of each Hazard Class or Division in the overpack must be visibly displayed on two opposing sides.

(2) The restrictions for overpacks containing Class 8, Packing Group I material and Division 5.1, Packing Group I material in § 173.25(a)(5) of this subchapter. These waste materials may be overpacked with other materials.

(g) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter when transported in accordance with applicable state, local, or tribal requirements.

■ 14. In § 173.13, revise paragraph (c)(1)(ii) to read as follows:

§ 173.13 Exceptions for Class 3, Division 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

* * * * *

(c) * * *

(1) * * *

(ii) The inner packaging must be placed in a hermetically sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging. Alternatively, the inner packaging may first be wrapped in a non-reactive absorbent material and then placed in the hermetically sealed barrier bag. The combination of inner packaging, absorbent material, and bag must be placed in a snugly fitting metal can.

* * * * *

■ 15. In § 173.31, revise paragraph (d)(1)(vi) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(d) * * *

(1) * * *

(vi) The pressure relief device, including a careful inspection of the rupture disc in non-reclosing pressure relief devices, for corrosion or damage that may alter the intended operation of the device. The rupture disc is not required to be removed prior to visual inspection if the tank car contains the residue, as defined in § 171.8 of this subchapter, of a Class 8, PG II or PG III material with no subsidiary hazard or the residue of a Class 9 elevated temperature material;

* * * * *

■ 16. In § 173.306, redesignate paragraph (k) as paragraph (l) and add new paragraph (k) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(k) *Aerosols for recycling or disposal.* Aerosols, as defined in § 171.8 of this subchapter, containing a limited quantity which conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are not subject to the 30 kg (66 pounds) gross weight limitation when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(1) The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(2) Each aerosol container must be secured with a cap to protect the valve stem or the valve stem must be removed; and

(3) The packaging must be offered for transportation or transported by—

(i) Private or contract motor carrier; or

(ii) Common carrier in a motor vehicle under exclusive use for such service.

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

■ 17. Add new § 173.310 to read as follows:

§ 173.310 Exceptions for radiation detectors.

Radiation detectors, radiation sensors, electron tube devices, or ionization chambers, herein referred to as "radiation detectors," that contain only Division 2.2 gases, are excepted from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter when designed, packaged, and transported as follows:

(a) Radiation detectors must be single-trip, hermetically sealed, welded metal inside containers that will not fragment upon impact.

(b) Radiation detectors must not have a design pressure exceeding 4.83 MPa (700 psig) and a capacity exceeding 355 fluid ounces (641 cubic inches). They must be designed and fabricated with a burst pressure of not less than three times the design pressure if the radiation detector is equipped with a pressure relief device, and not less than four times the design pressure if the detector is not equipped with a pressure relief device.

(c) Radiation detectors must be shipped in a strong outer packaging capable of withstanding a drop test of at least 1.2 meters (4 feet) without breakage of the radiation detector or rupture of the outer packaging. If the radiation detector is shipped as part of other equipment, the equipment must be packaged in strong outer packaging or the equipment itself must provide an equivalent level of protection.

(d) Emergency response information accompanying each shipment and available from each emergency response telephone number for radiation detectors must identify those receptacles that are not fitted with a pressure relief device and provide appropriate guidance for exposure to fire.

PART 174—CARRIAGE BY RAIL

■ 18. The authority citation for part 174 continues to read as follows:

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

■ 19. In § 174.81, revise paragraph (c) to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

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PART 176—CARRIAGE BY VESSEL

■ 20. The authority citation for part 176 continues to read as follows:

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

■ 21. In § 176.83, revise paragraph (a)(11) to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids; waste Division 4.2 materials transported with Class 8 liquids; and waste Division 6.1 Packing Group I, Hazard Zone A material transported with waste Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material are set forth in § 173.12(e) of this subchapter.

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PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

■ 23. In § 177.848, revise paragraph (c) to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

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PART 179—SPECIFICATIONS FOR TANK CARS

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

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

■ 25. Revise § 179.13 to read as follows:

§ 179.13 Tank car capacity and gross weight limitation.

Except as provided in this section, tank cars, built after November 30, 1970, or any existing tank cars that are converted, may not exceed 34,500 gallons (130,597 L) capacity or 263,000 pounds (119,295 kg) gross weight on rail.

(a) For other than tank cars containing poisonous-by-inhalation material, a tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). Tank cars must conform to the conditions of the approval and must be operated only under controlled interchange conditions agreed to by participating railroads.

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars exceeding 263,000 pounds and up to 286,000 pounds gross weight on rail must meet the requirements of AAR Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (IBR; see § 171.7 of this subchapter). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

Issued in Washington, DC on May 7, 2010, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–11570 Filed 5–13–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130104–91027–02]

RIN 0648–XW12

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009–2011

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

ACTION: Rule; announcement of date of applicability.

SUMMARY: NMFS announces that the catch retention requirements for U.S. purse seine fishing vessels operating in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area) will be applicable from 00:00 on June 14, 2010, Universal Coordinated Time (UTC). In accordance with regulations, the requirements will be applicable until 24:00 on December 31, 2011, UTC, or until nullified by a notification in the **Federal Register.** This action is being taken to implement, for U.S. fishing vessels, the catch retention measures adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) at its regular annual session in December 2008. The action will have the effect of requiring that U.S. purse seine vessels do not discard any bigeye tuna, yellowfin tuna, or skipjack tuna at sea within the Convention Area, except in certain specified circumstances.

DATES: The date of applicability of 50 CFR 300.223(d) is 00:00 on June 14, 2010, UTC, and the requirements of that paragraph will be applicable until 24:00 on December 31, 2011, UTC, or until nullified by a notification in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Regional Office, 808–944–2219.

SUPPLEMENTARY INFORMATION:

Regulations at 50 CFR 300.223(d)(1) provide for NMFS to publish a notification in the **Federal Register** announcing the "effective date" of the catch retention requirements set forth at 50 CFR 300.223(d)(3), which apply to U.S. fishing vessels equipped with purse seine gear operating in the Convention Area. The phrase "effective date" as used in 50 CFR 300.223(d) is synonymous with the "date of applicability" in this notice of the catch retention requirements. The term "date of applicability" is used here to clarify that the regulation, including 50 CFR 300.223(d)(1), became effective (but not yet applicable) on August 3, 2009. The regulations at 50 CFR 300.223(d) establish the catch retention requirements adopted by the WCPFC. The notification by NMFS is to be based on NMFS' determination as to whether an adequate number of WCPFC observers is available for the purse seine vessels of all members of the WCPFC as necessary to ensure compliance by such vessels with the catch retention requirements established by the WCPFC. Based upon information provided by the WCPFC Secretariat, NMFS has determined that an adequate number of WCPFC observers is currently available for placement aboard purse seine vessels of all WCPFC members. Accordingly, NMFS announces through this document that the date of applicability of the catch retention requirements is 00:00 on June 14, 2010, UTC. In accordance with 50 CFR 300.223(d)(3), the requirements will be applicable until 24:00 on December 31, 2011, UTC, or until they are nullified by a notification in the **Federal Register** pursuant to 50 CFR 300.223(d)(2).

Further information about the Convention, the catch retention requirements established by the WCPFC, and the basis for the catch retention requirements for U.S. fishing vessels set forth at 50 CFR 300.223(d) can be found in the proposed and final rules to establish the requirements for U.S. fishing vessels (74 FR 26160, June 1, 2009; and 74 FR 38544, August 4, 2009; respectively).