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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 178, 180

[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: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to petitions for rulemaking submitted by the regulated community, PHMSA proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to update, clarify, or provide relief from miscellaneous regulatory requirements. Specifically, PHMSA is proposing to amend the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; clarify an acceptable range in specifications for resins used in the manufacture of plastic drums and Intermediate Bulk Containers (IBCs); remove the listing for "Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203"; 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 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 provide

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: Comments must be received by [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Dockets Management System; U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.
- Hand Delivery: To U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA-2011-0142 (HM-219) or the Regulatory Identification Number (RIN) 2137-AE79 for this notice of proposed rulemaking at the beginning of your comment. Please note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

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.regulations.gov.

Docket: Access to ASTM D4976-06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, discussed in this NPRM is available for public review during the comment period at: http://www.astm.org/usdot. You may view the public docket through the Internet at http://www.regulations.gov, or in person at the Docket Operations office at the above address (See ADDRESSES).

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell at (202) 366-8553 at the Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

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. In this NPRM, PHMSA (also "we" or "us") proposes to amend the HMR in response to petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives. These

proposed revisions are intended to reduce regulatory burdens while maintaining or enhancing the existing level of safety. We discuss the petitions and proposals in detail in Section II of this NPRM. The following is a brief summary of the proposed regulatory changes.

- 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 package 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 "Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203"; and remove reference to gasohol in Sections §§ 172.336(c)(4) and 172.336(c)(5) as gasohol is a blend of gasoline with not more than 10% ethyl alcohol and the listing for gasoline includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol;
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Address a petition that asks that we extend the relief provided by Special Permit DOT-SP-14652 by incorporating it the HMR and allowing the transport of certain

hazardous materials in IM101 portable tanks under T Codes in effect on September 30, 2001;

- 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;
- 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; and
- Provide greater flexibility by allowing 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.

II. Proposals in this NPRM

A. Certification Package Marking and Record Keeping Requirements (P-1479)

B. Clarification of Alcohol and Gasoline Mixtures (P-1522)

C. Self-Reactive Solid Type F (P-1542)

D. Plastic Drum and IBC Material Thickness Standards (P-1554) and (P-1564)

E. SP 9735, Dangerous Cargo Manifest Location (P-1556)

F. Table of Portable Tank T Codes TI - T-22 (P-1558)

G. Smokeless Powder, Division 1.4C (P-1559)

A. Certification Package Marking and Recordkeeping Requirements (P-1479)

In a petition for rulemaking (P-1479), gh Package & Product, Testing and Consulting, Inc. requests that PHMSA consider amending the HMR to indicate that an entity performing continued package certification is not allowed to use the original manufacturer's or third party laboratory's mark unless authorized by the manufacturer or third-party laboratory; and that package test reports are kept for a limited time instead of the current requirement of "until the package is no longer manufactured."

Regarding the first issue, the petitioner states that his laboratory tested a package at least three times, and the package failed each time. Eleven years after the petitioner had tested the package, 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 package as the package tester's mark. For these reasons, the petitioner is 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 package the option of marking the package 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 who did not initially certify the package are using 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 package being retested by someone else.

Regarding the second issue, the petitioner explains 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 package is still being made. The petitioner seeks relief from the paperwork burden.

In this NPRM, PHMSA is proposing to revise § 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 periodic retesting, the marking must identify the person who certifies that the packaging continues to meet the applicable UN Standard.

In addition, to address concerns raised by the petitioner regarding an open-ended paperwork burden, we are proposing 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. In doing so, we propose to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we provide a chart to clearly identify the current retention requirements for test reports.

B. Clarification of Alcohol and Gasoline Mixtures (P-1522)

In its petition (P-1522), Shell Chemicals asks PHMSA to remove from the HMT the listing for "Gasohol, with not more than 10% ethanol." Shell states 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 asks 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 "Gasohol, NA1203" 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.

Shell Chemicals also petitions for the removal of Special Provision 172 from Column 7 in association with all packing groups for the Proper Shipping Name "Alcohols, n.o.s." Special Provision 172 states that "this entry includes alcohol mixtures containing up to 5% petroleum products." Shell indicates that a blend of 5% gasoline and 95% alcohol is not an alcohol solution as indicated in Special Provision 172. They object to the term "solution" because under certain conditions such as low temperatures, these materials can separate. For these reasons, Shell states that these blends should not be permitted to be transported under the Alcohols, n.o.s., UN1987; rather, Denatured alcohol, NA 1987, and Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, UN 3475, are more appropriate descriptions. 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. Retaining reference to Special Provision 172 in the listing for Alcohols, n.o.s. would continue to provide a listing for international shipments of alcohol mixtures containing up to 5% petroleum products.

