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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 176, and 178

[Docket No. PHMSA-2011-0142 (HM-219)]

RIN 2137-AE79

Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)

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

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations in response to petitions for rulemaking submitted by the regulated community to update, clarify, or provide relief from miscellaneous regulatory requirements. Specifically, PHMSA is amending the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; removing the listing for “NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol”; harmonizing internationally and providing a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids Types B through F; allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material; and providing greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides “on or near the vessel’s bridge” while the vessel is in a United States port.

DATES: Effective Date: This rule is effective [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

Voluntary Compliance Date: Voluntary compliance with all amendments is authorized [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

A. Notice of Proposed Rulemaking (NPRM)

On May 24, 2012, PHMSA (also “we” or “us”) published a Notice of Proposed Rulemaking (NPRM) titled, “Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)” under Docket PHMSA 2011-0142 (HM-219) in the Federal Register. The NPRM and this final rule are part of the Department of Transportation’s Retrospective Regulatory Review (RRR) designed to identify ways to improve the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)). PHMSA’s rulemaking procedure regulations, in 49 CFR § 106.95, provide for persons to ask PHMSA to add, amend, or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action. The NPRM responded to eight petitions for rulemaking submitted to PHMSA by various stakeholders. In the NPRM, we proposed to amend the HMR to update, clarify, or provide relief from miscellaneous regulatory requirements at the request of the regulated community. Below is a summary of the proposed changes in the May 24, 2012 NPRM:

- Revise § 178.3 to clearly indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;

- Revise §§ 178.601(l), 178.801(l) and 178.955(i) to relax the record retention requirements for packaging test reports and provide a chart to clearly identify the retention requirements;
- Revise the Hazardous Materials Table (HMT; 49 CFR § 172.101) by removing the listing for “NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol”; and removing reference to gasohol in Sections §§ 172.336(c)(4) and 172.336(c)(5);
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Add a reference in 49 CFR § 178.601(c)(4) and § 178.801(c)(7) to ASTM D4976 - 06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide a range of acceptable resin tolerances in the plastic drum and IBC material;
- Allow smokeless powder classed as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and
- Allow the Dangerous Cargo Manifest (DCM) to be in locations designated by the master of the vessel besides “on or near the vessel’s bridge” while the vessel is in a United States port to ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

PHMSA received six public comments in response to the above amendments proposed in the May 24, 2012, HM-219 NPRM. These comments are discussed in further detail in this final rule.

B. Commenters

The comment period for the May 24, 2012 NPRM closed on July 23, 2012. PHMSA received comments from six entities, five of which submitted the petitions discussed in the NPRM, and one is a council of manufacturers, shippers and carriers of hazardous materials, and their representative associations. Two commenters supported proposed changes in the HMR in their entirety; one commenter supported the proposed changes and asked for a further revision; one commenter disagreed with proposed changes pertaining to packaging marking and test report record retention, our intent to retain Special provision 172, and our intent to incorporate by reference ASTM Standard 04976-06 without stating that plastic drums and IBCs made from polyethylene meeting that standard do not constitute a different design type; one commenter asked that we adopt changes as they were written in their petition, not as they were proposed in the NPRM; and one commenter withdrew their petition.

In consideration of the comments received to the public docket, PHMSA has developed this final rule. We address and discuss the proposals adopted and those not adopted into the HMR in this rulemaking under the heading: Discussion of Amendments and Applicable Comments. One commenter asked that we make additional amendments that were not specifically addressed in the NPRM and, therefore, these suggested amendments are considered beyond the scope of this rulemaking. The comments, as submitted to this docket, may be accessed via <http://www.regulations.gov> and were

submitted by the following companies, and associations (abbreviations used throughout the document and Docket Reference numbers are also provided):

Commenter	Abbreviation	Docket Reference
Association of Hazmat Shippers	AHS	PHMSA-2011-0142-0004
Dangerous Goods Advisory Council	DGAC	PHMSA-2011-0142-0005
Hapag-Lloyd	–	PHMSA-2011-0142-0003
International Vessel Operators Dangerous Goods Association	IVODGA	PHMSA-2011-0142-0002
Plastic Drum Institute, Inc. and the Rigid Intermediate Bulk Container Association, Inc.	PDI and RIBCA	PHMSA-2011-0142-0007
Sporting Arms and Ammunition Manufacturers' Institute, Inc.	SAAMI	PHMSA-2011-0142-0006

II. **Discussion of Amendments and Applicable Comments**

A. General Comments

On September 30, 1993, President Bill Clinton issued Executive Order 12866, which asked Federal agencies “to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.”

On October 21, 2011, President Barack Obama issued Executive Order 13563, which is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866. This executive order urged government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Finally, federal agencies were directed to periodically review existing significant regulations; retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively

burdensome; and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

On May 10, 2012, President Barack Obama issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review). Executive Order 13610 directs agencies to prioritize “those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.” Executive Order 13610 further instructs agencies to give “consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.” In response to Executive Orders 12866, 13610, and 13563, PHMSA has undertaken a retrospective review of the HMR. This final rule, and the NPRM that preceded it, are part of PHMSA’s regulatory review initiative. This initiative was in response to petitions for rulemaking by the regulated community. Its intent is to update, clarify, or provide relief from miscellaneous regulatory requirements. The NPRM provided an opportunity for further public participation in the development of the regulatory amendments, and promoted exchange of information and perspectives among the various stakeholders.

Six entities commented on the NPRM. PHMSA fully considered all comments. The comments are comprehensive and raised important issues that need to be addressed. A detailed description of the original proposals in the May 24, 2012 NPRM, a summary of the comments received, a response to those comments, and PHMSA’s decision are detailed below.

