



**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 173**

**[Docket No. PHMSA-2025-0094 (HM-268F)]**

**RIN 2137-AG08**

**Hazardous Materials: Reducing Burdens by Allowing Continued Use of Department of Transportation Special Permit Packagings**

**ACTION:** Notice of proposed rulemaking (NPRM).

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

**SUMMARY:** This NPRM proposes to revise the Hazardous Materials Regulations (HMR) to allow for the continued use of packagings authorized under a manufacturing special permit for duration of the useful life of the package. The current HMR provisions require an otherwise safe and usable package to be discontinued solely because the original special permit has expired or was not renewed.

**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-2025-0094 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-2025-0094 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 Steven Andrews, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, D.C. 20590-0001, or by email at [steven.andrews@dot.gov](mailto:steven.andrews@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:** Steven Andrews, Transportation Regulations Specialist, 1200 New Jersey Avenue, SE Washington, D.C. 20590, 202-366-6199, [steven.andrews@dot.gov](mailto:steven.andrews@dot.gov).

## **I. GENERAL DISCUSSION**

PHMSA is proposing to revise 49 CFR § 173.23, “Previously authorized packaging,” to allow for the continued use of a Department of Transportation (DOT) special permit (SP) packaging for which the special permit has expired. The current requirements impose an unnecessary burden on the regulated community, wherein a packaging manufactured, marked, and sold under the terms of a DOT-SP may no longer be authorized solely based on the original manufacturer going out of business, ceasing manufacture of a product under the condition of the original DOT-SP, or choosing to not renew a DOT-SP. Authorizing the continued use of such packagings for the life of the package, provided the package continues to be in conformance with the terms of the DOT-SP, eliminates that burden without compromising public safety. For these reasons, PHMSA is proposing to add a new exception to § 173.23 in paragraph (j) to allow approved packagings to be used for the duration of the usable life of the DOT-SP packaging, regardless of the status of the grantee (*i.e.*, such as when the original grantee has gone out of business but some of their packagings remain in commerce because they have not yet completed

shipment to their end consumer, or when the original grantee has gone out of business and their assets have been purchased by another company) and whether the special permit was renewed.<sup>1</sup>

## 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>2</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

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<sup>1</sup> However, PHMSA notes that even with this revision, a carrier may still choose to not accept a package where the manufacturing DOT-SP is not renewed by the grantee.

<sup>2</sup> 58 FR 51735 (Oct. 4, 1993).

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 preliminarily determined that this proposed rule may result in cost savings by reducing regulatory burdens and regulatory uncertainty for affected entities by allowing for the use of packages manufactured under a special permit for the useful life of the package beyond the original permit’s expiration date. PHMSA expects those cost savings will also result in reduced costs for the public to whom those entities generally transfer a portion of their compliance costs.

#### *C. Executive Orders 14192 and 14219*

This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.<sup>3</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>4</sup>

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

The President has declared in E.O. 14156 (“Declaring a National Energy Emergency”)<sup>5</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>6</sup> asserts a Federal policy to unleash American energy by ensuing access to abundant

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<sup>3</sup> 90 FR 9065 (Jan. 31, 2025).

<sup>4</sup> 90 FR 10583 (Feb. 19, 2025).

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

<sup>6</sup> 90 FR 8353 (Jan. 29, 2025).

supplies of reliable, affordable energy from (inter alia) the removal of “undue burden[s]” on the identification, development, or use of domestic energy resources such as PHMSA-jurisdictional shippers and carriers of hazardous materials. PHMSA preliminarily finds this proposed rule is consistent with each of E.O. 14156 and E.O. 14154. The proposed rule will give affected entities regulatory flexibility by allowing for the continued use of expired DOT-SP packages, some of which may be used to transport energy related products, or products that are otherwise used in supply chains related to energy production. PHMSA therefore expects the regulatory amendments in this proposed rule will in turn assist shipper and carriers of hazardous materials ability to provide abundant, reliable, affordable energy products in response to residential, commercial, and industrial demand.

However, 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>7</sup> which requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy 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; OIRA has therefore not designated this proposed rule as a significant energy action.

*E. Executive Order 13132: Federalism*

PHMSA analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132 (“Federalism”)<sup>8</sup> and the Presidential Memorandum (“Preemption”) published in the Federal Register on May 22, 2009.<sup>9</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

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<sup>7</sup> 66 FR 28355 (May 22, 2001).

<sup>8</sup> 64 FR 43255 (Aug. 10, 1999).

<sup>9</sup> 74 FR 24693 (May 22, 2009).

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
- (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 paragraph I 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>10</sup> obliges agencies to establish procedures promoting compliance with the Regulatory Flexibility Act. DOT posts its implementing guidance on a dedicated webpage.<sup>11</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 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 or direct final 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.

PHMSA anticipates this proposed rule will 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.

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<sup>10</sup> 67 FR 53461 (Aug. 16, 2002).

<sup>11</sup> DOT, “Rulemaking Requirements Related to Small Entities,” <https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities> (last accessed Sept 3, 2024).

#### *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 will 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>12</sup> and DOT Order 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 will 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 will 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.

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<sup>12</sup> 65 FR 67249 (Nov. 9, 2000).

*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 rulemaking will 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>13</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 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.

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<sup>13</sup> 77 FR 26413 (May 4, 2012).

PHMSA engages with international standards setting bodies to protect the safety of the American public. PHMSA has assessed the effects of the proposed rule and has determined that its regulatory amendments will not cause unnecessary obstacles to foreign trade.

*L. Cybersecurity and Executive Order 14028*

E.O. 14028 (“Improving the Nation's Cybersecurity”)<sup>14</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 the proposed rule and has determined that its regulatory amendments would not materially affect the cybersecurity risk profile for affected entities.

**List of Subjects in 49 CFR Part 173**

Hazardous materials transportation, Training, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set forth above, PHMSA proposes to amend 49 CFR part 173 as follows:

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

1. 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.

2. In § 173.23, add paragraph (j) to read as follows:

**§ 173.23 Previously authorized packaging.**

\* \* \* \* \*

(j) If a manufacturing special permit is not renewed by the grantee, then a packaging manufactured, marked, and sold under its conditions may continue to be used (*i.e.*, offered for transportation in commerce, retested, and maintained) after the expiration date of the special

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<sup>14</sup> 86 FR 26633 (May 17, 2021).

permit and for the life of the packaging according to the terms of the final revision of the special permit.

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. 2025-12081 Filed: 6/27/2025 4:15 pm; Publication Date: 7/1/2025]