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. As such, we propose to amend the HMT by removing the listing for "Gasohol, gasoline mixed with ethyl alcohol, with not

more than 10% alcohol." We also propose to revise § 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.

C. Self-Reactive Solid Type F (P-1542)

In a petition (P-1542), the Association of Hazmat Shippers (AHS) requests that we amend the HMT to refer to § 173.151, exceptions for Class 4, 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 indicate 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, we propose to expand on the AHS petition and seek 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. Accordingly, we propose to 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 to allow limited quantities of Self-reactive solids and Self-reactive liquids, Types B through F materials to be excepted from labeling and placarding requirements as long as the materials meet the provisions of § 173.151.

D. Plastic Drum and IBC Material of Construction Standards (P-1554) and (P-1564)

In two petitions (P-1554 and P-1564), Rigid Intermediate Bulk Container Association (RIBCA) and the Plastic Drum Institute (PDI) have indicated 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. These reasons include: using multiple suppliers for a material of construction; differences in the material of construction; changes in material suppliers without performing design tests; and changes within the material suppliers accepted specifications for melt flow and density. In an effort to ensure safety and compliance when receiving each order of resin, RIBCA and PDI ask 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 request that we add a reference to ASTM D4976-06. The petitioners further ask that PHMSA revise the HMR to state that plastic drums or IBCs made from polyethylene meeting ASTM D4976-06 do not constitute a different package.

We believe that this petition has merit in that it would provide acceptable ranges for the polyethylene plastics molding and extrusion materials used in the production of plastic drums and IBCs. For that reason we propose 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.

With respect to the request that we revise the HMR to state that plastic drums or IBCs made from polyethylene within the same density category of ASTM D4976-06 do not constitute a different package, we do not have sufficient package testing data, such as performance test results and transportation experience, to show whether the ranges allowed for plastic molding in ASTM D4976-06 provide adequate strength and consistency when used as a component in packagings for transporting hazardous materials. For this reason, we are not proposing to make that change.

E. 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.) has asked in a petition (P-1556) 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 is to 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 impractical maintenance of the DCM on or near the vessel's bridge while docked in port, IVODGA requests 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) which authorizes the DCM "to be retained in a location other than on or near the bridge" while subject vessels are in port. The 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 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 manned 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 agree with the petitioner 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 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 without diminishing the DCM requirements and for this reason we propose to incorporate DOT- SP 9735 into § 176.30 of the HMR.

F. Table of Portable Tank T Codes TI - T-22 (P-1558)

In a petition dated April 12, 2010 (P-1558), Magnum Mud Equipment Company asked PHMSA to amend the HMR to allow certain Class 3 materials to be transported in IM 101 portable tanks, in accordance with the applicable T Codes in effect on September 30, 2001. The petitioner owns approximately six hundred, 1,060 gallon IM 101 tanks used to support the oil and gas industry in the Gulf of Mexico. The tanks were built in accordance with IM 101 requirements and were allowed to transport hazardous materials commonly used in the oilfield. As a result of changes made to the HMR in final rule under Docket HM-215D (66 FR 33316), in January 2010, several Hazard Class 3 materials were no longer allowed to be transported in IM 101 tanks, but rather were required to move in tanks specified in the new T Codes. The petitioner's interest is to allow its equipment and the equipment of other companies servicing the oil and gas industry to remain viable methods of transport to the industry.

A few owners of IM 101 tanks applied for and were granted a special permit authorizing the use of the IM 101 tanks beyond January 2010. The permit (DOT SP-14652) authorized the transport of UN1193, Ethyl methyl ketone or Methyl ethyl ketone, Hazard Class 3, Packing Group II; UN1203, Gasoline, Hazard Class 3, Packing Group II; UN1230, Methanol, Hazard Class 3, Packing Group II; UN1268, Petroleum distillates, n.o.s. or Petroleum products, n.o.s., Hazard Class 3, Packing Group II or III; and NA1270, Petroleum oil, Hazard Class 3, Packing Group II or III, to be transported in IM 101 portable tanks under T Codes in effect on September 30, 2001. The special permit required that each tank must pass the periodic inspection and test requirements prescribed in § 180.605 for UN portable tanks. Further, the portable tanks were not to be used for the transportation of hazardous materials after January 1, 2025.

