DEPARTMENT OF DEFENSE

48 CFR Part 241

[DFARS Case 2003–D096]

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Utility Rates Established by Regulatory Bodies

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to utility rates established by independent and nonindependent regulatory bodies. This rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: *Effective Date:* January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D096.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dars/dfars/transformation/index.htm.*

This final rule is a result of the DFARS Transformation initiative. The rule—

- Revises DFARS 241.201 to clarify that utility rates established by independent regulatory bodies may be relied upon as fair and reasonable; and
- Adds DFARS 241.501 to clarify requirements for use of contract clauses addressing changes in rates for regulated and unregulated utility services.

DoD published a proposed rule at 70 FR 8565 on February 22, 2005. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule contains clarifying DFARS amendments, with no significant change to DoD contracting policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 241

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 241 is amended as follows:

PART 241—ACQUISITION OF UTILITY SERVICES

■ 1. The authority citation for 48 CFR part 241 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 241.201 is revised to read as follows:

241.201 Policy.

(1) DoD, as a matter of comity, generally complies with the current regulations, practices, and decisions of independent regulatory bodies. This policy does not extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the United States may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body—

(i) Are considered ''prices set by law or regulation'';

(ii) Are sufficient to set prices without obtaining cost or pricing data (see FAR Subpart 15.4); and

(iii) Are a valid basis on which prices can be determined fair and reasonable.

(4) Compliance with the regulations, practices, and decisions of independent regulatory bodies as a matter of comity is not a substitute for the procedures at FAR 41.202(a).

■ 3. Section 241.501 is added to read as follows:

241.501 Solicitation provision and contract clauses.

(d)(1) Use a clause substantially the same as the clause at FAR 52.241–7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services to be provided are subject to an independent regulatory body.

(2) Use a clause substantially the same as the clause at FAR 52.241–8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services to be provided are not subject to a regulatory body or are subject to a nonindependent regulatory body.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, and 173

[Docket No. RSPA–2004–18795 (HM–237)]

RIN 2137–AD88

Hazardous Materials: Requirements for Lighters and Lighter Refills

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

ACTION: Final rule.

SUMMARY: This final rule amends requirements in the Hazardous Materials Regulations (HMR) pertaining to the examination, testing, certification, and transportation of lighters and lighter refills. This action will clarify regulatory requirements and, where appropriate, decrease the regulatory burden, while continuing to provide for the safe transportation of lighters and lighter refills in commerce.

DATES: *Effective Date:* The effective date of these amendments is January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens or Kurt Eichenlaub, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background

On August 16, 2004, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) issued a notice of proposed rulemaking (NPRM; 69 FR 50976) proposing to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) pertaining to the examination, testing, certification, and transportation of lighters and lighter refills. The purpose of the rulemaking is to clarify regulatory requirements and decrease regulatory burdens without compromising the safe transportation in commerce of lighters and lighter refills.

We proposed: (1) Definitions for ''lighter'' and ''lighter refill'' based on the definition in regulations for lighters issued by the Consumer Product Safety Commission (CPSC); (2) revisions to the § 172.101 Hazardous Materials Table (HMT) to include separate entries for ''lighters'' and ''lighter refills''; (3) adoption of requirements for the design, capacity, and pressure capability of lighters that are generally consistent with definitions in the American Society for Testing and Materials (ASTM), *Standard Consumer Safety Specification for Lighters* (ASTM F–400); (4) revised approval procedures that permit lighter designs to be examined, tested and assigned a unique identification number by a qualified person authorized by PHMSA; (5) provisions for the transportation of lighter samples; and (6) revised packaging requirements for lighters and lighter refills.

In the NPRM, we noted the CPSC denied a petition from the Lighter Association to require all lighters manufactured or imported into the United States conform to ASTM F–400. Instead, CPSC urged voluntary compliance with the standard. However, on November 30, 2004 CPSC voted to initiate development of a mandatory safety standard to prevent mechanical malfunction of lighters that could be based on the voluntary ASTM F–400. CPSC determined it was necessary to develop a mandatory safety standard to address safety concerns associated with reported incidents involving defective lighters.

II. Summary of Regulatory Changes and Analysis of Comments

In response to the NPRM, we received seven comments from representatives of the domestic and international lighter industries, carrier trade associations, safety associations, and individual citizens. In this final rule, we discuss comments submitted to the docket, concerns raised by commenters, and the provisions of this final rule.

Section 171.8

In the NPRM, we proposed to add definitions for ''lighter'' and ''lighter refill'' in § 171.8. The proposed definition for ''lighter'' was based on the current definition found in the CPSC regulations, 16 CFR parts 1210 and 1212, the ASTM F400–00 *Standard Consumer Safety Specification for Lighters*, and the International Organization for Standardization's (ISO) 9994:1995(E) *Lighters—Safety Specification.* We proposed to define the term ''lighter'' to mean a mechanically operated flame-producing device that employs an ignition device, and contains a Division 2.1 liquefied gas fuel such as butane, isobutane, propane, or mixture thereof, where the vapor pressure of the Division 2.1 material exceeds a gauge pressure of 101.3 kPa (14.7 psia) at 20 °C. The definition includes ''cigarette'' lighters and multi-purpose lighters. A multi-purpose lighter is: (1) A utility lighter, that is, a lighter greater than four inches in length that may be used to light a fireplace or grill; (2) a micro torch or torch lighter or jet turbo lighter, that is, a high-intensity wind-resistant or wind-proof style that has little or no visible flame that may or may not be operated in a hands-free mode; and (3) a portable soldering or brazing torch with self-contained fuel supply.

One commenter is concerned that the definition of lighter does not include non-pressurized ''wick'' lighter styles containing absorbed or unabsorbed flammable liquid fuel. The commenter asserts that these devices are hazardous and should be classed and described as lighters when they are offered into transportation.