B. Comments Beyond the Scope of this Rulemaking

In this section, PHMSA discusses the comments to the NPRM that provided suggestions for additional revisions that were not specifically addressed in the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA identifies one comment as beyond the scope of this rulemaking action. The comments submitted by IVODGA asked that we consider a revision to the proposed language in § 176.30(a) to insert: “The carrier may use the DCM format found in the International Conference on Facilitation of Maritime Travel and Transport (FAL Convention), Form 7, as amended, for these purposes.”

Referring to the FAL Convention Form 7 as an acceptable DCM format was not proposed in the NPRM and, therefore, the regulated community was not given the opportunity to comment on this amendment. For this reason, PHMSA is unable to address this suggested revision in this rule. However, it should be noted that the HMR would not prohibit the use of the FAL Convention Form 7 provided that it contains all of the required information on the DCM. If we do choose to pursue adoption of this beyond the scope comment, we will do so in a separate rulemaking. Alternatively, if IVODGA believes this amendment warrants rulemaking action, we encourage them to file a petition for rulemaking in accordance with § 106.95 including all information (see § 106.100) needed to support a petition.

C. Provisions Not Adopted in This Final Rule and Discussion of Comments

In this section, PHMSA discusses the changes proposed in the NPRM and the comments received in response to the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA identified one provision that we are not

adopting in this final rule. Specifically, PHMSA received a comment from Plastic Drum Institute, Inc. (PDI) and the Rigid Intermediate Bulk Container Association, Inc. (RIBCA) withdrawing their petitions for rulemaking. Below is a summary of the amendment proposed, the comment received, and PHMSA's rationale for not adopting such an amendment.

In two petitions (P-1554 and P-1564) addressed in the NPRM, RIBCA and PDI asked that we incorporate by reference "ASTM D4976-06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials," which provides standard requirements for polyethylene plastic molding and extrusion materials. The petitioners also asked that we revise the HMR to state that plastic drums or Intermediate Bulk Containers (IBCs) made from polyethylene meeting ASTM D4976-06 would not constitute a different packaging provided the polyethylene used is within a tolerance defined in the standard. PDI and RIBCA indicated in the petitions that their members have been cited for "probable violations" for a number of reasons pertaining to changes in material construction in their plastic drums and IBCs.

In the NPRM we proposed to incorporate by reference in § 171.7 ASTM D4976-06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, and revise §§ 178.509(b)(1) and 178.707(c)(3) to include reference to ASTM D4976-06. Packaging testing data was not provided and, consequently, we were unable to determine if packagings manufactured of resins within the tolerance range specified in the standard passed the performance criteria. For this reason, we did not propose to revise the HMR to state that plastic drums or IBCs made from polyethylene meeting ASTM D4976-06 tolerances would not constitute a different packaging.

RIBCA and PDI filed a notice of withdrawal of the petitions. Therein, they suggested that by proposing the incorporation of ASTM D4976-06 without stating that plastic drums or IBCs made from polyethylene meeting ASTM D4976-06 do not constitute a “different packaging” as defined in § 178.601(c), PHMSA was in effect imposing a greater burden on industry. They indicate that their petitions were essentially intended “to advise enforcement staff that a certain range of specifications should be recognized as ‘equivalent’ for purposes of deciding whether new design qualification tests were required under the HMRs.” They further state that they did not intend for ASTM D4976-06 to be considered an exhaustive list of what is acceptable in manufacturing their products. Furthermore, they contend that “a change in resin specifications, whether within or outside the referenced ASTM standard, cannot by itself, absent a performance test failure, justify imposition of a fine.” The Dangerous Goods Advisory Council (DGAC) also commented on this provision. DGAC supported the incorporation by reference of ASTM 04976-06, but expressed a preference that PHMSA state that variations of material density within ASTM D4976-06 would not constitute a new design type.

While we support the incorporation by reference of ASTM D4976-06 to provide acceptable ranges for materials used in the manufacture of plastic drums and IBCs, we are not incorporating this standard in this final rule. The intent of PHMSA in its proposal was not to impose a greater burden on industry, but rather to refer to an industry standard for guidance as to acceptable ranges in materials used to manufacture hazardous materials packagings. For this reason, we are not incorporating by reference ASTM D4976-06 into the HMR.

D. Provisions Adopted in This Final Rule and Discussion of Comments

In this section, PHMSA discusses the changes proposed in the NPRM and the comments received in response to the NPRM. Based on an assessment of the proposed changes and the comments received, PHMSA is adopting these provisions in this final rule. Also, to clearly identify the issues addressed in this rule, PHMSA provides the following list of adopted amendments discussed in this section:

- Revise § 178.3 to clearly indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;
- Revise §§ 178.601(l), 178.801(l), and 178.955(i) to relax the record retention requirements for packaging test reports and provide a chart to clearly identify the recordkeeping requirements;
- Revise the Hazardous Materials Table (HMT; 49 CFR § 172.101) by removing the listing for “NA1203, Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol”; and removing reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5);
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Allow smokeless powder classed as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety;

- Allow the DCM to be in locations designated by the master of the vessel besides “on or near the vessel’s bridge” while the vessel is in a United States port to ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

Certification Packaging Marking and Recordkeeping Requirements (P-1479)

In a petition for rulemaking (P-1479), gh Package & Product, Testing and Consulting, Inc. requested that PHMSA consider amending the HMR to indicate that an entity performing continued packaging certification on a UN certification packaging is not allowed to use the original manufacturer’s or third party laboratory’s mark unless authorized by the manufacturer or third-party laboratory. The petitioner also requested PHMSA to amend the HMR to provide that packaging test reports are kept for a limited time instead of the current requirement of “until the packaging is no longer manufactured.”

