



## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 171, 172, and 173

[Docket No. PHMSA-2025-0093 (HM-268E)]

RIN 2137-AG07

### Hazardous Materials: Remove Redundant List of U.S. EPA CERCLA Hazardous Substances

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This NPRM proposes to revise the Hazardous Materials Regulations (HMR) to  
remove redundant pages contained in an Appendix that repeats references already listed in U.S.  
Environmental Protection Agency (EPA) regulations.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE  
OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by the Docket Number PHMSA-2025-  
0093 using any of the following methods:

*E-Gov Web:* <https://www.regulations.gov>. This site allows the public to enter comments  
on any Federal Register notice issued by any agency. Follow the online instructions for  
submitting comments.

*Mail:* Docket Management System: U.S. Department of Transportation, 1200 New Jersey  
Avenue SE, West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.

*Hand Delivery:* U.S. DOT Docket Management System: West Building Ground Floor,  
Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through  
Friday, except Federal holidays.

*Fax:* 1-202-493-2251.

*Instructions:* Please include the docket number PHMSA-2025-0093 at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at <https://www.regulations.gov>.

*Note:* Comments are posted without changes or edits to <https://www.regulations.gov>, including any personal information provided. There is a privacy statement published on <https://www.regulations.gov>.

*Privacy Act:* In accordance with 5 U.S.C. § 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. § 552), CBI is exempt from public disclosure. It is important that you clearly designate the comments submitted as CBI if: your comments responsive to this document contain commercial or financial information that is customarily treated as private; you actually treat such information as private; and your comment is relevant or responsive to this notice. You may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information that you are submitting is CBI. Submissions containing CBI should be sent to Yul B. Baker Jr., Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE,

Washington, D.C. 20590-0001, or by email at [yul.baker@dot.gov](mailto:yul.baker@dot.gov). Any materials PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the docket.

Alternatively, you may review the documents in person at the street address listed above.

**FOR FURTHER INFORMATION CONTACT:** Yul B. Baker Jr., Transportation Regulations Specialist, 1200 New Jersey Avenue, SE Washington, D.C. 20590, 202-366-8553, [yul.baker@dot.gov](mailto:yul.baker@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. GENERAL DISCUSSION**

To eliminate redundant and unnecessary requirements in the hazardous materials regulations (HMR; 49 CFR Parts 171-180), PHMSA is proposing to remove Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities and insert a reference to the Environmental Protection Agency’s (EPA) list of hazardous substances and reportable quantities in the definitions of “hazardous substance” and “reportable quantity” (*see*, 40 CFR § 302.4). PHMSA is also proposing a conforming revision to requirements for empty packagings to remove reference to the now deleted Appendix A. Finally, PHMSA is proposing an editorial change to rename Appendix B to § 172.101—List of Marine Pollutants to Appendix A and to revise the definition of “marine pollutant” to refer to Appendix A instead of Appendix B based on these proposed changes. PHMSA does not expect that these proposed revisions will have any adverse impact on safety.

The Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA; 42 U.S.C. 9601 *et seq*) provides that “each hazardous substance which is listed or designated as provided in section 9601(14)...shall...be listed and regulated as a hazardous material under chapter 51 of title 49.” 42 U.S.C. § 9656. EPA codified the list of hazardous substances at 40 CFR § 302.4 and periodically updates the list to add, remove or revise entries.

Even though EPA’s list of “hazardous substances” is effectively incorporated into the HMR via the definitions that apply to the transportation of “hazardous materials” in § 171.8, PHMSA nevertheless publishes a separate list of hazardous substances in Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities.

The proposed revisions to the HMR in this NPRM will still satisfy the intent of the CERCLA statute and improve clarity while also improving efficiency. Under the current regulations, PHMSA must publish a rulemaking periodically to update the list as a companion action to EPA rulemakings that make changes to the 40 CFR § 302.4 list. There is often a time lag between when EPA updates its list through a rulemaking and when PHMSA issues a corresponding rulemaking. During this delay, stakeholders have expressed confusion whether a material that is listed by EPA is regulated by PHMSA as a hazardous material. PHMSA also receives similar inquiries when reportable quantities for certain materials are adjusted. Removing the separate list of hazardous substances in the HMR and referencing EPA’s list of hazardous substances at 40 CFR § 302.4 will provide more regulatory certainty. When a hazardous substance is listed, removed, or the applicable RQ adjusted by EPA, the material is either subject to the HMR as hazardous material, no longer subject to the HMR as hazardous material, or the conditions for applicability have been revised, respectively. PHMSA does not expect that these proposed revisions will have any adverse impact on safety.