The commenter is correct that, for purposes of the HMR, the proposed definition of ''lighter'' does not include non-pressurized (*i.e.*, gauge vapor pressure of fuel not more than 34.5 kPa (5.0 psi) at 24 °C (75 °F)) ''wick'' lighter styles containing absorbed or unabsorbed flammable liquid fuel. We agree that non-pressurized lighter styles pose a hazard when offered for transportation in a fueled condition. Therefore, in this final rule, we have modified the definition of ''lighter'' to mean a mechanically operated flame-producing device employing an ignition device and containing a Class 3 or Division 2.1 material. In addition we have added an entry to the HMT for ''Lighters, *non-pressurized, containing flammable liquid*, 3, NA1057, PG II.'' Under this final rule, non-pressurized wick type lighters containing flammable liquid fuel are forbidden in transportation unless the design has been approved for transportation by the Associate Administrator for Hazardous Materials Safety (Associate Administrator) under the conditions specified in § 172.102, Special Provision 168. In addition, in this final rule, we are clarifying in Special Provision 168 that a new or never filled lighter or one that is cleaned and purged of all its fuel or vapors is not subject to the HMR.

In the NPRM, we proposed to define the term ''lighter refill'' to mean a pressurized container of not more than 4 fluid ounces capacity (7.22 cubic inches) and containing 65 grams of fuel or less that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1 (Flammable gas) fuel. The NPRM also included the proposed capacity limitations in § 173.306.

Commenters did not address the capacity limitations proposed for lighter refills transported in commerce. However, we determined that capacity limitations should not be included in the regulatory definition of ''lighter,'' but are more appropriately addressed in operational requirements applicable to their transportation. Therefore, in this final rule we are defining lighter refill in § 171.8 to mean a pressurized container that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1 flammable gas fuel. The capacity limitations for lighter refills are specified in § 173.306(h).

Section 172.101

We are amending the note to paragraph (c)(11) by adding the words ''lighter samples'' and by adding a

reference to § 173.308(b)(2) for the transportation requirements applicable to lighter samples.

We are finalizing changes to the § 172.101 Hazardous Materials Table (HMT) for the shipping description ''Lighters or Lighter refills.'' Both ''Lighters'' and ''Lighter refills'' have the same United Nations (UN) identification number (UN 1057). However, the approval, special provisions, and packaging requirements are different for lighters and lighter refills and we are therefore separating the two articles in the HMT. To facilitate the transportation of lighters containing flammable liquid fuel, we are adding the entry ''Lighters, non-pressurized, containing flammable liquid, NA 1057.'' A lighter containing a flammable liquid fuel is excepted from examination and testing; however, a lighter containing a flammable liquid fuel must be specifically approved by the Associate Administrator. Unapproved lighters containing flammable liquids are forbidden in transportation (*see* § 173.21).

Section 172.102

Commenters did not address the revisions proposed in the NPRM to this section. Therefore, in this final rule, we are adopting the revisions. We are adding two new numerical special provisions, 168 and 169, to specify what may be described under the description ''lighters'' and ''lighter refills,'' respectively. Special Provision 168 specifies that certain lighter designs must be examined and tested by a person authorized by the Associate Administrator. In addition, it references specific paragraphs in § 173.308 for determining what constitutes a ''new'' lighter design, procedures for offering and transporting lighter samples for examination and testing, and provides transitional dates for the continued use of lighter design approvals issued by RSPA or PHMSA prior to October 1, 2006. Special Provision 168 also specifies that a non-pressurized wick style lighter does not require examination and testing, but does require approval by the Associate Administrator to be offered for transportation or transported in commerce in a fueled condition. This design approval will specify the packaging and most appropriate shipping description for the device on a case-by-case basis. Finally, Special Provision 168 codifies our long-standing interpretation that a new or unused lighter or a lighter that is empty or purged of all fuel or vapors is not subject to the HMR.

Special Provision 169 sets forth requirements for lighter refills that do not require approval (*i.e.*, certification) under the HMR. A refill that exceeds 4 fluid ounces or contains more than 65 grams of fuel must be classed and described for the material contained therein, and may not be classed and described as a ''Lighter refill.''

In addition, we are removing Special Provision N10 and relocating the packaging, marking, and shipping paper requirements for lighters to § 173.308 (*see* preamble discussion under § 173.308).

Section 173.6

Based on a number of recent telephone and written inquiries to PHMSA, it appears that individuals in the lighter industry are unclear on the applicability of the materials of trade (MOTS) exception in § 173.6 to lighters and lighter refills. While we do not believe that specific revisions to § 173.6 are necessary, we offer the following clarification.

Lighters and lighter refills are typically regulated as Division 2.1 materials. The MOTS exception is limited to Division 2.1 and 2.2 materials in cylinders with a gross weight not over 100 kg (220 pounds) or a permanently mounted tank manufactured to the ASME Code of not more than 70 gallon water capacity for a non-liquefied Division 2.2 material with no subsidiary hazard (§ 173.6(a)(2)). A cylinder is defined in § 171.8 as a pressure vessel designed for pressures higher than 40 psia and having a circular cross section. It does not include a portable tank, multi-unit tank car tank, cargo tank, or tank car. The primary packagings for lighters and lighter refills generally do not meet the definition of a cylinder. Therefore, lighters and lighter refills generally do not qualify for the MOTS exception in § 173.6.

Section 173.21

We are revising § 173.21(i) to permit unapproved lighter design samples to be offered and transported to an examination and testing facility under certain conditions set forth in § 173.308(b)(2). In addition, we are clarifying that lighters containing flammable liquid fuel are not authorized for transportation in the fueled condition unless they have been approved by the Associate Administrator. A new or never filled lighter or one that is cleaned and purged of all its fuel or vapors is not subject to the HMR.

Section 173.306

In the proposed rule we did not include language to exclude lighter refills from the limited quantity exception for containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) in § 173.306(a)(1). It was our intent in the NPRM to require lighter refills to be shipped in accordance with the new paragraph in § 173.306(h). Therefore, we are amending § 173.306(a)(1) to exclude lighter refills.

In § 173.306, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to prescribe requirements for lighter refills. Consequently, current paragraphs (i) and (j) are redesignated as paragraphs (j) and (k) respectively. We are requiring a lighter refill to conform to a volumetric capacity limit of 4 fluid ounces (7.22 cubic inches) and a net mass of 65 grams of fuel. Because they contain a release device, lighter refills may not be described as ''Gas cartridges *(flammable)* (UN2037).''

