

Earlier in 2009, and subsequent to the publication of final rules in each of the PHMSA and EPA rulemakings, but before EPA's clarification of its rules, PHMSA issued its decision on NTTC's application. On January 23, 2009, PHMSA published in the **Federal Register** its determination of NTTC's application in Preemption Determination No. 19(R) (PD-19(R)), 74 FR 4291.<sup>4</sup> PHMSA found that the HMTA preempted the following NYSDEC requirements because the requirements were not substantively the same as requirements in the HMR on the marking, maintaining, repairing, or testing of a package or container that is represented, marked, certified, or sold as qualified for transporting hazardous material:

- 6 NYCRR 230.4(a)(3)—requirement that the marking must be a minimum two inches and contain “NYS DEC”;
- 6 NYCRR 230.6(b)—requirement for maintaining a copy of the most recent pressure-vacuum test results with the gasoline transport vehicle; and
- 6 NYCRR 230.6(c)—requirement to retain pressure-vacuum test and repair results for two years.

Within the 20-day time period provided in 49 CFR 107.211(a), NYSDEC submitted a petition for reconsideration of PHMSA's decision in PD-19(R). NYSDEC asked PHMSA to rescind its preemption determination and dismiss the application by NTTC. In April 2009, PHMSA extended the period for comments on NYSDEC's petition due to the unusually long period it took for the agency to issue PD-19(R). This action was followed by another extended period of inactivity until August 26, 2010, when PHMSA reopened the period for comments on NYSDEC's petition for reconsideration to receive comments on EPA's rule changes. The matter has remained dormant since that time based on PHMSA's understanding that NYSDEC was planning to revise its regulations.

On February 12, 2020, NYSDEC proposed a rulemaking to repeal and replace 6 NYCRR Part 230 Gasoline Dispensing Sites and Transport Vehicles. Volume XLII, Issue 6, N.Y. Reg. 8 (February 12, 2020). The adopted requirements in 6 NYCRR Part 230, sections 230.6 and 230.7, became effective on February 11, 2021. These provisions contain revised versions of the requirements that were at issue in this proceeding for marking gasoline

transport vehicles and recordkeeping and reporting requirements.

## II. Dismissal on Grounds of Mootness

NYSDEC's legislative changes to its rules have rendered moot NYSDEC's petition for reconsideration of PHMSA's 2009 preemption determination.

NYSDEC, in its February 12, 2020, rulemaking proposal, required pressure-vacuum cargo tank testing and markings that align with DOT's testing and marking requirements. NYSDEC indicated that the proposed amendments would make the requirements consistent on the state and federal level. Furthermore, NYSDEC proposed to revise the gasoline transport vehicle recordkeeping retention requirements from 2 years to 5 years in order to align with the current version of the EPA's recordkeeping requirement located at 40 CFR part 63 subpart CCCCC.

The recently adopted requirements in 6 NYCRR Part 230, sections 230.6 and 230.7, became effective on February 11, 2021. These provisions contain the requirements that were at issue in this proceeding for marking gasoline transport vehicles and recordkeeping and reporting requirements. The provision for the marking of gasoline transport vehicles states:

(a) No owner or operator of a gasoline transport vehicle may transport gasoline or allow the vehicle to be filled or emptied in New York State unless the gasoline transport vehicle meets:

- (1) the federal Department of Transportation (DOT) requirements for leak testing as required by 49 CFR 180.407(h) (see Table 1, Section 200.9 of this Title); and
- (2) the federal DOT requirements for test markings as required by 49 CFR 180.415 (see Table 1, Section 200.9 of this Title).

6 NYCRR 230.6.

The recordkeeping and reporting provision states:

(a) The owner of any gasoline transport vehicle subject to the leak testing requirements outlined in section 230.6(a) of this Part shall keep:

- (1) leak testing records with information as prescribed by 49 CFR 180.417(b)(1) and (2) (see Table 1, Section 200.9 of this Title) for 5 years; and
- (2) a copy of the most recent leak testing results with the gasoline transport vehicle.

6 NYCRR 230.7.

In light of the facts and circumstances described above, it is apparent the NYSDEC rules that PHMSA found were preempted under the HMTA—and subject of NYSDEC's petition for reconsideration—have been significantly revised. On their face, the revised rules do not appear to impose the same requirements on regulated

entities as the previous version of the rules that were challenged in this proceeding. Consequently, it would be inappropriate for PHMSA to render a decision on a petition for reconsideration that was filed more than a decade ago, for relief from the agency's preemption determination that was based on a previous version of NYSDEC's pressure-vacuum cargo tank testing and markings requirements when those requirements have recently undergone significant revisions. It appears that issuing a decision on the petition for reconsideration would have no practical effect on any party.

## III. Ruling

For the reasons set forth above, NYSDEC's petition for reconsideration is dismissed because the issues raised in the petition are moot.