## **II. REGULATORY ANALYSIS AND NOTICES**

### *A. Legal Authority*

This proposed rule is published under the authority of the Secretary of Transportation set forth in the Federal Hazardous Materials Transportation laws (49 U.S.C. § 5101 et seq.) and delegated to the PHMSA Administrator pursuant to 49 CFR § 1.97.

*B. Executive Order 12866, Regulatory Planning and Review*

Executive Order (E.O.) 12866 (“Regulatory Planning and Review”),<sup>1</sup> as implemented by DOT Order 2100.6B (“Policies and Procedures for Rulemaking”), requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” DOT Order 2100.6B specifies that regulations should generally “not be issued unless their benefits are expected to exceed their costs.” In arriving at those conclusions, E.O. 12866 requires that agencies should consider “both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify” and “maximize net benefits . . . unless a statute requires another regulatory approach.” E.O. 12866 also requires that “agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” DOT Order 2100.6B directs that PHMSA and other Operating Administrations must generally choose the “least costly regulatory alternative that achieves the relevant objectives” unless required by law or compelling safety need.

E.O. 12866 and DOT Order 2100.6B also require that PHMSA submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President’s Office of Management and Budget (OMB) for review. This proposed rule is a not significant regulatory action pursuant to E.O. 12866; it also has not designated this rule as a “major rule” as defined by the Congressional Review Act (5 U.S.C. § 801 *et seq.*).

PHMSA has complied with the requirements in E.O. 12866 as implemented by DOT Order 2100.6B and made a preliminary determination that this proposed rule would result in cost savings to the government by streamlining regulations and eliminating redundancy. The

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<sup>1</sup> 58 FR 51735 (Oct. 4, 1993).

proposed rule would also benefit the regulated public by clarifying applicability and reducing confusion.

*C. Executive Orders 14192 and 14219*

This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.<sup>2</sup> PHMSA seeks data that would be helpful to generate an estimate of the cost savings from this rule. PHMSA’s initial estimates are that the total costs of the rule on the regulated community will be less than zero. Nor does this proposed rule does implicate any of the factors identified in section 2(a) of E.O. 14219 indicative of a regulation that is “unlawful . . . [or] that undermine[s] the national interest.”<sup>3</sup>

*D. Energy-Related Executive Orders 13211, 14154, and 14156*

The President has declared in E.O. 14156 (“Declaring a National Energy Emergency”)<sup>4</sup> a national emergency to address the United States’s inadequate energy development production, transportation, refining, and generation capacity. Similarly, E.O. 14154 (“Unleashing American Energy”)<sup>5</sup> asserts a Federal policy to unleash American energy by ensuing access to abundant supplies of reliable, affordable energy from (inter alia) the removal of “undue burden[s]” on the identification, development, or use of domestic energy resources. PHMSA preliminarily finds this proposed rule is consistent with each of E.O. 14156 and E.O. 14154. The proposed regulatory amendments merely reference U.S. EPA regulations to reduce the size of the HMR and do not impact energy transportation, development, or use.

This proposed rule is not a “significant energy action” under E.O. 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”),<sup>6</sup> which requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy

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<sup>2</sup> 90 FR 9065 (Jan. 31, 2025).

<sup>3</sup> 90 FR 10583 (Feb. 19, 2025).

<sup>4</sup> 90 FR 8353 (Jan. 29, 2025).

<sup>5</sup> 90 FR 8353 (Jan. 29, 2025).