Consistent with the UN Model Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Organization's International Maritime Dangerous Goods Code (Amendment 32; IMDG Code), in the NPRM we proposed to require lighter refills to be packaged in outer packagings meeting the Packing Group II performance level. This specification packaging requirement is currently prescribed in the ICAO Technical Instructions for transport by aircraft and under the 13th Revised Edition of the UN Model Regulations and Amendment 32 of the IMDG Code (both effective January 1, 2005). Unless otherwise excepted, we proposed to require UN specification outer packaging for lighter refills transported by all modes under the HMR. We solicited comments on whether the requirement for PG II outer packagings for lighter refills was overly restrictive for shipments of lighter refills by highway and rail.

One commenter believes the requirement for Packing Group II outer packagings for lighter refills is overly restrictive for highway transportation. The commenter states, ''Lighter refills have been treated as ORM–D for over thirty years. To the best of our knowledge, there have not been any safety incidents with the transportation of any size lighter refills. We understand the need to harmonize with international standards. However, we see no reason for the industry to bear the additional cost of testing and certifying to PG II when there is no known safety reason for such a change.''

The current exceptions in the HMR applicable to lighter refills do not treat lighter refills as ORM–D as the comments suggests. Currently, lighter refills are listed in the hazardous materials table as ''Lighter refills, 2.1, UN1057''. Column (8A) of the HMT provides no exceptions for lighter refills, and column (8B) refers to § 173.308 for packaging requirements. The packaging requirements do not include a provision to rename lighter refills as ''Consumer commodity, ORM–D.'' Thus, regardless of transport mode, lighter refills are not eligible for the exceptions under the ORM–D hazard class and may not be renamed ''Consumer commodity.''

We do agree, however, that the proposed requirement to package lighter refills in specification outer packagings for transportation by highway or rail is overly restrictive given the risks posed by such transportation. Therefore, in this final rule, non-specification outer packagings are authorized for lighter refills offered for transportation or transported by highway or rail as specified in § 173.306(h).

In this final rule, in paragraph (h)(2), we continue to allow the current exception from Subparts C through H of Part 172 (i.e., shipping papers, marking, labeling, placarding, emergency response information, and training), and Part 177, for no more than 1,500 lighter refills carried aboard a transport vehicle (see discussion under § 173.308(e)). In addition, this exception allows the use of non-specification outer packaging meeting the general requirements of Subpart B of Part 173.

Section 173.308

We proposed in the NPRM revision of paragraph (a) to prescribe requirements for the design, capacity, and pressure capability of lighters so they are generally consistent with definitions in ASTM F–400, ISO 9994, UN Model Regulations (Twelfth Revised Edition) and the current HMR. We proposed a volumetric capacity limit of 4 fluid ounces for lighters consistent with limited quantity requirements for compressed gases.

One commenter suggests the volumetric capacity limit of 4 fluid ounces is too large. The commenter states, ''It is unclear to us why such a large capacity was selected. If the maximum fuel quantity is 0.35 fluid ounces, the maximum fuel capacity for a lighter could be as low as 1 fluid ounce. We suppose that acetylene torches, hobby lighters or so-called micro-torches might have a fuel capacity of 4 fluid ounces. However, most conventional lighters and utility lighters have a capacity of 1 fluid ounce or less.''

Although most conventional lighters and utility lighters do have a capacity of 1 fluid ounce or less, the capacity limit of 4 fluid ounces provides flexibility for a variety of alternative lighter designs. The capacity limit of 4 fluid ounces is consistent with the current requirement for limited quantities of compressed gases in § 173.306. The limit provides flexibility without compromising safety in transportation.

In § 173.308(a)(3), the HMR require a cigarette lighter or similar device, including closures, to be capable of withstanding without leakage or rupture an internal pressure of at least two times the vapor pressure of the fuel at 55 °C (131 °F). In addition, the HMR require each lighter design be subject to a leakage test (see § 173.308(b)(3) of the regulatory text for actual test procedures). We solicited comments on whether the pressure test should be required, or if it should remain as a capability measure. We did not receive comments on this issue, and, therefore, we are maintaining the pressure test as a capability standard.

In this final rule, we are adopting the provisions proposed in the NPRM to require lighters containing a Division 2.1 material to be examined and successfully tested in accordance with § 173.308(a). After the effective date of this final rule, PHMSA will no longer approve lighter designs for Division 2.1 materials. Paragraph (a) specifies that a person who is qualified and authorized by the Associate Administrator under the provisions of subpart E of part 107 as limited by the conditions specified in § 173.308(a)(4) may examine and test a lighter design. Each authorized person will be assigned a unique identification code by PHMSA to examine and test lighter designs, and the identification code must appear on the test report with a unique test report identifier for each design tested. The new requirement permits testers to use the same unique design identifier that manufacturers register with CPSC, allowing for increased flexibility and less regulatory burden.

In the NPRM, we invited comments on whether foreign entities should be allowed to examine and test lighter designs on behalf of the Competent Authority of the United States. Several commenters request amending the regulations to allow foreign entities to examine and test lighter designs on behalf of the Competent Authority of the United States. They suggest geographic location and citizenship have no bearing on transportation safety. They assert that any regulation that does not permit foreign examination of lighters initiates an unnecessary technical barrier to international trade.

We disagree. According to the Lighter Association, approximately fifty percent of the lighters transported in the United States are imported. We have not been able to determine, and commenters have not furnished data, supporting that all foreign testing facilities possess the technical expertise and capability to adequately evaluate lighter designs. Further, we believe that oversight of approval agencies located in foreign countries is likely to present significant logistical hurdles to the agency due to resource limitations. Therefore, we would be unable to determine the adequacy of foreign testing facilities and thus, the appropriate level of safety. For these reasons, in this final rule, we are adopting paragraph (a)(4) as it was proposed. We will continue to evaluate this issue as the provisions of this final rule are implemented.