Marking

Regarding the manufacturer’s or third party tester’s mark, the petitioner stated that his laboratory tested a packaging at least three times, and the packaging failed each time. Eleven years after the petitioner had tested the packaging, he learned that the package that had failed in his laboratory was still being manufactured and that the petitioner’s symbol was being used on the packaging as the packaging tester’s mark. For these reasons, the petitioner was concerned that the regulations expose the manufacturer and the original third-party test laboratory to potential liability for defective packaging and other packaging violations.

The current regulations provide the person who is certifying compliance of a packaging the option of marking the packaging with a symbol rather than the company name and address provided that the symbol is registered with PHMSA's Associate Administrator for Hazardous Materials Safety. While it is implied that the symbol being used is that of the person who has registered the symbol, it is not explicit. The petitioner has indicated that since the regulations do not specify who is authorized to use the mark, some third-party retesters that did not initially certify the packaging are continuing to use the original third-party laboratory's symbol to certify compliance. While the symbol is associated with the original manufacturer or third-party laboratory, that entity has no control over the packaging being retested by someone else.

In the NPRM, we proposed to revise § 178.3 to clarify that the required marking must identify the person who is certifying that the packaging meets the applicable UN Standard. We further proposed that, for continued certification of the packaging through periodic retesting, the mark must identify the person who certifies the packaging.

DGAC disagrees with the proposed changes stating that they would have the effect of replacing, in the UN performance packaging marking, the mark of the person who performed the design qualification tests with the mark of the person who performed the most recent periodic retest. DGAC states that "periodic retesting does not necessarily confirm compliance with all requirements applicable to a UN design type (e.g., requirements in §§ 178.504- 523)." Further, they state that:

[A] consequence of the proposed changes is that the UN package marking for a given design type would have to be changed at least every year in the case of single or composite packagings and every two years in the case of combination packagings. It does not appear that PHMSA has considered the costs of changing these package markings at this frequency in its regulatory evaluation. At a minimum, such marking changes could result

in considerable administrative costs. In addition, we question whether these changes would provide a meaningful enhancement to safety.

PHMSA's intent has been that the certification mark that is used on the packaging is that of the person manufacturing that packaging or testing the packaging on behalf of the manufacturer. If a packaging that passed an original design qualification test by one manufacturer is then made and retested by another manufacturer, the symbol or name of the manufacturer doing the retesting should be on the packaging. While the periodic retesting requirements are less stringent in some regards than the design qualification tests, e.g., with respect to the vibration test as detailed in § 178.608, when a manufacturer or third party places the UN marking on a packaging following either a design qualification test or a retest, that entity is certifying that the packaging meets the UN requirements for that packaging. PHMSA's intent with respect to whose mark may be used at what time is documented in penalty action reports published on PHMSA's website that indicate that it is a violation to mark a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.¹ Since this is a clarification of the HMR, the administrative costs will not change if the packaging testers are already complying with the HMR.

For these reasons, PHMSA is adopting the changes proposed regarding the packaging certifier's mark in this final rule and is revising § 178.3 to clearly indicate that the required marking must identify the person who is certifying that the packaging meets the applicable UN Standard. Further, for continued certification of the packaging through

¹ See <http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Press%20Releases/2011%20Hazmat%20Penalty%20Action%20Report.pdf>.

periodic retesting, the marking must identify the person who certifies that the packaging continues to meet the applicable UN standard.

Test Reports

Regarding the packaging test reports, the petitioner explained that the record retention requirements indicate that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter. According to petitioner, often the original manufacturer or third-party laboratory is not aware that a packaging is still being made. The petitioner sought relief from the paperwork burden.

In the NPRM we proposed to revise § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings to indicate that records are maintained until the next periodic retest.

DGAC opposes this change, stating that:

PHMSA may alter the required frequency based on an approval and, in the case of IBCs and Large packagings, PHMSA may substitute a quality control program for required periodic retesting (see § 178.801(e)(2)). As such, the periodic retest date is not a date certain, raising the question of how the person who conducted the design qualification tests can know the actual time period for retaining records. If PHMSA maintains the proposed record retention requirements in some form, we recommend the retention period be tied to the date of the design qualification testing rather than the date of periodic retesting.

When the required packaging retest frequency is based on an approval and, in the case of IBCs and Large packagings, a quality control program is substituted for required periodic retesting, records would have to be maintained predicated on the specifications of

each approval. We do agree with DGAC that retest dates may vary depending on a variety of factors and, in this final rule, we are adding the word “required” in conjunction with “periodic retest” to clarify that records of the retest must be kept only five years after the HMR-required test is performed successfully. Specifically, we are revising the language proposed in the NPRM in § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings, to indicate that records are maintained until the next *required* periodic retest is successfully performed and a new test report produced. In all other respects we are amending the HMR as proposed in the NPRM. In doing so, we are limiting the document retention period for persons conducting initial design testing to five years beyond the next successful required periodic retest. In addition, we provide a chart to clearly identify the retention requirements for test reports.

Clarification of Alcohol and Gasoline Mixtures (P-1522)

In its petition (P-1522), Shell Chemicals asked PHMSA to remove from the HMT the listing for “Gasohol, with not more than 10% ethanol.” Shell stated that the proper shipping names for “Gasoline, includes gasoline mixed with ethyl alcohol (ethanol), with not more than 10% alcohol” and “Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,” provide the necessary entries for accurate and specific descriptions of these fuel blends. Consistent with the removal of gasohol from the HMT, Shell Chemicals asked that we remove reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5), which contain hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these

fuels. These provisions were amended as the result of a final rule issued on January 28, 2008 under Docket HM-218D (73 FR 4699) intended to help emergency responders identify and respond to the hazards unique to fuel blends with high ethanol concentrations.

