DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 172

[Docket No. PHMSA–2011–0102 (HM–145O)]

RIN 2137–AE74

Hazardous Materials: Revision to the List of Hazardous Substances and Reportable Quantities

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

ACTION: Final rule.

SUMMARY: PHMSA amends the Hazardous Materials Regulations by removing saccharin and its salts from the list of hazardous substances and reportable quantities. The Comprehensive Environmental Response, Compensation and Liability Act, requires PHMSA to list and regulate all hazardous substances designated by statute or by the U.S. Environmental Protection Agency (EPA). EPA recently removed saccharin and its salts from their list of hazardous substances through notice and comment rulemaking. This final rule simply harmonizes the lists to better enable shippers and carriers to identify the affected hazardous substances, comply with all applicable regulatory requirements, and make required notifications if the release of a hazardous substance occurs.

DATES: *Effective Date:* June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen (202) 366–8553, Standards and Rulemaking Division, PHMSA, 1200 New Jersey Avenue, SE, East Building, Washington, DC 20590–0001. Questions about hazardous substance designations or reportable quantities should be directed to the Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0454.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601–9675), as amended by section 202 of the Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C 11011 *et seq.*), requires the Secretary of Transportation to regulate hazardous substances listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5128). PHMSA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a), as amended by Section 202 of SARA.

In carrying out the statutory mandate, PHMSA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. In accordance with CERCLA requirements, EPA must issue final rules amending the list of CERCLA hazardous substances, including removing entries, before PHMSA can amend the list of hazardous substances in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA periodically revises the list of hazardous substances and RQs in the HMR as adjustments are made by EPA.

II. Regulatory Actions

EPA Rulemaking

EPA published a notice of proposed rulemaking (NPRM) for public comment on April 22, 2010 (75 FR 20942) and a final rule December 17, 2010 (75 FR 78918) removing saccharin and its salts from the List of Hazardous Substances and Reportable Quantities in 40 CFR 302.4 (Table 302.4) in response to a petition submitted to EPA. EPA received two comments in response to the NPRM, one supportive of removing saccharin and its salts from the list and one beyond the scope of the rulemaking. The amendment includes the removal of both the product name (saccharin) and the chemical name (1,2-benzisothiazol-3(2H)-one,1,1-dioxide). EPA based its decision on a review of evaluations conducted by key public health agencies concerning the carcinogenic and other potential toxicological effects of saccharin and its salts, as well as their own assessment of the waste generation and management information for saccharin and its salts. This review/assessment demonstrated that saccharin and its salts do not meet the criteria in their hazardous waste regulations for remaining on EPA's lists of hazardous constituents, hazardous wastes, and hazardous substances. Specifically, EPA's listing of saccharin and its salts as a hazardous substance was based solely upon the material being listed as hazardous wastes under the Resource Conversation and Recovery Act (RCRA) (see 40 CFR 261.33(f)). Thus, by no longer being listed hazardous wastes, there was no basis for retaining saccharin and its salts in Table 302.4.

PHMSA Rulemaking

This final rule revises the ''List of Hazardous Substances and Reportable Quantities'' that appears in Table 1 to Appendix A of § 172.101 by removing the entry for saccharin and its salts (including the chemical name and salts). This revision is being made for consistency with EPA's December 17, 2010 final rule removing saccharin and its salts from the List of Hazardous Substances and Reportable Quantities in Table 302.4. This final rule will enable shippers and carriers to properly identify CERCLA hazardous substances subject to HMR and EPA requirements, and subsequent notifications if a release of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a release of a hazardous substance is subject to EPA notification requirements under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

PHMSA is publishing this final rule without notice and public procedure with good cause. As discussed in the ''EPA Action'' section above, EPA revised the list of hazardous substances through notice and public procedure. EPA has ultimate discretion when determining what is or is not a hazardous substance. PHMSA is statutorily mandated to list and regulate in the 49 CFR EPA's list of hazardous substances. Thus, it is unnecessary for PHMSA to again provide notice and public procedure to incorporate into the HMR the changes made by EPA.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce. This rulemaking is also issued under Section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601–9675), as amended by section 202 of the Superfund Amendments and Reauthorization Act of 1986 (SARA; 42 U.S.C 11011 et seq.), which requires the Secretary of Transportation to regulate hazardous substances listed or designated under Section 101(14) of

CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5128).

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not a significant rulemaking action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This rulemaking conforms to the intent of Executive Order 13563. This rulemaking relieves regulatory burdens placed on shippers or carriers of saccharin and on its salts that may be subject to regulation under the 49 CFR based on being defined as a hazardous substance, and subsequent regulation as a hazardous material by removing saccharin and its salts from the list of hazardous substances found in Table 1 of Appendix A to 49 CFR 172.101.

C. Executive Order 13132

This final rule has been 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 adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous 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 materials and requirements related to the number, contents, and placement of those documents;

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

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

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is required by statute. Federal hazardous materials transportation law provides at Sec. 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 for these requirements is September 26, 2011.

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, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a Federal agency to assess the impact of a regulatory action on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking (NPRM). Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designation reflected in this rule.

F. Executive Order 13272 and DOT Regulatory Policies and Procedures

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 consideration of the potential impact of a rulemaking on small entities.