In paragraph (b) we proposed to define a ''new'' lighter design type and prescribed the requirements under which a lighter design sample may be offered for transportation and transported for examination and testing. We invited comments on whether the definition of a ''new'' lighter design needed further clarification or if it was overly restrictive. One commenter suggests the definition of ''new'' lighter design type should be revised to be more specific. This commenter states lighters that use the same ignition mechanism and the same reservoir capacity to provide the same safety performance should be considered as the same design.

We disagree. The definition does not require a lighter produced by a single manufacturer with the same ignition mechanism and same reservoir capacity as a previous design to be tested as a new design unless it was altered in a way that may affect the escape (leakage) of gas. To clarify, any lighter altered in a manner that does not affect the escape (leakage) of gas—labeling, color, texture, etc.—is not considered a ''new'' lighter design according to this definition. Consistent with CPSC policy, private labelers and distributors of such devices will not be required to maintain copies of test reports, provided no changes are made to a device that would affect the ability of the device to pass the specified tests. A private labeler is someone who might place an approved device in a gift set, or someone who places advertisement logos in the form of labels on an approved device for resale. We are adopting the definition of a ''new'' lighter design type as it was proposed.

Paragraph (b) proposed that outer packagings for lighter samples must meet the requirements of Subpart M of Part 178 at the Packing Group I performance level. One commenter suggests the requirement for specification packaging at the Packing Group I performance level is not necessary for shipments of lighter samples. The commenter states lighter samples have historically been offered for transportation as Division 2.1 materials in Packing Group II outer packagings. This commenter asserts there have been no known incidents involving lighter samples offered into transportation for testing, and requests a revision to the packaging requirements for lighter samples to permit transport of lighters in Packing Group II outer packagings.

We disagree. Historically, lighters, including lighter samples, were forbidden in transportation unless the device and inner packaging had been examined by the Bureau of Explosives and specifically approved by the Associate Administrator for Hazardous Materials Safety (§ 173.21(i)). Unapproved lighter designs may not be capable of meeting the specific testing and approval requirements required by the HMR. Because the quality of an unapproved lighter is unknown, these lighters could pose a more significant hazard in transportation than lighter already approved. Therefore, in this final rule, we are adopting the packaging requirements for lighter samples as they were proposed.

In the NPRM, we solicited comments on whether to incorporate by reference transportation-related portions of the ASTM and International Organization for Standardization (ISO) standards for lighters, thereby making compliance mandatory, or to include them in the HMR as suggested methods by which the performance standard may be met. We also solicited comments on whether the leakage test currently required by the HMR is overly restrictive or unnecessary or whether the same level of safety can be achieved by requiring the elevated temperature and sealed fluid fuel reservoir leakage tests prescribed in the ASTM and ISO standards for lighters.

Some commenters support the adoption of the ASTM/ISO tests for lighters. They state the ASTM/ISO standards provide for an adequate level of safety. Other commenters state the current testing required by the HMR provides an adequate level of safety for the storage and transportation of lighters. They also note certain parts of the ASTM/ISO test would not be applicable to transportation (*e.g.*, flame height measurement and compatibility).

The Lighter Association, Inc. submitted the following comment:

> The association has carefully reviewed the proposed gas leakage test at proposed Part 173.308(b)(3). Based upon our initial testing, the proposed test is not workable because it does not account for the absorption of moisture into the plastic bodies of lighters. When placed in an oven for 96 hours at 100 degrees F, the weight loss from the burning off or evaporation of this moisture easily exceeds 20 mg. Moreover, placing the lighters in a dessicator for 24 hours does not appear to resolve this problem. Second, we do not believe that 100 degrees F is sufficiently high to reflect real world transportation conditions. We believe that a temperature in the range of 120 degrees F or higher is going to be necessary to reflect transportation conditions. Third, we suspect that 20 mg is too low at the higher temperatures that we are considering. Accordingly we are requesting an opportunity to conduct further testing and to come back to the agency no later than March 15, 2005 with a new, more rigorous, elevated temperature test.

We have taken these comments into consideration and have determined that we do not have sufficient data at this time to warrant a change to the current testing requirements for lighters. We believe that the current testing requirements may be improved to more accurately represent transportation conditions. However, we are not convinced the ASTM/ ISO testing requirements for lighters provide a satisfactory alternative. In this final rule, we are maintaining current testing requirements for lighter designs and their inner packagings; however, we encourage persons to submit data, statistics, or alternative test methods for further review. We will continue to evaluate this issue, and, if necessary, may consider alternative testing procedures for lighters in a future rulemaking. In this final rule, we are maintaining the current leakage test requirement for lighter samples and we are incorporating the test procedure as proposed in § 173.308(b)(3).

In this final rule, paragraph (c) is amended to provide specific packaging requirements for lighters. Lighters must be placed in an inner packaging designed to prevent movement of the lighters and inadvertent ignition or leakage. In addition, the ignition device and gas control lever of each lighter must be designed, or securely sealed, taped, or otherwise fastened or packaged to protect against accidental functioning. The lighters must then be placed in an authorized outer packaging at the Packing Group II performance level.

Paragraph (d) prescribes the shipping paper and package marking requirements for lighters. Consistent with the current shipping paper and marking requirements in the HMR—which require packages of lighters to be marked and shipping papers to be annotated with the approval number assigned by PHMSA—in this final rule, we are requiring the identification code and test report identifier to be annotated on a shipping paper, in association with the basic description, and marked on a package, for all designs contained therein. The shipping paper notation and package marking requirements will enable enforcement personnel to identify the person who tested and approved the lighters for transportation should they identify a problem with the shipment. In addition, for transportation by vessel, a closed transport vehicle or closed freight container must be marked with the warning statement as currently required by the HMR, as currently required.

In paragraph (e) we proposed in the NPRM to continue to allow the current exception from Subparts C through H of Part 172, and Part 177, for no more than 1,500 lighters carried aboard a transport vehicle by highway. The exception allows the use of non-specification outer packaging meeting the general requirements of Subpart B of Part 173. This paragraph does not, however, contain an exception from marking the test report identifier on the outer package because of the potential for transportation by common or contract carriage. We invited comments on whether this exception was necessary, no longer relevant, or if its use should be discontinued in the interest of safety.