In the January 28, 2008 final rule, we revised the entry for “Gasohol, gasoline mixed with ethyl alcohol, with not more than 20% alcohol” to limit the applicability of the entry to gasoline mixtures with not more than 10% alcohol. In addition, we amended the listing for Gasoline, to read “Gasoline, includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.” At the time, Shell suggested that we remove the entry “NA1203, Gasohol” and revise the entry for “Gasoline” to add a special provision that specifically communicates to shippers that the entry “Gasoline” may be used for gasoline and ethanol blends with not more than 10% ethanol for use in spark ignition engines. While we agreed then that Shell’s suggestion had merit, we did not remove the entry “Gasohol” in HM-218D. We did however revise the entry “Gasoline” to allow for that description to be used for gasoline and ethanol blends with not more than 10% ethanol.

We agree that the proper shipping names for “Gasoline, includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol,” and “Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,” provide the necessary entries for accurate and specific description of these fuel blends. We also agree that the proper shipping name for “Alcohol, n.o.s.” is not as specific as the listings for Gasoline, including “gasoline mixed with ethyl alcohol, with not more than 10% alcohol,” and “Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol.”

Shell Chemicals also petitioned for the removal of Special Provision 172 from Column 7 in association with all packing groups for the Proper Shipping Name “UN1987, Alcohols, n.o.s.” Special Provision 172 stated that “this entry includes alcohol mixtures containing up to 5% petroleum products.” Shell contended that:

Canada does not permit the use of ‘UN1987, Alcohols, n.o.s.’ for alcohol mixtures containing up to 5% petroleum products. A shipment originating in the United States, destined for a customer in Canada using the proper shipping name of “UN1987, Alcohols, n.o.s.” must change the placard and the proper shipping name and to use the entry ‘UN3475, Ethanol and Gasoline mixture,’ when the packaging is returned to the United States. The use of both PSN entries causes a lot of confusion.

For these reasons, Shell stated that these blends should not be permitted to be transported under the “UN 1987, Alcohols, n.o.s.”; rather, “NA 1987, Denatured alcohol,” and “UN 3475, Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture,” are more appropriate descriptions.

In the NPRM we retained Special Provision 172 in association with “Alcohols, n.o.s.” We indicated that, while we agree that “Denatured alcohol” is a more accurate description, this proper shipping name applies to domestic shipments only and may not be available to imported shipments of alcohol mixtures containing up to 5% petroleum products.

DGAC, in their comments, agrees with Shell and states that:

[I]n North America, international shipments of gasoline/ethanol mixtures are predominately between the US and Canada by either highway or rail. Canada does not permit the use of UN1987 in the manner permitted by Special Provision 172. Shipments where UN1987 is used for ethanol/gasoline mixtures face frustrations when moving into Canada, requiring placards to be changed to comply with Canadian regulations.” DGAC states that the full range of gasoline and ethanol concentrations is covered by UN1203 and UN3475, making Special Provision 172 unnecessary.

An alert issued by Transport Canada contradicts these statements.² That alert was issued to respond to incidents involving alcohol and petroleum mixtures and states:

[W]hen dealing with mixtures that contain a high percentage of alcohol (example ethanol) and a low percentage (maximum 5%) of petroleum products (example gasoline), the following shipping name is to be used: Alcohols, n.o.s., Class 3, UN1987, (mixture of alcohol with a petroleum product content up to 5%).

This is to ensure that these mixtures are readily identifiable and refer emergency responders to emergency response guidance specifying use of alcohol-resistant foam.

While PHMSA agrees that the full range of gasoline and ethanol concentrations can be covered by UN1203 and UN3475, when the regulations were changed to incorporate UN3475 and the number of shipments and types of gasoline/ethanol blends increased, it was made readily apparent by multiple stakeholders, including industry, emergency responders, and local, state and Federal government entities, that there was a need for that special provision. Also, removing Special Provision 172 from the UN1987 entry as suggested by Shell and DGAC leaves no HMT entry for a blend of ethanol and gasoline that is not directly intended for use in an internal combustion engine and does not meet PG II criteria. As such, in this final rule we are amending the HMT by removing the listing for “Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol.” We are also revising § 172.336 to remove all references to “gasohol” and to add a table to more clearly indicate hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels. While the preamble of the NPRM indicated that we were intending to retain Special Provision 172, the regulatory text showed that it was removed. This was a typographical error on our part. In this final rule we are retaining reference to Special Provision 172 in the listings for “Alcohols, n.o.s.”

² <http://www.tc.gc.ca/eng/tdg/newsletter-spring2006-323.htm> (Date modified: 3/6/2012) (Date accessed: 9/12/2012)

Self-Reactive Solid Type F (P-1542)

In a petition (P-1542), the Association of Hazmat Shippers (AHS) requested that PHMSA amend the HMT to reference § 173.151, exceptions for Class 4, in column 8A to provide the limited quantity exception for Self-reactive solid, Type F materials, consistent with international regulations.

According to the petitioner, imports of this material may be handled as limited quantities, but domestic shipments must be treated as fully regulated hazardous materials. They indicated that this situation has led to confusion and frustration, particularly upon reshipment of the same products either in the United States or internationally.

In the interest of international harmonization and clarification, in the NPRM we proposed to expand on the AHS petition to authorize all eligible self-reactive liquid and solid material as limited quantities in accordance with the type and quantity of substances authorized in the UN Model Regulations. AHS offered “strong support for adoption into the rules of general applicability of the changes proposed for § 173.151.”

In this final rule we authorize types B through F non-temperature controlled liquid and solid self-reactive materials as limited quantities by amending the listings in the HMT for Self-reactive solids and Self-reactive liquids, Types B through F, to add references in column 8(a) in the HMT to § 173.151.