Going forward, any person directly affected by the revised NYSDEC rules (including a State, political subdivision of a State, or Indian tribe) may apply to PHMSA for a decision on whether the revised rules are preempted by the HMTA. 49 U.S.C. 5125(d); 49 CFR 107.203. Similarly, any person who thinks there is a practical reason for PHMSA to revisit its preemption decision regarding the now-superseded rules may apply to PHMSA for a new decision on that question.

Issued in Washington, DC, on May 26, 2021.

**Vasiliki Tsaganos,**  
*Acting Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Hazardous Materials: Notice of Applications for New Special Permits

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

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of

Rule with amendments and clarifications, 76 FR 4156 (January 24, 2011).

<sup>4</sup> As published in the **Federal Register**, the agency's January 23, 2009 determination in PD-19(R) indicated an incorrect docket number (99-3559, instead of 98-3559).

the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 7, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-

addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for

inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 2, 2021.

**Donald P. Burger,**  
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21227-N .....	Apollo Fusion, Inc .....	173.302 .....	To authorize the transportation in commerce of Xenon in non-DOT specification cylinders. (mode 1).
21231-N .....	Patrick J. Kelly Drums, Inc .....	173.28(b) .....	To authorize the recondition of UN specification metal drums that have minimum steel thicknesses below those now authorized in 49 CFR § 173.28(b)(4). (modes 1, 2, 3, 4, 5).
21232-N .....	Scandinavian Airlines System Denmark-Norway-Sweden.	175.75(c) .....	To authorize the transportation in commerce of aviation fuel contained in a fuel tank by passenger-carrying aircraft in quantities that exceed the limitation for materials loaded in an inaccessible manner. (mode 5).
21233-N .....	Airopack B.V .....	178.33b-6(a) .....	To authorize the manufacture, mark, sale, and use of DOT 2S inner containers manufactured from recycled materials. (modes 1, 2, 3, 4, 5).
21234-N .....	Air Liquide Advanced Materials Inc.	173.301 .....	To authorize the transportation in commerce of Dichlorosilane in non-DOT specification cylinders. (modes 1, 3).
21235-N .....	United States Dept. of Energy	173.413, 173.416 .....	To authorize the transportation in commerce of certain Class 7 materials in alternative packaging. (mode 1).
21237-N .....	Mauser USA, LLC .....	178.503(a)(3)(ii) .....	To authorize the use of certain 1H1 plastic drums with markings that do not include the "Y" letter identifying that the packagings have been successfully tested to meet the Packing Group II performance standard. (modes 1, 2, 3, 4, 5).
21238-N .....	Target Stores, Inc .....	172.315(a)(2) .....	To authorize the transportation in commerce of limited quantities of hazardous materials that are marked with a limited quantity marking having dimensions of 25 mm by 25 mm. (modes 1, 2).
21240-N .....	Volkswagen Group of America Chattanooga Operations, LLC.	172.101(j), 173.185(b)(1) .....	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft in alternative packaging. (mode 4).
21241-N .....	ZF Airbag Germany GmbH .....	173.301(h), 173.302a(a) .....	To authorize the manufacture, mark, sale and use of non-DOT specification pressure vessels for use as components of safety systems and explosive articles. (modes 1, 2, 3, 4, 5).
21242-N .....	Myers Container, LLC .....	178.503(a)(10) .....	To authorize the use of specification steel drums exceeding 100 L where the specification marking on the bottom of the drum indicates a different year of manufacture than the top/side. (modes 1, 2, 3, 4, 5).
21244-N .....	Contrivance Incorporated .....	172.203(a), 172.301(c), 180.211(c)(2)(i).	To authorize the repair of certain DOT 4L cylinders without requiring pressure testing. (modes 1, 2, 3, 4, 5).

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Internal Revenue Service Advisory Council (IRSAC); Nominations**

**AGENCY:** Internal Revenue Service, Department of the Treasury.

**ACTION:** Request for Nominations.

**SUMMARY:** The Internal Revenue Service (IRS) is seeking new members to serve on the Internal Revenue Service Advisory Council (IRSAC). Applications are currently being accepted for appointments that will begin in January 2022. IRSAC members are drawn from substantially diverse backgrounds representing a cross-section of the taxpaying public with substantial, disparate experience in: Tax preparation for individuals, small businesses and large, multi-national corporations; tax-exempt and government entities; and

information reporting. Nominations of qualified individuals may come from individuals or organizations; applications should describe and document the proposed member's qualifications for IRSAC.

**DATES:** Applications must be received on or before July 9, 2021.

**ADDRESSES:** Applications should be submitted to IRS National Public Liaison via email to [publicliaison@irs.gov](mailto:publicliaison@irs.gov) or electronic fax to 855-811-8021. Application packages are