One commenter suggests that the requirement to mark the test report identifier on the outside of a package under the exception for 1,500 lighters or less in § 173.308(e)(1) should be removed. This commenter states, ''This requirement has always been problematic since typically persons transporting 1,500 lighters or less are distributors, who carry several different brands of lighters. They do not know when they order their boxes or plastic totes what lighters will be shipped in the outer packaging. Thus, they are faced with the dilemma of arbitrarily picking one T number, or putting several on the packaging.''

We agree. However, under this exception, the test report identifier marking is the only information available to enforcement personnel and carriers to identify the types of lighters that are contained in a package and to ascertain whether the lighters have been examined in accordance with the HMR. Distributors should be aware of the test report identifiers for each design type in

their inventory. We agree that marking the outside of the packaging may impose an unnecessary burden on distributors; however, we still believe that some record of the test report identifiers for lighters transported in a package must be available to enforcement personnel and carriers during transportation. Therefore, as an alternative to marking the package, we are allowing a list of test report identifiers to be included inside, or attached to the outside of a package as a means of complying with the requirement.

Another commenter is concerned the exception from the shipping paper requirement would make it difficult for the carrier to comply with the requirement for less than 1,500 lighters carried on a single transport vehicle. This commenter suggests that many carriers rely on the shipping papers to determine compliance with the hazmat regulations. The commenter suggests that a carrier that picks up multiple shipments from different shippers may not be aware that it has exceeded the 1,500 lighter limit.

We disagree. The exception in § 173.308(e)(1) still requires shippers to mark the outer packaging with the number of lighters contained in the package; thus, a carrier should know whether it has exceeded the 1,500 limit. Although we except shippers from the shipping paper requirements, a carrier may develop an agreement with its customers requiring them to provide the driver with information on the quantity of lighters that they are offering into transportation.

One commenter suggests revisions to the exception in § 173.308(e)(1) requiring a person transporting lighters under that exception to be specifically informed of the requirements of that section. This commenter states it is unnecessary and burdensome to train drivers in aspects of § 173.308(e)(1) that apply to shippers.

We disagree. Under the exception, we are providing relief from the formal training requirements in Subpart H to Part 172. The requirement for training in § 173.308(e)(1) simply requires persons who carry lighters in accordance with the exception to be informed of the requirements. To ensure safety and compliance it is necessary for both shippers and carriers to be informed of all of the exception requirements.

Based on the lower level of risk posed by limited numbers of lighters, we are allowing additional exceptions for the private carriage of lighters in paragraph (e)(2). This exception allows lighters to be transported by private carriers in non-specification rigid outer packagings where the outer package contains 300 or fewer lighters. The total number of lighters that may be transported on a single vehicle is limited to a maximum of 1,500. These limits are based on current industry practice. In addition, the test report identifier is not required to be marked on the outer packaging.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. In accordance with § 5103(a) of Federal hazmat law, the Secretary is authorized to designate a material or a group or class of materials as hazardous when transportation of that material in commerce may pose an unreasonable risk to health and safety, or property. A lighter fueled by a flammable gas or a flammable liquid is a hazardous material for purposes of regulation under Federal hazmat law and the HMR. As described in detail in this preamble, this final rule amends HMR requirements applicable to the transportation of lighters and lighter refills to provide increased flexibility to shippers and carriers while maintaining the level of safety provided in the current regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not formally reviewed by the Office of Management and Budget. This final rule is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not impose increased compliance costs on the regulated industry. The revised definitions for ''lighters'' and ''lighter refills'' are consistent with the definition used by CPSC and with definitions in the ASTM and ISO industry consensus standards. Consistent definitions will reduce confusion in the regulated community and promote voluntary compliance. In addition, the testing provisions adopted for lighters in this final rule are consistent with industry consensus standards, and the packaging requirements adopted for lighters and lighter refills are consistent with international transportation standards. Again, consistent requirements will provide additional flexibility, reduce confusion, and promote compliance, thereby enhancing transportation safety.

In this final rule, PHMSA is revising requirements applicable to the approval of lighter designs for transportation. Currently, designs for lighters intended for transportation in commerce must be approved by PHMSA. We receive about 100 requests each year for lighter design approvals. Each submission costs an applicant about $175.50 for professional, clerical, and testing expenses. There is one testing laboratory currently authorized to support PHMSA's approval process. The laboratory tests the lighter design and provides the applicant with a test report. The applicant then submits the test report to PHMSA with its application for approval. We review the application and test report and issue an approval; this process may take two to three weeks to complete. Once this final rule is implemented, PHMSA will no longer approve lighter designs. Instead, PHMSA will authorize third parties to test lighter designs and certify compliance with HMR requirements, thus eliminating the two-to-three-week delay between completion of testing and issuance of an approval and reducing the industry's professional and clerical costs for obtaining an approval by about 50 percent. We expect that between 10 and 20 laboratories will seek authorization to grant lighter design approvals. The increased number of available testing facilities may result in reductions in the costs associated with performing the required tests.

In addition, this final rule excepts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule will reduce the compliance burden on the regulated industry without compromising transportation safety.

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 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 government. Therefore, the

consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, 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:

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

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

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

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

(v) The design, manufacture, fabrication, marking, maintenance, recondition, 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 (i), (ii), (iii), and (v) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT 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. PHMSA has determined that the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13175

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

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact 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. This final rule will not impose increased compliance costs on the regulated industry. Rather, the final rule incorporates current approval procedures for the transportation of lighters and lighter refills into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the final rule excepts certain shipments from the specification packaging requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, I certify that 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 currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, ''Approvals for Hazardous Materials,'' with an expiration date of June 30, 2007. This final rule imposes no new information collection and recordkeeping requirements.