DOT-SP 9735, Dangerous Cargo Manifest (DCM) Location (P-1556)

The International Vessel Operators Dangerous Goods Association (IVODGA) (formerly known as the International Vessel Operators Hazardous Materials Association, Inc.) submitted a petition (P-1556) requesting that PHMSA revise the requirements for where the DCM is kept onboard when the vessel is docked a United States port. Section

176.30(a) requires the DCM be "kept in a designated holder on or near the vessel's bridge." According to IVODGA, when a vessel is underway, the bridge is occupied at all times and the DCM is readily accessible; however, when a vessel is docked in port during loading and unloading operations, the bridge is often left unattended and locked for security purposes. Thus, the requirement to keep the DCM on or near the vessel's bridge at all times is contrary to the purpose of the DCM, which should be readily available to communicate to the crew and emergency responders the presence and nature of the hazardous materials on board a vessel.

Given the impracticality of maintaining the DCM on or near the vessel's bridge while the vessel is docked in port, IVODGA requested that PHMSA allow the DCM to be kept in a place other than the bridge of the vessel. Hapag-Lloyd AG currently holds a special permit (DOT-SP 9735) that authorizes the DCM "to be retained in a location other than on or near the bridge" that subject vessels are in port. The special permit requires the DCM to be maintained either in the vessel's cargo office or another location designated by the master of the vessel. The special permit further requires the DCM to be readily accessible to emergency responders, and for a sign to be placed in the designated holder on or near the vessel's bridge indicating the location of the DCM while the vessel is in port. During loading and discharging operations, the vessel's cargo office is attended and a working copy of the DCM is updated as hazardous materials are loaded and discharged. This working copy, therefore, would contain the most complete and correct information concerning hazardous materials aboard the vessel at any time during the loading/discharging process. The cargo office would also be readily accessible in an emergency, so the DCM would be immediately available to first responders.

We received only positive comments on this proposal. Hapag-Lloyd commented in support of the proposed change. They wrote:

Hapag-Lloyd is the world's fifth largest liner shipping company, handling 5.5 million containers each year, operating a fleet of more than 135 containerships which have a capacity exceeding 600,000 TEU (20-ft. equivalent units), serving 130 countries throughout Europe, Asia, the Americas, and Africa. Since it was first issued in 1987, Hapag-Lloyd, as holder of DOT-SP 9735, has handled over one million dangerous goods shipments without incidents related to the terms of this exemption/special permit.

IVODGA welcomes the proposed change and asks that PHMSA consider a further minor revision to the proposed language in § 176.30 (a) to include the language: "The carrier may use the DCM format found in the FAL Convention, Form 7, as amended, for these purposes." As indicated in the background section of this rule, such a revision would be beyond the scope of this rulemaking because the language was not proposed in the NPRM and was, therefore, not available for public comment. If IVODGA believes that such language should be incorporated in the HMR, we encourage them to file a petition for rulemaking in accordance with § 106.95 including all information (see § 106.100) needed to support a petition.

We agree with the petitioner and the commenters that the DCM should be allowed to be in locations designated by the master of the vessel besides "on or near the bridge" while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned. The location of the DCM chosen by the master of the vessel must be readily accessible to emergency personnel in an emergency and enforcement personnel for inspection purposes. Allowing alternate locations of the DCM while the vessel is docked provides greater flexibility to the master of the vessel without diminishing the DCM requirements. For this reason, in this final rule

we are incorporating DOT- SP 9735 into § 176.30 of the HMR as proposed in the May 24, 2012 NPRM.

Smokeless Powder, Division 1.4C (P-1559)

The Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI), in a petition (P-1559), requested that PHMSA amend § 173.171 to allow Division 1.4C smokeless powder to be reclassified as a Division 4.1 material. Currently § 173.171 allows smokeless powder for small arms that has been classed in Division 1.3C (Explosive) to be reclassified for domestic transportation as a Division 4.1 (Flammable Solid) material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions.

In a final rule published on January 14, 2009 under Dockets HM-215J and HM-224D (74 FR 2199), PHMSA added a new description to the HMT for Powder, smokeless, Division 1.4C; however, the rule did not extend the allowance provided for Division 1.3C to the Division 1.4C materials.

The petition seeks, with proper examination and approval, to allow a Division 1.4C material which, by definition (see § 173.50), poses the lesser safety risk when compared with Division 1.3 explosives, to be reclassified as a Division 4.1 material.

We believe that this petition has merit, as Division 1.4 explosives pose less of a hazard in transportation than Division 1.3 explosives, which are already allowed to move as Division 4.1 materials. In the NPRM we deviated from the petition by proposing a different net mass allowance for the inner packaging for Division 1.4 materials than what is currently allowed for Division 1.3 materials. The petition asked that we amend § 173.171(c) to include Division 1.4 materials in the exception allowed, which stipulates

that materials must be in combination packagings with inner packaging not exceeding 3.6 kg (8 pounds). Instead we proposed to add a paragraph (d) that stipulates that Division 1.4 materials must be in combination packagings with inner packagings not exceeding the net mass that have been examined and approved as required in § 173.56.

PHMSA received a comment from SAAMI stating that they:

[H]ave studied this proposed change, and find that the sole effect is to allow a flammable solid which emanated from a Division 1.4 classification to exceed the current eight pound limit per inner package. Unless a need for this change is substantiated, we see no reason why the flammable solid classification limit for inner packages should be amended. Furthermore this would be unenforceable in the field.