On June 4, 2010, PHMSA issued a letter indicating its intent to suspend Special Permit DOT-SP-14652 pending review of information requested of its grantees. Grantees were asked to provide the following information: the number of portable tanks that are operating under the special permit; the number of tanks no longer in service and the reason why they were removed from service; for each portable tank, whether in service or not, the manufacturer's name, build date, original test date, serial number, designated approval agency, water capacity in gallons, maximum allowable working pressure, shell thickness, the date and type of last periodic inspection and retest including name and addresses of entity performing the work; if the portable tank is equipped with bottom outlets, information on the number of independent shut off devices; if remote closure and/or thermal activation features are present, number and type of pressure relief devices including the set pressure, and whether or not the tank is equipped with a flame screen; for portable tanks that have been modified, including replacement or welding to frame members, addition or reconfiguration of lift lugs, information on the modification or repair to include the date, designated approval agency, drawing and or specification with bill of materials, if requested modification was previously denied and copy of new approval certificate if applicable.

On May 26, 2011, following its review of the information grantees provided, PHMSA suspended Special Permit DOT-SP-14652. In its letter of suspension, PHMSA indicated that the special permit does not achieve an equivalent level of safety to maintain the safety of people, property and the environment as required by regulation. On June 10, 2011, Magnum Mud Equipment Company appealed our decision to suspend the special permit.

Predicated on our safety review of the IM 101 tanks that are the subject of this petition, we remain of the opinion that they do not achieve an equivalent level of safety to maintain the safety of people, property and the environment as required by regulation. For this reason, we are denying petition P-1558 and will not incorporate DOT-SP-14652 into the HMR.

G. Smokeless Powder, Division 1.4C (P-1559)

The Sporting Arms and Ammunition Manufacturers Institute, Inc (SAAMI), in a petition (P-1559), asks PHMSA to amend § 173.171 to allow Division 1.4C smokeless powder to be reclassified as a Class 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 Class 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 maintains an equivalent or greater level of safety to the existing regulations. It seeks, with proper examination and approval, to allow a Division 1.4C material which, by definition (see § 172.50), 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 Class 4.1 materials. Incorporating this change into § 173.171 will reduce the burden

associated with transportation and storage of smokeless powder currently transported as a Division 1.4C explosive.

III. Section-by-Section

Below is a section-by-section description of the changes being proposed in this NPRM:

§ 171.7

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. In this NPRM, PHMSA is proposing to incorporate by reference ASTM D4976 - 06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of plastic drums and IBCs.

§ 172.101

This section provides a hazardous materials table (HMT) that identifies listed materials as hazardous material for purposes of transportation and special provisions referred to in the HMT. In this NPRM, PHMSA is proposing to revise the HMT by removing the listing for "Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203." It also seeks to revise the 10 table entries for "Self-reactive liquid" and "Self-reactive solid", types B through F, non-temperature controlled, by adding a reference to Section 173.151 in column (8A).

§ 172.336

This section provides identification number marking requirements and exceptions for certain transport vehicles and freight containers. In this NPRM, PHMSA is proposing to revise § 172.336 to remove all references to "gasohol." In addition, we are proposing to

add a table that will more clearly indicate the identification number marking requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels.

§ 173.151

This section provides exceptions for Class 4 materials. PHMSA is proposing to revise this section by adding paragraphs (b)(1)(ii) and (b)(1)(iii) that prescribe limited quantity requirements for Types B through F self-reactive liquids and solids (non-temperature controlled).

§ 173.171

This section provides exceptions for the transportation of smokeless powder for small arms. Currently § 173.171 allows smokeless powder for small arms that has been classed in Division 1.3 (Explosive) to be reclassified for domestic transportation as a Class 4.1 (Flammable Solid) material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions. In this NPRM, PHMSA is proposing to amend § 173.171 to also allow Division 1.4 smokeless powder to be reclassified as a Class 4.1 material.

§ 176.30

Section 176.30 specifies the regulations pertaining to the DCM for transportation by vessel. In this NPRM, PHMSA is proposing to revise this section to allow the DCM 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.

§ 178.3

This section specifies marking on packagings represented as manufactured to a DOT specification or a UN standard. In this NPRM, PHMSA is proposing to revise

§ 178.3 to clearly indicate that the required marking must identify the person who certifies that the packaging meets the applicable UN Standard.

§ 178.509

Section 178.509 specifies standards for plastic drums. In this NPRM, PHMSA is proposing to amend this section to reference ASTM D4976 - 06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of plastic drums.

§ 178.601

This section provides the general requirements for testing non-bulk packagings and packages. In this NPRM, PHMSA is proposing to revise paragraph (l) of section 178.601 to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

§ 178.707

Section 178.707 specifies standards for composite IBCs. In this NPRM, PHMSA is proposing to amend this section to reference ASTM D4976 - 06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of IBCs.

§ 178.801

This section provides the general requirements for testing IBCs. In this NPRM, PHMSA is proposing to revise paragraph (l) of section 178.801 to limit the document retention period for persons conducting initial design testing to five years beyond the next

required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

§ 178.955

This section provides the general requirements for testing large packagings. In this NPRM, PHMSA is proposing to revise paragraph (i) of section 178.955 to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

IV Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM 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 rule proposes to amend the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; clarify an acceptable range in specifications for resins used in the manufacture of plastic drums and IBC's; remove the listing for "Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203"; harmonize internationally and provide a limited quantity exception for 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; 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; and provide 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 and DOT Regulatory Policies and Procedures

This NPRM 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 proposed 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 NPRM, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. PHMSA anticipates the proposals contained in this rule will have economic benefits to the regulated community. This NPRM is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs.

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 NPRM, PHMSA has involved the public in the regulatory process in a variety of ways for this proposed rulemaking. Specifically, in this rulemaking PHMSA is responding to seven 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. 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 proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed 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 proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted, this 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 a final rule in this matter in the Federal Register.

D. Executive Order 13175

This proposed 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 proposed 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 proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and provide clarity where requested by the regulated community The proposed 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 proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. Therefore, this proposed

rule will not have a significant economic impact on a substantial number of small entities; however, it will provide economic relief to some small businesses. For example, limiting the document retention period for persons conducting initial design testing of packages to five years beyond the next required periodic retest, as proposed, should reduce the paperwork burden for some small businesses.

This proposed 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

This proposed rule does not impose any new information collection requirements. We anticipate a decrease in this information collection burden due to the elimination of the application process for a special permit and a reduction in document retention time if adopted in this rule.

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 proposed 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), NPRM

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.

Proposed Amendments to the HMR:

In this NPRM, PHMSA is proposing 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;

- 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 of until the package in 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 Sections §§ 172.336(c)(4) and 172.336(c)(5);
- 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;
- Add a reference in 49 CFR §§ 178.509(b)(1) and 178.707(c)(3) to ASTM D4976 - 06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide a range of acceptable thicknesses in the IBC material; and

- 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 U.S. 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 this 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, package 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.

The proposed packaging changes would establish greater accountability for certifying packages, reduce paperwork for the affected package testing agencies, and

potentially reduce package 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 proposed revision regarding where the DCM is keep 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 proposes to make miscellaneous amendments to the HMR in response to petitions for rulemaking. The proposed amendments 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 proposed rule. We welcome comment on this preliminary analysis.

List of Agencies Consulted

U.S. Coast Guard

U.S. Department of Agriculture (USDA)

U.S. Department of Energy

U.S. Department of Interior

U.S. Department of Justice

U.S. Environmental Protection Agency

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.regulations.gov.

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, 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 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 proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this NPRM, PHMSA is proposing to revise the HMR to align with international standards by: Removing reference to "gasohol"; providing a limited quantity exception for 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 171

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

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 proposing to amend 49 CFR Chapter I as follows:

PART 171--GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

1. In § 171.7, the paragraph (a)(3) table is amended as follows:

Under the entry "The American Society for Testing and Materials," the entry "ASTM D4976-06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials" is added in appropriate numerical order.

§ 171.7 Reference Material.

(a) * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * *	* *
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428, telephone 610-832-9585, http://www.astm.org:	
* * * * *	* *
ASTM D4976-06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, published December, 2006	178.601(c)(4), 178.801(c)(7).
* * * * *	* *

* * * * *

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

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 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* [REVISE]		*		*		*		*		*		*

	Alcohols, n.o.s.	3	UN1987	I	3	T11, TP1, TP8, TP27	4b	201	243	1L	30L	E	
				II	3	IB2, T7, TP1, TP8, TP28	4b, 150	202	242	5L	60L	B	
				III	3	B1, IB3, T4, TP1, TP29	4b, 150	203	242	60L	220L	A	
	*		*		*		*		*		*		*
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, B1, B33, IB2, T8	150	202	242	5L	60L	E	
	*		*		*		*		*		*		*
	Powder, smokeless	1.4C	UN0509	II	1.4C			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	……..
	*		*		*		*		*		*		*

* * * * *

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

3. In § 172.102, Special provision 16 is revised to read, as follows:

* * *

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

* * * * *

4. In § 172.336, paragraphs (c)(4),(5), and (6) are revised, as follows:

§ 172.336 Identification numbers.

* * * * *

(c) Identification Numbers are not required on:

Packaging:	*When:*	*Then the Alternative Marking Requirement is:*
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.

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).
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).
On cargo tanks	They contain different petroleum distillate fuels.	the identification number for the liquid petroleum distillate fuel having the lowest flash point is displayed; the cargo tank that contains such petroleum distillate fuels together with gasoline and alcohol fuel blends consisting of more than ten percent ethanol and the identification number "3475" is also displayed
On compartmented cargo tanks or tank cars	They contain different petroleum distillate fuels.	The identification number for the liquid petroleum distillate having the lowest flash point is displayed. If the compartmented cargo tank or tank car also contains a gasoline and alcohol fuel blends consisting of more than 10% ethanol the identification number "3475" or "1987" must also displayed.
On nurse tanks	They meet the provisions of §173.315(m) of this subchapter.	N/A

* * * * *

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

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

5. Section 173.171 is amended to include a new subparagraph (d) and to move current subparagraph (d) to subparagraph (e) to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 or Division 1.4 may be reclassed in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

(a) The powder must be examined and approved for a Division 1.3 or Division 1.4 and Division 4.1 classification in accordance with §§173.56 and 173.58 of this part.

(b)The total quantity of smokeless powder may not exceed 45.4 kg (100 pounds) net mass in:

(1) One rail car, motor vehicle, or cargo-only aircraft; or

(2) One freight container on a vessel, not to exceed four freight containers per vessel.

(c) For Division 1.3: only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass 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) For Division 1.4: only combination packagings with inner packagings not exceeding the net mass that have been examined and approved as required in §173.56 of this part 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.

(e) Inside packages that have been examined and approved by the Associate Administrator may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent shifting and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

* * * * *

PART 176—CARRIAGE BY VESSEL

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

6. In § 176.30, paragraph (a) 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 HMR or the 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:

* * * * *

SECTION 178 SPECIFICATIONS FOR PACKAGINGS

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

7. 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. 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.

* * * * *

8. In § 178.509, paragraph (b)(1) is revised to read as follows:

§ 178.509 Standards for plastic drums and jerricans.

* * * * *

(b) * * *

(1) The packaging must be manufactured from suitable plastic material and be of adequate strength in relation to its capacity and intended use. The specification of the plastic material may not fall outside the parameters established by ASTM D4976-06 (IBR, see § 171.7 of this subchapter). No used material other than production residues or regrind from the same manufacturing process may be used unless approved by the Associate Administrator. The packaging must be adequately resistant to aging and to degradation caused either by the substance contained or by ultra-violet radiation. Any permeation of the substance contained may not constitute a danger under normal conditions of transport.

* * * * *

9. 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:

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 periodic retest and five years thereafter
Person performing periodic retesting	Until next periodic retest

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: * * *

* * * * *

10. In § 178.707, paragraph (c)(3) is revised to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(c) * * *

(3) The inner receptacle must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform use. The specification of the plastic material may not fall outside the parameters

established by ASTM D4976-06 (IBR, see § 171.7 of this subchapter). In addition to conformance with the requirements of §173.24 of this subchapter, the material must be resistant to aging and to degradation caused by ultraviolet radiation. The inner receptacle of 31HZ2 composite IBCs must consist of at least three plies of film.

* * * * *

11. In § 178.801, paragraph (l) is revised to read as follows:

§ 178.801 General Requirements.

* * * * *

(l) Record retention. (1) 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 periodic retest and five years thereafter
Person performing periodic retesting	Until next periodic retest

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.

* * * * *

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

§ 178.955 General Requirements

* * * * *

(i) Record retention. 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 periodic retest and five years thereafter
Person performing periodic retesting	Until next periodic retest

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: * * *

* * * * *

Issued in Washington, DC on May 18, 2012 under authority delegated in 49 CFR Part 106.

William Schoonover

Deputy Associate Administrator, Field Operations

Pipeline and Hazardous Materials Safety Administration

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