G. Paperwork Reduction Act

This final rule does not impose any new information collection burdens under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

H. Regulation Identifier Number (RIN)

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

I. Unfunded Mandates Reform Act

This final rule imposes no unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $140.8 million or more to either State, local or tribal governments, in the aggregate, or to the private sector.

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 (65 FR 19477 through 19478) or you may visit *http://www.dot.gov.*

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires a Federal agency to consider the consequences of a major Federal action and prepare a detailed statement on actions significantly affecting the quality of the human environment. The revision made to the ''List of Hazardous Substances and Reportable Quantities'' found in Table 1 of Appendix A to § 172.101 in this final rule is not a major Federal action significantly affecting the quality of the human environment.

Releases of hazardous substances have the potential to cause damages to the human environment. Releases can occur during any stage of transportation (i.e., loading, transport, unloading, etc.). When a release occurs, it may result in increased risk to public health and the environment such as increased human exposure to carcinogens or adverse impacts vegetation and wildlife surrounding the location of the release. EPA believes that saccharin and its salts, based on the results of reviews of available scientific information performed by National Toxicology Program and the International Agency

for Research on Cancer, do not pose a present or potential risk of causing toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. EPA believes the results, of these reviews as well as their own assessment of waste generation and management information for saccharin and its salts, indicate that saccharin and its salts do not meet the criteria for listing as hazardous wastes under 40 CFR 261.11. EPA's listing of saccharin and its salts as a hazardous substance under CERCLA (40 CFR 302.4) was based solely upon being listed as hazardous wastes under RCRA (40 CFR 261.33(f)). Thus, we conclude there is no significant environmental impact associated with removing saccharin and its salts for the ''List of Hazardous Substances and Reportable Quantities'' found in Table 1 to Appendix A of 49 CFR 172.101 in this final rule.

List of Subjects in 49 CFR Part 172

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

■ In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

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

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

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

§ 172.101 [Amended]

■ 2. Section 172.101 Appendix A is amended as follows:

■ a. By removing the entry ''1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts'' from Table 1.

■ b. By removing the entry ''Saccharin & salts'' from Table 1.

Issued in Washington, DC on June 21, 2011 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2011–15954 Filed 6–24–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 100803320–1319–03]

RIN 0648–AY93

Fisheries in the Western Pacific; Mechanism for Specifying Annual Catch Limits and Accountability Measures

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

ACTION: Final rule.

SUMMARY: This final rule establishes the procedures and timing for specifying annual catch limits (ACLs) and accountability measures (AMs) for western Pacific fisheries. The final rule is intended to help NMFS end and prevent overfishing, rebuild overfished stocks, and achieve optimum yield.

DATES: This rule is effective July 27, 2011.

ADDRESSES: Copies of the Fishery Ecosystem Plans (FEP) for the Pacific Remote Islands Areas (PRIA), American Samoa, Mariana Archipelago, Hawaii, and western Pacific pelagic fisheries are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808–522–8220, fax 808–522–8226, or *http://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR, Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans include a mechanism for specifying ACLs at a level such that overfishing does not occur and that does not exceed the fishing level recommendation of a council's Scientific and Statistical Committee (SSC). AMs are also required to prevent ACLs from being exceeded, and to correct or mitigate overage of an ACL should it occur. The requirements for ACLs and AMs do not apply to fisheries for stocks that are subject to international fishery agreements in which the U.S. participates, or for species with life cycles of approximately one year. ACLs and AMs are also not required for species classified in a fishery management plan as ''ecosystem component species,'' which are generally non-target species, not determined to be subject to overfishing, approaching overfished, or overfished, not likely to become subject to overfishing or overfished, and generally not retained for sale or personal use.

This final rule implements the mechanism that NMFS will use to specify ACLs (possibly including multi-year ACLs) and AMs in western Pacific fisheries. Briefly, the Council will recommend an ACL to NMFS at least two months before the start of a fishing year. The Council will base its recommendation on the SSC's fishing level recommendation for the subject species or fishery, and may not exceed it. At least one month before the fishing year starts, NMFS will request public comment on the proposed ACL. Before the start of the fishing year, NMFS will notify fishermen and the public of the final ACL specification.

NMFS will monitor the fishery on an ongoing basis throughout the fishing year. When an ACL is projected to be reached during the year, NMFS will notify fishermen and the public that fishing for the regulated stock will be restricted through one or more inseason accountability measures to ensure that the ACL is not exceeded. Restrictions may include, but are not limited to, closing the fishery, closing specific areas, changing bag limits, or otherwise restricting effort or catch. Any inseason restriction will generally remain in effect until the end of the fishing year.

If inseason monitoring or subsequent data analyses indicate that an ACL was exceeded in the previous fishing year, the Council may recommend that NMFS reduce the ACL for the subsequent year by the amount of the overage.

This rule establishes only the procedures for specifying ACLs and AMs. The Council and NMFS will provide the public with opportunities to review and comment on the ACLs and AMs for each fishery at the time they are proposed.

Comments and Responses

On March 31, 2011, NMFS published a proposed rule and request for public comment (76 FR 17808). The public comment period ended on May 16, 2011. Additional background information on this final rule is found in the preamble to the proposed rule and is not repeated here. NMFS received two comments that were generally supportive of this action.

Changes From the Proposed Rule

No changes were made from the proposed rule.