G. Regulation Identifier Number (RIN)

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

H. Unfunded Mandates Reform Act

This final rule imposes no unfunded mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

I. 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 you may visit *http://dms.dot.gov*.

IV. List of Subjects

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

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

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

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

■ 2. In § 171.8, new definitions of ''lighter'' and ''lighter refill'' are added, in appropriate alphabetical sequence, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Lighter means a mechanically operated flame-producing device employing an ignition device and containing a Class 3 or a Division 2.1 material. For design, capacity, and filling density requirements for lighters containing a Division 2.1 material, see § 173.308.

Lighter refill means a pressurized container that does not contain an ignition device but does contain a release device and is intended for use as a replacement cartridge in a lighter or to refill a lighter with a Division 2.1

flammable gas fuel. For capacity limits, see § 173.306(h) of this subchapter.

* * * * *

■ 3. In § 171.11, in paragraph (d), a new paragraph (19) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(19) Lighters and lighter refills containing Division 2.1 or Class 3 materials (*see* § 171.8 of this subchapter) must conform to the requirements of this subchapter.

■ 4. In § 171.12, in paragraph (b), a new paragraph (23) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(23) Lighters and lighter refills containing Division 2.1 or Class 3 materials (*see* § 171.8 of this subchapter) must conform to the requirements of this subchapter.

* * * * *

■ 5. In § 171.12a, in paragraph (b), a new paragraph (21) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(21) Lighters and lighter refills containing Division 2.1 or Class 3 materials (*see* § 171.8 of this subchapter) must conform to the requirements of this subchapter.

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

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

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

■ 7. In § 172.101, in paragraph (c)(11), the Note to paragraph (c)(11) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(11) * * *

Note to Paragraph (c)(11): For the transportation of samples of self-reactive materials, organic peroxides, explosives or lighters, *see* §§ 173.224(c)(3), 173.225(c)(2), 173.56(d) or 173.308(b)(2) of this subchapter, respectively.

* * * * *

■ 8. In § 172.101, the Hazardous Materials Table is amended to read as follows:

§ 172.101. HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	(REMOVE).												
	*	*		*	*		*	*					
	Lighter replacement cartridges containing liquefied petroleum gases (and similar devices, each not exceeding 65 grams). See Lighters *or* Lighter refills *etc. containing flammable gas.*												
	*	*		*	*		*	*					
	Lighters or Lighter refills *containing flammable gas.*												
	*	*		*	*		*	*					
	(ADD).												
	*	*		*	*		*	*					
	Lighters *containing flammable gas.*	2.1	UN1057		2.1	168	21,308	21,308	None	1 kg	15 kg	B	40
	Lighters, new or empty, purged of all residual fuel and vapors.					168.							
	Lighters, *non-pressurized, containing flammable liquid,.*	3	NA1057	II	3	168	21	None	None	Forbidden	Forbidden	B	40
	Lighter refills *containing flammable gas not exceeding 4 fluid ounces (7.22 cubic inches) and 65 grams of flammable gas.*	2.1	UN1057		2.1	169	306	306	None	1 kg	15 kg	B	40
	Lighter replacement cartridges containing liquefied petroleum gases see Lighter *refills containing flammable gas. Etc.*												
	*	*		*	*		*	*					

* * * * *

§ 172.102 [Amended]

■ 9. In § 172.102, the following changes are made:
■ a. In paragraph (c)(1), new Special Provisions 168 and 169 are added.
■ b. In paragraph (c)(5), Special Provision N10 is removed.

The additions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *
(1) * * *

* * * * *

168 For lighters containing a Division 2.1 gas (*see* § 171.8 of this subchapter), representative samples of each new lighter design must be examined and successfully tested as specified in § 173.308(b)(3). For criteria in determining what is a new lighter design, *see* § 173.308(b)(1). For transportation of new lighter design samples for examination and testing, *see* § 173.308(b)(2). The examination and testing of each lighter design must be performed by a person authorized by the Associate Administrator under the provisions of subpart E of part 107 of this chapter, as specified in § 173.308(a)(4). For continued use of approvals dated prior to January 1, 2012, *see* § 173.308(b)(5).

For non-pressurized lighters containing a Class 3 (flammable liquid) material, its design, description, and packaging must be approved by the Associate Administrator prior to being offered for transportation or transported in commerce. In addition, a lighter design intended to contain a non-pressurized Class 3 material is excepted from the examination and testing criteria specified in § 173.308(b)(3). An unused lighter or a lighter that is cleaned of residue and purged of vapors is not subject to the requirements of this subchapter.

169 This entry applies to lighter refills (*see* § 171.8 of this subchapter) that contain a Division 2.1 (flammable) gas but do not contain an ignition device. Lighter refills offered for transportation under this entry may not exceed 4 fluid ounces capacity (7.22 cubic inches) or contain more than 65 grams of fuel. A lighter refill exceeding 4 fluid ounces capacity (7.22 cubic inches) or containing more than 65 grams of fuel must be classed as a Division 2.1 material, described with the proper shipping name appropriate for the material, and packaged in the packaging specified in part 173 of this subchapter for the flammable gas contained therein. In addition, a container exceeding 4 fluid ounces volumetric capacity (7.22 cubic inches) or containing more than 65 grams of fuel may not be connected or manifolded to a lighter or similar device and must also be described and packaged according to the fuel contained therein. For transportation by passenger-carrying aircraft, the net mass of lighter refills may not exceed 1 kg per package, and, for cargo-only aircraft, the net mass of lighter refills may not exceed 15 kg per package. See § 173.306(h) of this subchapter.

* * * * *

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. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 11. In § 173.21, paragraph (i) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(i) Except for a package containing a lighter design sample that meets the requirements of § 173.308(b)(2), a package containing a lighter (see § 171.8 of this subchapter) containing a Division 2.1 material, of a design that has not been examined and successfully tested by an authorized person under the criteria specified in § 173.308(a)(4) or, a lighter design containing a Class 3 material, that has not been approved by the Associate Administrator.