<sup>6</sup> 66 FR 28355 (May 22, 2001).

action.” Because this proposed rule is not a significant action under E.O. 12866, it will not have a significant adverse effect on supply, distribution, or energy use; and OIRA has therefore not designated this proposed rule as a significant energy action. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

*E. Executive Order 13132: Federalism*

PHMSA analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132 (“Federalism”)<sup>7</sup> and the Presidential Memorandum (“Preemption”) published in the Federal Register on May 22, 2009.<sup>8</sup> E.O. 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.” The Federal Hazardous Materials Transportation Laws contain an express preemption provision at 49 U.S.C. § 5125(b) that preempts state, local, and tribal requirements on certain covered subjects, unless the non-federal requirements are “substantively the same” as the federal requirements, including the following:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

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<sup>7</sup> 64 FR 43255 (Aug. 10, 1999).

<sup>8</sup> 74 FR 24693 (May 22, 2009).

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

This proposed rule addresses covered subject items (1) above and would preempt state, local, and Tribal requirements not meeting the “substantively the same” standard. While the proposed rule may operate to preempt some State requirements, it would not impose 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. The preemptive effect of the regulatory amendments in this proposed rule is limited to the minimum level necessary to achieve the objectives of the Federal Hazardous Materials Transportation Laws. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

#### *F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) requires Federal agencies to conduct an Initial Regulatory Flexibility Analysis (IRFA) for a proposed rule subject to notice-and-comment rulemaking under the APA unless the agency head certifies that the proposed rule in the rulemaking will not have a significant economic impact on a substantial number of small entities. E.O. 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”)<sup>9</sup> obliges agencies to establish procedures promoting compliance with the Regulatory Flexibility Act. DOT posts its implementing guidance on a dedicated webpage.<sup>10</sup> This proposed rule was developed in accordance with E.O. 13272 and DOT implementing guidance to ensure compliance with the Regulatory Flexibility Act. The proposed rule is expected to reduce

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<sup>9</sup> 67 FR 53461 (Aug. 16, 2002).

<sup>10</sup> DOT, “Rulemaking Requirements Related to Small Entities,” <https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities> (last accessed Sept 3, 2024).

burdens. Therefore, PHMSA certifies the proposed rule does not have a significant impact on a substantial number of small entities.

*G. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act (UMRA, 2 U.S.C. § 1501 et seq.) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any proposed rule that includes a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate of \$100 million or more (in 1996 dollars) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

This proposed rule does not impose unfunded mandates under UMRA because it does not result in costs of \$100 million or more (in 1996 dollars) per year for either State, local, or Tribal governments, or to the private sector.

*H. National Environmental Policy Act*

The National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 et. seq.) requires that Federal agencies assess and consider the impact of major Federal actions on the human and natural environment.

PHMSA analyzed this proposed rule in accordance with NEPA and has preliminarily determined that the rulemaking does not adversely affect safety and, therefore, will not significantly affect the quality of the human and natural environment. The public is invited to comment on the impact of the proposed action.

*I. Executive Order 13175*

PHMSA analyzed this proposed rule according to the principles and criteria in E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”)<sup>11</sup> and DOT Order

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<sup>11</sup> 65 FR 67249 (Nov. 9, 2000).

5301.1A (“Department of Transportation Tribal Consultation Policies and Procedures”). E.O. 13175 requires agencies to assure meaningful and timely input from Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing “substantial direct compliance costs” or “substantial direct effects” on such communities or the relationship or distribution of power between the Federal government and Tribes.

PHMSA assessed the impact of the proposed rule and determined that it does not significantly or uniquely affect Tribal communities or Indian Tribal governments. The rulemaking’s regulatory amendments have a broad, national scope; therefore, this proposed rule does not significantly or uniquely affect Tribal communities, much less impose substantial compliance costs on Native American Tribal governments or mandate Tribal action. For these reasons, PHMSA has concluded that the funding and consultation requirements of E.O. 13175 and DOT Order 5301.1A do not apply.

*J. Paperwork Reduction Act.*

The Paperwork Reduction Act (44 U.S.C. § 3501 et seq.) and its implementing regulations at 5 CFR 1320.8(d) requires that PHMSA provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. This proposed rule does not create, amend, or rescind any existing information collections.

*K. Executive Order 13609 and International Trade Analysis*

E.O. 13609 (“Promoting International Regulatory Cooperation”)<sup>12</sup> requires agencies 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

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<sup>12</sup> 77 FR 26413 (May 4, 2012).

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 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 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, so long as 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 engages with international standards setting bodies to protect the safety of the American public. PHMSA has assessed the effects of this proposed rule and has determined that its regulatory amendments do not cause unnecessary obstacles to foreign trade.

*L. Cybersecurity and Executive Order 14028*

E.O. 14028 (“Improving the Nation's Cybersecurity”)<sup>13</sup> directed the Federal government to improve its efforts to identify, deter, and respond to “persistent and increasingly sophisticated malicious cyber campaigns.” PHMSA has considered the effects of this proposed rule and has determined that its regulatory amendments would not materially affect the cybersecurity risk profile for affected entities.

**List of Subjects**

**49 CFR Part 171**

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

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<sup>13</sup> 86 FR 26633 (May 17, 2021).

## 49 CFR Part 172

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

## 49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Chapter I 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. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

2. In § 171.8, revise the definitions for “hazardous substance,” “marine pollutant,” and “reportable quantity” in alphabetic order to read as follows:

#### **§ 171.8 Definitions and abbreviations.**

\* \* \* \* \*

*Hazardous substance* for the purposes of this subchapter, means a material, including its mixtures and solutions, that—

(1) Is listed in 40 CFR 302.4;

(2) Is in a quantity, in one package, which equals or exceeds the reportable quantity (RQ)

listed in the 40 CFR 302.4; and

(3) When in a mixture or solution—

(i) For radionuclides, the following requirements shall be used in determining if a package contains an RQ of a hazardous substance: (a) if the identity and quantity (in curies or terabecquerels) of each radionuclide in a mixture or solution is known, the ratio between the quantity per package (in curies or terabecquerels) and the RQ for the radionuclide must be

determined for each radionuclide. A package contains an RQ of a hazardous substance when the sum of the ratios for the radionuclides in the mixture or solution is equal to or greater than one; (b) if the identity of each radionuclide in a mixture or solution is known but the quantity per package (in curies or terabecquerels) of one or more of the radionuclides is unknown, an RQ of a hazardous substance is present in a package when the total quantity (in curies or terabecquerels) of the mixture or solution is equal to or greater than the lowest RQ of any individual radionuclide in the mixture or solution; and (c) if the identity of one or more radionuclides in a mixture or solution is unknown (or if the identity of a radionuclide by itself is unknown), an RQ of a hazardous substance is present when the total quantity (in curies or terabecquerels) in a package is equal to or greater than either one curie or the lowest RQ of any known individual radionuclide in the mixture or solution, whichever is lower.

(ii) For other than radionuclides, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the following table:

RQ pounds (kilograms)	Concentration by weight	
	Percent	PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in 40 CFR 302.4, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

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*Marine pollutant* means a material which is listed in Appendix A to § 172.101 of this subchapter (also see § 171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(1) Ten percent by weight of the solution or mixture for materials listed in the appendix;

or

(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the appendix.

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*Reportable quantity (RQ)* for the purposes of this subchapter, means the final RQ quantity specified for any material identified in 40 CFR 302.4.

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

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

**Authority:** 49 U.S.C. 5101- 5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

**§ 172.101 [Amended]**

4. Amend § 172.101 to:

a. Delete current “Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities” including Table 1 to Appendix A—Hazardous Substances Other Than Radionuclides and Table 2 to Appendix A—Radionuclides; and

b. Revise “Appendix B to § 172.101—List of Marine Pollutants” by renaming it “Appendix A to § 172.101—List of Marine Pollutants”.

**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 CFR 1.81, 1.96 and 1.97.

6. In § 173.29, revise paragraph (h) to read as follows:

**§ 173.29 Empty packagings.**

\* \* \* \* \*

(h) A package that contains a residue of a hazardous substance, Class 9, that does not meet the definition of another hazard class and is not a hazardous waste or marine pollutant, may remain marked, labeled and, if applicable, placarded in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for a hazardous substance.

Issued in Washington, D.C., on June 26, 2025, under the authority delegated in 49 CFR § 1.97.

**Benjamin D. Kochman,**  
*Acting Administrator.*

[FR Doc. 2025-12067 Filed: 6/27/2025 4:15 pm; Publication Date: 7/1/2025]