Our intent with the modification to the SAAMI petition was to ensure that the allowable net mass did not exceed the net mass of the material that had been examined and approved. Instead of making the proposed modification, and adding a new paragraph (d), in this final rule, we are revising Special Provision 16 and § 173.171 for clarification purposes. Specifically, we are revising the following:

- The wording of Special Provision 16 to read: “This description applies to smokeless powder and other propellant powders that are used as powder for small arms that have been classed as Division 1.3C or 1.4C and reclassified to Division 4.1 in accordance with § 173.56 and § 173.58 of this subchapter.” The current wording of Special Provision 16 uses the term “solid” and, consequently, narrows the application to only smokeless powder or propellant in powder form to be qualified for reclassification as a Division 4.1 material. Also, by using the term “propellant powders” we are ensuring that powders that have hazard properties different from “propellants” are not reclassified as a Division 4.1 material.

- The introductory paragraph of § 173.171 to read: “Powders that have been classed in Division 1.3 or Division 1.4C may be reclassified in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions.”
- Section 173.171(a) to read: “Powders that have been approved as Division 1.3C or Division 1.4C may be reclassified to Division 4.1 in accordance with §§ 173.56 and 173.58 of this part,” as we see no need to retest powders already classed as 1.3C or 1.4C to be tested again.
- Current paragraph (c) to read: “Only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass and outer packaging of UN 4G fiberboard boxes meeting the Packing Group I standards are authorized. Inner packagings must be arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.”
- Current paragraph (d) of § 173.171 to read: “The net weight of smokeless powder in any one box (one package) must not exceed 7.3 kg (16 pounds).”

The changes in this final rule to Special Provision 16 and § 173.171 are non-substantive and clarify existing language.

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 materials in intrastate, interstate, and foreign commerce. This final rule amends the recordkeeping and packaging marking requirements for third-party labs and manufacturers to assure the traceability of packaging; removes the listing for “Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203”; provides a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; allows smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and provides greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides “on or near the vessel’s bridge” while the vessel is in a United States port.

B. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures

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

In this final rule, we amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. PHMSA anticipates the changes contained in this rule will have economic benefits to the regulated community. This final

rule is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs.

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize “those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.” Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

In this final rule, PHMSA has involved the public in the regulatory process in a variety of ways. Specifically, in this rulemaking PHMSA is incorporating regulatory

changes in response to five petitions that have been submitted by the public in accordance with the Administrative Procedure Act and PHMSA's rulemaking procedure regulations, in 49 CFR § 106.95. Furthermore, the public was given the opportunity to comment on the proposed changes during the open comment period. Key issues covered by the petitions include requests from the public to revise the packaging requirements, clarify the HMR pertaining to alcohol and gasoline mixtures, and allow additional exceptions for the classification of smokeless powder used for small arms ammunition.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (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, content, and placement of those documents;

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

(v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. This final rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” (see 49 CFR 107.202(d) as the Federal requirements.)

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the Federal Register the effective date of Federal preemption. That 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 proposes the effective date of federal preemption be 90 days from publication of this 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 on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

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

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. This final rule amends miscellaneous provisions in the HMR to clarify provisions based on petitions for rulemaking. While maintaining safety, it relaxes certain requirements that are overly burdensome and provides clarity where requested by the regulated community. The changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The changes shown herein are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. The benefits are modest and, therefore, this final rule will not have a significant economic impact on a substantial number of small entities, though it will provide economic relief to some small

businesses. For example, limiting the document retention period for persons conducting initial design testing of packagings to five years beyond the next required periodic retest, should reduce the paperwork burden for some small businesses.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has an approved information collections under OMB Control Numbers 2137-0018 “Inspection and Testing of Portable Tanks and Intermediate Bulk Containers”, 2137-0051 “Rulemaking, Special Permits, and Preemption Requirements”, and 2137-0572 “Testing Requirements for Non-Bulk Packaging.” This final rule may result in a decrease in the annual burden and costs under this information collection due to proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record and a minimal decrease in this information collection burden because of a reduction in the record retention period for non-bulk packages, IBCs and large packagings. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has

developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden of this final rule is as follows:

- OMB Control Nos. 2137-0018 (Inspection and Testing of Portable Tanks and Intermediate Bulk Containers) and 2137-0572 (Testing Requirements for Non-Bulk Packaging.) We anticipate a minimal decrease in this information collection burden because this rule establishes a finite record retention period. Specifically, § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies recordkeeping requirements for testing large packagings are revised to limit the document retention period for persons conducting initial design testing from an indefinite period to five years beyond the next required periodic retest.
- Office of Management and Budget (OMB) Control Number 2137-0051; Rulemaking and Special Permit Petitions: We anticipate a minimal decrease in this information collection burden due to the elimination of the application process for DOT- SP 9735. Specifically, the holder of DOT-SP 9735 is no longer required to re-apply for a Special Permit to place the DCM in locations designated by the master of the vessel besides “on or near the bridge” while the vessel is docked in a United States port while cargo

unloading, loading, or handling operations are underway and the bridge is unmanned.

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 does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141,300,000 or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. §§ 4321-4375, requires federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) the need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action:

Docket No. PHMSA-2011-0142 (HM-219), Final Rule

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 et seq. To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Adopted Amendments to the HMR:

In this final rule, PHMSA is adopting amendments to:

- Revise § 178.3 to indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory. This change will ensure that the mark used is tied to the entity that was issued the mark.
- Revise §§ 178.601(l), 178.801(l), and 178.955(i) to require that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for the duration of the certification plus five years beyond the last certification, instead of the current requirement that it be maintained until the packaging is no longer made.
- Revise the HMT by removing the listing for “Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203,” and remove reference to gasohol in §§ 172.336(c)(4) and 172.336(c)(5).

This change clarifies the HMR and harmonizes the HMR with international recommendations.

- Revise § 172.101 to refer to § 173.151 to provide the limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F, consistent with international regulations.
- Allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety.
- Allow the DCM to be in locations designated by the master of the vessel besides “on or near the vessel’s bridge” while the vessel is docked in a United States port to ensure that the DCM is readily available to communicate the presence and nature of the hazardous materials on board a vessel. This revision would provide greater flexibility by allowing the document to be maintained in either the vessel’s cargo office or another location designated by the master of the vessel.

Alternatives Considered:

Alternative (1): Do nothing

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Go forward with the proposed amendments to the HMR in the NPRM.

This is the selected alternative.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, packaging failures, loading, unloading, collisions, handling problems,

or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (e.g. wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up and decontamination of the accident scene.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: (1) risk of release and resulting environmental impact; (2) risk to human safety, including any risk to first responders; (3) longevity of the packaging; and (4) if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. The adopted packaging changes would establish greater accountability for certifying packagings, reduce paperwork for the affected packaging testing agencies, and potentially reduce packaging failures that result in hazardous materials incidents. The amendments that harmonize the HMR with international standards and recommendations are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. The revision regarding where the DCM is kept when a vessel is in a U.S. port should help to expedite a response to an emergency and reduce the environmental impact to a hazardous materials spill.

Conclusion

PHMSA is making miscellaneous amendments to the HMR in response to petitions for rulemaking. The amendments adopted in this final rule are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the requirements easier to understand and follow.

While the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this final rule.

J. Privacy Act.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

K. Executive Order 13609 International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the

absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, provided that the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this final rule, PHMSA is revising the HMR to align with international standards by: removing reference to “gasohol”; providing a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; and allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material. These amendments are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, ensure the smooth flow of hazardous materials from their points of origin to their points of destination, and facilitate effective emergency response in the event of a hazardous materials incident. Accordingly, this

rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

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, Training, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

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

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Chapter I 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 1.53.

2. In § 172.101, The Hazardous Materials Table is amended by removing and revising entries, in the appropriate alphabetical sequence as follows.

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols (1)	Hazardous materials descriptions and proper shipping names (2)	Hazard class or division (3)	Identification Numbers (4)	PG (5)	Label Codes (6)	Special Provisions (§ 172.102) (7)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	*		*		*		*		*		*		
	[REVISE]												
	*		*		*		*		*		*		
	Powder, smokeless	1.4C	UN0509	II	1.4C		None	62	None	Forbidden	Forbidden	06	
	*		*		*		*		*		*		
G	Self-reactive liquid type B	4.1	UN3221	II	4.1	53	151	224	None	Forbidden	Forbidden	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive liquid type C	4.1	UN3223	II	4.1		151	224	None	5 L	10 L	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive liquid type D	4.1	UN3225	II	4.1		151	224	None	5 L	10 L	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive liquid type E	4.1	UN3227	II	4.1		151	224	None	10 L	25 L	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive liquid type F	4.1	UN3229	II	4.1		151	224	None	10 L	25 L	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive solid type B	4.1	UN3222	II	4.1	53	151	224	None	Forbidden	Forbidden	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive solid type C	4.1	UN3224	II	4.1		151	224	None	5 kg	10 kg	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive solid type D	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D 52, 53	
	*		*		*		*		*		*		
G	Self-reactive solid type E	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D 52, 53	

G	*		*		*		*		*		*		*
	Self-reactive solid type F	4.1	UN3230	II	4.1		151	224	None	10 kg	25 kg	D	52, 53
	*		*		*		*		*		*		*
	[REMOVE]												
	*		*		*		*		*		*		*
	Gasohol gasoline mixed with ethyl alcohol, with not more than 10% alcohol	3	NA1203	II	3	144, 177	150	202	242	5 L	60 L	E
	*		*		*		*		*		*		*

* * * * *

3. In § 172.102, in paragraph (c)(1), Special provision 16 is revised to read as follows:

§ 172.102 Special provisions

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

16 This description applies to smokeless powder and other propellant powders that are used as powder for small arms and have been classed as Division 1.3C and 1.4C and reclassified to Division 4.1 in accordance with §173.56 and §173.58 of this subchapter.

* * * * *

4. In § 172.336, paragraph (c) is revised to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(c) Identification Numbers are not required:

<i>Packaging:</i>	<i>When:</i>	<i>Then the Alternative Marking Requirement is:</i>
(1) On the ends of portable tanks, cargo tanks, or tank cars	They have more than one compartment and hazardous materials with different identification numbers are being transported therein.	The identification numbers on the sides of the tank are displayed in the same sequence as the compartments containing the materials they identify.
(2) On cargo tanks	They contain only gasoline.	The tank is marked "Gasoline" on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with §172.542(c).
(3) On cargo tanks	They contain only fuel oil.	The cargo tank is marked "Fuel Oil" on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with §172.544(c).
(4) On nurse tanks	They meet the provisions of §173.315(m) of this subchapter.	N/A
(5) On cargo tanks, including compartmented cargo tanks, or tank cars	They contain more than one petroleum distillate fuel.	The identification number for the liquid petroleum distillate fuel having the lowest flash point is displayed. If the cargo tank also contains gasoline and alcohol fuel blends consisting of more than 10% ethanol the identification number "3475" or "1987," as appropriate, must also be displayed.

* * * * *

PART 173--SHIPPERS--GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for Part 173 continues to read as follows:

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

6. In § 173.171, the introductory text and paragraphs (a), (c) and (d) are revised to read as follows:

§ 173.171 Smokeless powder for small arms.

Powders that have been classed in Division 1.3 or Division 1.4 may be reclassified in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

(a) Powders that have been approved as Division 1.3C or Division 1.4C may be reclassified to Division 4.1 in accordance with §§ 173.56 and 173.58 of this part.