* * * * *

§ 173.306 [Amended]

■ 12. In § 173.306, the following changes are made:
■ a. In paragraph (a)(1), in the first sentence, the wording ''cigarette lighters'' is removed and the wording ''lighter refills (see 171.8 of this subchapter)'' is added in its place. In the last sentence, the wording ''paragraph (h)'' is removed and the wording ''paragraph (i)'' is added in its place.
■ b. In paragraph (a)(3) introductory text, in the last sentence, the wording ''paragraph (h)'' is removed and the wording ''paragraph (i)'' is added in its place.
■ c. In paragraph (b) introductory text, in the last sentence, the wording ''paragraph (h)'' is removed and the wording ''paragraph (i)'' is added in its place.
■ d. Paragraph (i) is redesignated as paragraph (j), paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(h) *Lighter refills.* (1) Lighter refills (see § 171.8 of this subchapter) must not contain an ignition element but must contain a release device. Lighter refills offered for transportation under this section may not exceed 4 fluid ounces capacity (7.22 cubic inches) or contain more than 65 grams of a Division 2.1 fuel. For transportation by highway or rail, lighter refills must be tightly packed and secured against movement in strong outer packagings. For transportation by aircraft or vessel, lighter refills must be tightly packed and secured against movement in any rigid specification outer packaging authorized in Subpart L of Part 178 of this subchapter at the Packing Group II performance level.

(2) *Exceptions.* For highway transportation, when no more than 1,500 lighter refills covered by this paragraph are transported in one motor vehicle, the requirements of subparts C through H of part 172, and Part 177 of this subchapter do not apply. Lighter refills covered under this paragraph must be packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of this part. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the word ''LIGHTER REFILLS'' and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. No person may offer for transportation or transport the lighter refills or prepare the lighter refills for shipment unless that person has been specifically informed of the requirements of this section.

* * * * *

■ 13. Section 173.308 is revised to read as follows:

§ 173.308 Lighters.

(a) *General requirements.* No person may offer for transportation or transport a lighter (see § 171.8 of this subchapter) containing a Division 2.1 (flammable gas) material except under the following conditions:

(1) The lighter must contain a fuel reservoir not exceeding 4 fluid ounces capacity (7.22 cubic inches), and must contain not more than 10 grams (0.35 ounce) of flammable gas.

(2) The maximum filling density may not exceed 85 percent of the volumetric capacity of each fluid reservoir at 15 °C (59 °F).

(3) Each lighter design, including closures, must be capable of withstanding, without leakage or

rupture, an internal pressure of at least two times the pressure of the flammable gas at 55 °C (131 °F).

(4) Each appropriate lighter design must be examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing under the provisions of subpart E of part 107 of this chapter and who—

(i) Has the equipment necessary to perform the testing required to the level of accuracy required;

(ii) Is able to demonstrate, upon request, the knowledge of the testing procedures and requirements of the HMR relative to lighters;

(iii) Does not manufacture or market lighters, is not financially dependent or owned in whole or in part, by any entity that manufactures or markets lighters;

(iv) Is a resident of the United States; and

(v) Performs all examination and testing in accordance with the requirements of paragraph (b)(3) and (4) of this section.

(5) The Associate Administrator will assign an identification code to each person who is authorized to examine and test lighters. This identification code must be incorporated into a unique test report identifier for each successfully tested lighter design.

(b) *Examination and testing of lighter design types.* (1) *Lighter design type definition.* A new lighter design is one that has never been examined and tested or one that differs from a previous design in any manner that may affect the escape (leakage) of gas. Lighter characteristics that may affect the escape of gas include changes in materials of construction, ignition mechanism, burner valve design, wall thickness, sealing materials, and type of fuel (e.g., vapor pressure differences).

(2) *Lighter samples submitted for examination and testing.* Samples of a new lighter design are excepted from the requirements of (a)(4) and (d) of this section and may be offered for transportation and transported under the following conditions:

(i) The samples must be transported only to an authorized testing agency;

(ii) No more than 12 lighters may be packaged in a single outer packaging;

(iii) Inner packagings must conform to the requirements of paragraph (c)(1) of this section. For transportation by aircraft, intermediate or outer packagings must meet the pressure differential requirements of § 173.27(c) of this part;

(iv) The outer packaging must conform to the requirements of Subpart M of Part 178 of this subchapter at the Packing Group I performance level and to the requirements of § 173.24 of this subpart;

(v) The word ''sample'' must appear on the shipping paper as part of the proper shipping name or in association with the basic description; and

(vi) In addition to other required markings and labels, the package must be marked ''SAMPLE FOR EXAMINATION AND TESTING.''

(vii) All other applicable requirements of this subchapter must be met.

(3) *Examination and testing of sample lighters by an authorized testing agency.* Each sample lighter must be examined for conformance with paragraph (a) of this section by a person authorized by the Associate Administrator. In addition, lighters must be subjected to the following leakage test:

(i) A minimum of six lighters must be examined and tested at one time. Store the lighters in a desiccator for 24 hours. After drying, weigh each lighter on an analytical balance capable of accurately measuring to within 1/10 of a milligram (0.0001 grams).

(ii) After weighing, place the lighters together in an explosion-proof, controlled-temperature laboratory oven capable of maintaining 38.7 ±1 °C (100 ±3 °F) for 96 continuous hours (4 days). At the end of 96 hours, remove the lighters from the oven and place them in the same desiccator and allow the lighters to cool to ambient temperature.

(iii) After cooling, weigh each lighter and determine the net weight differences for each lighter tested (subtract the mass after oven exposure from the original mass before oven exposure).

(iv) Weight losses must be assessed to determine the quantity of gas that leaked from the lighters and from the weight change as a result of absorbed moisture. If the net weight has increased, the test facility must run the required test using six empty lighters in parallel with the six filled lighters. The parallel tests are conducted to determine the weight of moisture absorbed in the plastic in order to determine the weight loss of the lighters from gas leakage.

(v) If the net weight loss for any one of the six lighters exceeds 20 milligrams (0.020 grams), the design must be rejected.

(vi) Lighters manufactured to a rejected lighter design may not be offered for transportation or transported in commerce unless approved in writing by the Associate Administrator.