* * *

(c) Only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass and outer packaging of UN 4G fiberboard boxes meeting the Packing Group I standards are authorized. Inner packagings must be arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.

(d) The net weight of smokeless powder in any one box (one package) must not exceed 7.3 kg (16 pounds).

* * * * *

PART 176—CARRIAGE BY VESSEL

7. The authority citation for Part 176 continues to read as follows:

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

8. In § 176.30, paragraph (a) introductory text is revised to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) The carrier, its agents, and any person designated for this purpose by the carrier or agents must prepare a dangerous cargo manifest, list, or stowage plan. This document may not include a material that is not subject to the requirements of the Hazardous Material Regulations (49 CFR parts 171 through 180) or the International Maritime Dangerous

Goods Code (IMDG Code) (IBR, see §171.7 of this subchapter). This document must be kept on or near the vessel's bridge, except when the vessel is docked in a United States port. When the vessel is docked in a United States port, this document may be kept in the vessel's cargo office or another location designated by the master of the vessel provided that a sign is placed beside the designated holder on or near the vessel's bridge indicating the location of the dangerous cargo manifest, list, or stowage plan. This document must always be in a location that is readily accessible to emergency response and enforcement personnel. It must contain the following information:

* * * * *

PART 178 -- SPECIFICATIONS FOR PACKAGINGS

9. The authority citation for Part 176 continues to read as follows:

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

10. In § 178.3, paragraph (a)(2) is revised to read as follows:

§ 178.3 Marking of packaging.

(a) * * *

(2) Unless otherwise specified in this part, the name and address or symbol of the packaging manufacturer or the person certifying compliance with a UN standard. Symbols, if used, must be registered with the Associate Administrator. Unless authorized in writing by the holder of the symbol, symbols must represent either the packaging manufacturer or the approval agency responsible for providing the most recent certification for the packaging through design certification testing or periodic retesting, as applicable.

Duplicative symbols are not authorized.

* * * * *

11. In § 178.601, paragraph (l) is revised to read as follows:

§ 178.601 General requirements.

* * * * *

(l) Record retention. Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained as follows:

(1) The test report must be maintained at each location where the packaging is manufactured, certified, and a design qualification test or periodic retest is conducted. The test report must be maintained as follows:

Responsible Party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter
Person performing periodic retesting	Until next required periodic retest is successfully performed and a new test report produced

(2) The test report must be made available to a user of a packaging or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

- (i) Name and address of test facility;
- (ii) Name and address of applicant (where appropriate);

- (iii) A unique test report identification;
- (iv) Date of the test report;
- (v) Manufacturer of the packaging;
- (vi) Description of the packaging design type (*e.g.* dimensions, materials, closures, thickness, *etc.*), including methods of manufacture (*e.g.* blow molding) and which may include drawing(s) and/or photograph(s);
- (vii) Maximum capacity;
- (viii) Characteristics of test contents, *e.g.* viscosity and relative density for liquids and particle size for solids;
- (ix) Test descriptions and results; and
- (x) Signed with the name and title of signatory.

12. In § 178.801, paragraph (1) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(1) Record retention. (1)(i) The person who certifies an IBC design type must keep records of design qualification tests for each IBC design type and for each periodic design requalification as specified in this part. These records must be maintained at each location where the IBC is manufactured and at each location where design qualification and periodic design requalification testing is performed. The test report must be maintained as follows:

Responsible Party	Duration

Person manufacturing the packaging	As long as manufactured and two years thereafter
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter
Person performing periodic retesting	Until next required periodic retest are successfully performed and a new test report produced.

(ii) These records must include the following information: name and address of test facility; name and address of the person certifying the IBC; a unique test report identification; date of test report; manufacturer of the IBC; description of the IBC design type (e.g., dimensions, materials, closures, thickness, representative service equipment, etc.); maximum IBC capacity; characteristics of test contents; test descriptions and results (including drop heights, hydrostatic pressures, tear propagation length, etc.). Each test report must be signed with the name of the person conducting the test, and name of the person responsible for testing.

(2) The person who certifies each IBC must make all records of design qualification tests and periodic design requalification tests available for inspection by a representative of the Department upon request.

13. In § 178.955, paragraph (i) is revised to read as follows:

§ 178.955 General requirements

* * * * *

(i) Record retention. (1) Following each design qualification test and each periodic retest on a Large Packaging, a test report must be prepared. The test report must be

maintained at each location where the Large Packaging is manufactured and each location where the design qualification tests are conducted. The test report must be maintained as follows:

Responsible Party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter
Person performing design testing	Until next required periodic retest is successfully performed, a new test report produced, and five years thereafter
Person performing periodic retesting	Until next required periodic retest is successfully performed and a new test report produced.

(2) The test report must be made available to a user of a Large Packaging or a representative of the Department of Transportation upon request. The test report, at a minimum, must contain the following information:

- (i) Name and address of test facility;
- (ii) Name and address of applicant (where appropriate);
- (iii) A unique test report identification;
- (iv) Date of the test report;
- (v) Manufacturer of the packaging;

(vi) Description of the packaging design type (*e.g.*, dimensions, materials, closures, thickness, etc.), including methods of manufacture (*e.g.*, blow molding) and which may include drawing(s) and/or photograph(s);

(vii) Maximum capacity;

(viii) Characteristics of test contents, *e.g.*, viscosity and relative density for liquids and particle size for solids;

(ix) Mathematical calculations performed to conduct and document testing (for example, drop height, test capacity, outage requirements, etc.);

(x) Test descriptions and results; and

(xi) Signature with the name and title of signatory.

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Cynthia L. Quarterman

Administrator,

Pipeline and Hazardous Materials Safety Administration

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