(4) *Recordkeeping requirements.* (i) Following the examination of each new lighter design, the person or agency that conducted the examination and test must prepare a test report and make that test report available to the manufacturer. At a minimum, the test report must contain the following information:

(A) Name and address of test facility;

(B) Name and address of applicant;

(C) A test report identifier, that is, the authorized person or agency identifier code immediately followed by an alpha/numeric identifier of four or more characters assigned to the specific lighter design by the authorized person or agency (e.g., ''LAA****,'' where, ''LAA'' is the identification code assigned to the authorized person or agency by the Associate Administrator and ''****'' is replaced with the unique test report identifier assigned to the specific lighter design by the authorized person or agency);

(D) Manufacturer of the lighter. For a foreign manufacturer, the U.S. agent or importer must be identified;

(E) Description of the lighter design type (e.g., model, dimensions, ignition mechanism, reservoir capacity, lot/batch number) in sufficient detail to ensure conformance with paragraph (b)(4)(iii) of this section; and

(F) A certification by the authorized testing agency that the lighter design conforms to paragraph (a) of this section and passes or does not pass the required leakage test in paragraph (b) of this section.

(ii) For as long as any lighter design is in production and for at least three years thereafter, a copy of each lighter's test report must be maintained by the authorized testing agency that performed the examination and testing and the manufacturer of the design. For a foreign manufacturer, each test report must be maintained in accordance with this paragraph by the foreign manufacturer's U.S. agent or importer.

(iii) Test reports must be traceable to a specific lighter design and must be made available to a representative of the Department upon request.

(5) *Transitional provisions.* Until January 1, 2012, approval numbers issued by the Associate Administrator prior to January 1, 2007 may continue to be marked on packages and annotated on shipping papers, where applicable. After that time, previously issued approvals (*i.e.,* T-***) will no longer be valid and each lighter design currently in production must be re-examined and tested under the provisions of this section.

(c) *Packaging requirements.* (1) *Inner containment.* Lighters must be placed in an inner packaging that is designed to prevent movement of the lighters and inadvertent ignition or leakage. The ignition device and gas control lever of each lighter must be designed, or

securely sealed, taped, or otherwise fastened or packaged to protect against accidental functioning or leakage of the contents during transport. If lighters are packed vertically in a plastic tray, a plastic, fiberboard or paperboard partition must be used to prevent friction between the ignition device and the inner packaging.

(2) *Outer packaging.* Lighters and their inner packagings must be tightly packed and secured against movement in any rigid specification outer packaging authorized in Subpart L of Part 178 of this subchapter at the Packing Group II performance level.

(d) *Shipping paper and marking requirements.* (1) In addition to the requirements of subpart C of part 172, shipping papers must be annotated with the lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) traceable to the test report assigned to the lighters or, if applicable, the previously issued approval number (*i.e.,* T***), in association with the basic description.

(2) In addition to the requirements of subpart D of part 172, a lighter design test report identifier (see paragraph (b)(4)(i)(C) of this section) or, if applicable, the previously issued approval number (*i.e.,* T***), must be marked on a package containing lighters.

(3) For transportation by vessel in a closed transport vehicle or a closed freight container, the following warning must be affixed to the access doors:

WARNING—MAY CONTAIN EXPLOSIVE MIXTURES WITH AIR—KEEP IGNITION SOURCES AWAY WHEN OPENING

The warning must be on a contrasting background and must be in letters measuring at least 12.7 mm (0.5 inch) in height.

(e) *Exceptions.* (1) *Common or contract carriage.* For highway transportation by common or contract carrier, when no more than 1,500 lighters covered by this section are transported in one motor vehicle, the requirements of subparts C through H of part 172, and Part 177 of this subchapter do not apply. Lighters transported in accordance with this paragraph are also excepted from the specification packaging, shipping paper, and marking requirements specified in §§ 173.308(c) and (d). Inner packagings must conform to paragraph (c)(1) of this section. Lighters must be further packaged in rigid, strong outer packagings meeting the general packaging requirements of subpart B of part 173. Outer packagings must be plainly and durably marked, on two opposing sides or ends, with the word ''LIGHTERS'' and the number of devices contained therein in letters measuring at least 20 mm (0.79 in) in height. In addition, the package must include the test report identifier for each lighter design as specified in paragraph (b)(4)(i)(C) of this section or, if applicable, the previously issued approval number (*i.e.,* T***). The test report identifier or approval number must be durable, legible, in English, and located in, attached to, or marked directly on the package. No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section.

(2) *Private carriage.* For highway transportation by a private carrier, lighters that have been examined and successfully tested in accordance with this section are not subject to any other requirements of this subchapter under the following conditions:

(i) No person may offer for transportation or transport the lighters or prepare the lighters for shipment unless that person has been specifically informed of the requirements of this section;

(ii) Lighters must be placed in an inner packaging that is designed to prevent accidental activation of the ignition device or valve, release of gas, and movement of the lighters (*e.g.,* tray, blister pack, etc.);

(iii) Inner packagings must be placed in a securely closed rigid outer packaging that limits movement of the inner packagings and protects them from damage;

(iv) The outer package may contain not more than 300 lighters;

(v) A transport vehicle may carry not more than 1,500 lighters at any one time;

(vi) The lighters may not be placed in an outer packaging with other hazardous materials; and

(vii) Outer packagings must be plainly and durably marked with the words ''LIGHTERS, excepted quantity.''

Authority: 49 CFR part 1.

Issued in Washington, DC, on January 11, 2006.

Brigham A. McCown,

Acting Administrator.

[FR Doc. 06–464 Filed 1–20–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 120805C]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

ACTION: Notification of standard prices.

SUMMARY: The National Marine Fisheries Service publishes IFQ standard prices for the Individual Fishing Quota(IFQ) Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. NMFS published a standard price notice for 2005 on December 15, 2005. NMFS subsequently discovered calculation errors in the published standard prices. This notice corrects the calculation errors and replaces the December 15, 2005, **Federal Register** document. This action is intended to provide holders of halibut and sablefish IFQ permits information to calculate the payments required for IFQ cost recovery fees due by January 31, 2006.

DATES: Effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended by Public Law 104–297 to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program'' (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees