

(SBIR) and the Small Business Technology Transfer (STTR) programs. This change is required to recognize the "Rights in Data—SBIR Programs" clause rather than the FAR "Rights in Data—General" clause currently referenced in the NFS "Final Scientific and Technical Reports" clause.

**DATES:** Comments should be submitted on or before October 12, 2004, to be considered in formulation of the final rule.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700-AD04 via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: [Celeste.M.Dalton@nasa.gov](mailto:Celeste.M.Dalton@nasa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The NASA FAR Supplement at 1835.070(d) requires all research and development contracts to include the clause at 1852.235-73, Final Scientific and Technical Reports. SBIR and STTR contracts are considered R&D contracts and must include the clause at 1852.235-73. This clause provides direction to the contractor regarding its ability to release data first produced or used in performance of the contract. However, the clause currently only address the contractor's rights in data as defined in FAR 52.227-14, Rights in Data—General. Contractor rights in data under SBIR and STTR contracts are defined in FAR clause 52.227-20, Rights in Data—SBIR Program. This change proposes an Alternate III to 1852.235-73 for use in SBIR and STTR contracts. The proposed Alternate III references FAR 52.227-20 to recognize contractor data rights under SBIR and STTR contracts.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

##### **B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on

a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because it only clarifies what the appropriate data rights clause is used under SBIR and STTR contracts.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### **List of Subjects in 48 CFR 1835 and 1852**

Government Procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

Accordingly, 48 CFR Parts 1835 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1835 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

##### **PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING**

2. Amend section 1835.070 by adding paragraph (d)(3) to read as follows:

##### **1835.070 NASA contract clauses and solicitation provision.**

\* \* \* \* \*

(d) \* \* \*

(3) Except when Alternate II applies in accordance with paragraph (d)(2) of this section, the contracting officer shall insert the clause with its Alternate III in all SBIR and STTR contracts.

\* \* \* \* \*

##### **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Amend section 1852.235-73 by revising the date of the clause to read (XX/XX); in the first sentence of paragraph (b), removing "NPG" and adding "NPR" in its place; and adding Alternate III to read as follows:

##### **1852.235-73 Final Scientific and Technical Reports.**

\* \* \* \* \*

##### **ALTERNATE III**

(XX/XX)

As prescribed by 1835.070(d)(3), insert the following as paragraph (e) of the basic clause:

(e) The Contractor's rights in data are defined in FAR 52.227-20, Rights In Data—SBIR Program. The Contractor may publish, or otherwise disseminate, such data without prior review by NASA. The Contractor is responsible for reviewing publication or

dissemination of the data for conformance with laws and regulations governing its distribution, including intellectual property rights, export control, national security and other requirements, and to the extent the Contractor receives or is given access to data necessary for the performance of the contract which contain restrictive markings, for complying with such restrictive markings. In the event the Contractor has established its claim to copyright data produced under this contract and has affixed a copyright notice and acknowledgement of Government sponsorship, or has affixed the SBIR Rights Notice contained in paragraph (d) of FAR 52.227-20, the Government shall comply with such Notices.

[FR Doc. 04-18365 Filed 8-11-04; 8:45 am]

**BILLING CODE 7510-01-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Research and Special Programs Administration**

##### **49 CFR Parts 171, 172, 173, 178, 179 and 180**

[Docket No. RSPA-04-18683 (HM-218C)]

**RIN 2137-AD87**

##### **Hazardous Materials; Miscellaneous Amendments**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

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

**SUMMARY:** RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations based on petitions for rulemaking and RSPA initiatives. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements.

**DATES:** Comments must be received by October 12, 2004.

**ADDRESSES:** You may submit comments (identified by DOT DMS Docket Number RSPA-04-18683 (HM-218C)) by any of the following methods:

- **Web Site:** <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

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

**Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

**Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

**Docket:** For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gigi Corbin, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

This NPRM is designed primarily to reduce regulatory burdens on industry by incorporating changes into the Hazardous Materials Regulations (HMR) based on RSPA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. In a continuing effort to review the HMR for necessary revisions, RSPA ("we" and "us") is also proposing to eliminate, revise, clarify and relax certain other regulatory requirements.

##### **II. Public Participation**

Comments should identify the docket number (RSPA-04-18683) and, if sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at <http://dms.dot.gov>.

The following is a section-by-section summary of the proposed changes.

##### **Section-by-Section Review**

###### **Part 171**

###### **Section 171.7**

Based on a petition for rulemaking by the Organic Peroxide Producers Safety

Division (OPPSD) (P-1429), we are proposing to incorporate by reference a document entitled "An Example of a Test Method for Vent Sizing—OPPSD/SPI Methodology" published in the American Institute of Chemical Engineers, Process Safety Progress Journal, June 2002, issue (Vol. 21, No. 2). The document describes an alternative method to determine the size of emergency relief devices on portable tanks transporting organic peroxides.

We are proposing to remove the American Society for Testing and Materials ASTM A 607-98 "Standard Specification for Steel, Sheet and Strip, High-Strength, Low-Alloy, Columbium or Vanadium, or Both, Hot-Rolled and Cold-Rolled." We are proposing to incorporate by reference the ASTM A 1008/A 1008M-3 "Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability" and A 1011/A 1011M-03a "Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability." In 2000, ASTM A 607-98 was replaced by ASTM A 1008/A 1008M-03 and A 1011/A 1011M-03a.

We are also proposing to incorporate by reference the Department of Defense's (DOD) "Packaging of Hazardous Material, DLAD 4145.41/AR 700-143/ AFJI 24-210/NAVSUPINST 4030.55B/ MCO 4030.40B". See § 173.7 preamble discussion.

Also, we are proposing to update the following documents which are incorporated by reference:

- Chlorine Institute instruction booklets entitled "Chlorine Institute Emergency Kit 'A' for 100-lb. & 150-lb. Chlorine Cylinders" (2000 edition) and "Chlorine Institute Emergency Kit 'B' for Chlorine Ton Containers" (1996 edition) to the 2003 edition; and
- Transport Canada Transportation of Dangerous Goods Regulations from the July 1985 edition to the August 2001 edition.

In paragraph (b), we are proposing to remove the table entry "National Association of Corrosive Engineers (NACE)" and NACE Standard TM090969 which describes an acceptable test for a liquid corrosive material. We failed to remove this entry when we revised the definition and testing methods for corrosive materials in a previous rulemaking.

###### **Section 171.8**

We are proposing to revise the definition for "Materials of trade"

(MOTS) by removing the phrase "in direct support of a principal business that is other than transportation by motor vehicle." This amendment will clarify that hazardous materials being transported for private carriage may be transported under the MOTS exception, if qualified, regardless of the principal business of the carrier.

###### **Section 171.12a**

In paragraph (b)(2), we propose to clarify that certain exceptions in Transport Canada's Transportation of Dangerous Goods (TDG) Regulations are not recognized under the reciprocity provisions; specifically, materials subject to the 500 kg exception in paragraph 1.16 of the TDG Regulations, may not be transported under the provisions of § 171.12a and are subject to the requirements of the HMR.

###### **Section 171.14**

Currently paragraph (d)(3) authorizes use of the KEEP AWAY FROM FOOD label and placard in effect on September 30, 1999, until October 1, 2003. Since the transition period has expired, we are proposing to remove paragraph (d)(3).

###### **Part 172**

###### **Section 172.101**

Currently, use of specification 3T cylinders, which are bulk packagings, is authorized in the non-bulk packaging sections in column (8B) of the Hazardous Materials Table (HMT). We are proposing to add a statement in § 172.101(i)(3) and a new paragraph (i)(5) to clarify that some bulk packaging authorizations are found in column (8B) of the HMT and in special provisions in column (7).

In the current HMT, "Bromine" and "Bromine solutions" are combined into one entry. The entry has a "+" in column (1) which fixes the proper shipping name, hazard class, ID number and packing group. Bromine and bromine solutions are assigned to Class 8 (corrosive) and have a subsidiary poison inhalation hazard in Zone A. It has been brought to our attention that some bromine solutions do not meet the criteria for a PIH Zone A material and are, in fact, in Hazard Zone B. Under the current regulations, a bromine solution meeting the criteria for a PIH Zone B material must be packaged and offered for transportation in the same manner as a bromine solution meeting the criteria for a PIH Zone A material. We are proposing to revise the HMT by adding two new entries, one for bromine solution, PIH Zone A and one for bromine solution, PIH Zone B. In the new table entries, we are proposing to

delete special provisions A3 and A6 in column (7) since bromine and bromine solutions are forbidden for transportation by air. Additionally, for each entry we are proposing to add missing stowage category "D" for vessel transportation in column 10A of the HMT. Stowage category "D" is described in § 172.101(k)(4).

In a final rule published on June 21, 2001 (HM-215D; 66 FR 33337), we removed the domestic entry "Denatured Alcohol, NA 1987" based on our determination that the entry "Alcohols, n.o.s., UN 1987" was equally appropriate. The Renewable Fuels Association (RFA) petitioned RSPA (P-1430) to reinstate the entry "Denatured Alcohol, NA 1987." The petitioner states that based on the flashpoint of the material, some ethanol shippers are using the shipping description "Flammable liquid, n.o.s., UN 1993" rather than "Alcohol, n.o.s., UN 1987." The RFA expressed concern for the safety of emergency responders. The Emergency Response Guidebook (ERG) directs emergency responders to Guide 128 for ID number 1993, and recommends "regular foam" to fight large fires. Guide 127 for ID number 1987 recommends "alcohol-resistant foam." The RFA states that the entry "Denatured Alcohol, NA 1987" which corresponds to Guide 127 in the ERG is the more appropriate shipping description. Based on the petition, we are proposing to reinstate the entry. We are also proposing to add the new special provision for the entries "Denatured Alcohol, NA 1987" and "Alcohols, n.o.s., UN 1987" to allow solutions of alcohol and petroleum products be described as either "Denatured Alcohol" or "Alcohols, n.o.s." provided the solution contains no more than 5% petroleum products.

We are proposing to correct an error in columns (9A) and (9B) for the entries "sec-Butyl chloroformate, NA 2742" and "Isobutyl chloroformate, NA 2742." The current HMT reflects these material may be transported by air. These materials are poisonous by inhalation in Hazard Zone B and are forbidden on passenger and cargo only aircraft.

We are proposing to revise the entry for "Refrigerating machines, containing flammable, non-toxic, liquefied gas, UN 3358" by adding a reference to § 173.307 in column (8A) of the HMT. Section 173.307 excepts refrigerating machines containing 12 kg (25 pounds) or less of a flammable, non-toxic gas from the HMR, except when offered or transported by air or vessel. We are also proposing to correct inconsistencies with the International Maritime Dangerous Goods (IMDG) Code

pertaining to vessel stowage for this entry.

We are proposing to revise the entry for "1,3,5-Trimethylbenzene, UN 2325" by adding a limited quantity exception for flammable liquids (see § 173.150) in Column (8A) of the HMT. This revision would be consistent with entries for other PG III flammable liquids in the HMR and in international regulations.

#### Section 172.102

We are proposing to revise Special provision 53 to provide relief from the subsidiary hazard class/division entry on the shipping paper if the material is excepted from the subsidiary label requirements.

#### Section 172.203

For readers' convenience, we are proposing to add a new paragraph (l)(4) which cross-references § 171.4. Section 171.4 excepts marine pollutants in non-bulk packagings from the HMR, except when transported by vessel.

#### Section 172.205

Section 172.205 prescribes shipping paper requirements for shipments of hazardous waste. Frequently, users of the HMR are not aware that the word "Waste" must precede the proper shipping name as provided by § 172.101(c)(9). We are proposing to add a new paragraph alerting the user to this requirement.

#### Section 172.504

In a final rule published on June 21, 2001 (HM-215D; 66 FR 33426), we authorized the display of only one placard bearing one compatibility letter when certain Class 1 materials of different compatibility groups are transported together in a single transport vehicle or container. We are proposing to amend § 172.504(g)(2) to clarify that explosives articles of compatibility groups C, D, or E when transported with explosives articles in compatibility group N may be placarded with a Class 1 compatibility group D placard.

#### Section 172.519

We are proposing to editorially revise paragraph (f) by adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)," after the wording "ICAO Technical Instructions, the IMDG Code, or the TDG Regulations".

#### Part 173

#### Section 173.7

Currently, § 173.7 authorizes military shipments of hazardous materials if the materials are packaged in accordance with the HMR or in packagings of equal

or greater strength and efficiency as certified by DOD in accordance with the procedures prescribed by "Performance Oriented Packagings of Hazardous Material, DLAR 4145.41/AR 700-143/AFR 71-5/NAVSUPINST 4030.55/MCO 4030.40." The DOD has revised this document and renamed it "Packaging of Hazardous Material, DLAD 4145.41/AR 700-143/AFJI 24-210/NAVSUPINST 4030.55B/MCO 4030.40B." In this NPRM, we are proposing to update the reference to the revised document.

#### Section 173.28

In paragraph (b)(3), we are proposing to clarify that packagings made of fiberboard are authorized for reuse.

#### Section 173.31

Since January 1, 1978, new non-pressure tank cars have had bottom outlet protection. To determine retrofit requirements, the FRA and the industry participated in a risk-analysis evaluation of the commodities carried in these cars. Those commodities requiring bottom outlet protection were listed in Appendix Y to the Tank Car Manual (AAR Manual of Standards and Recommended Practices,—1002). From time to time, additional commodities have been added. As far back as 1981, the risk-analysis evaluation has determined that molten sulfur does not require any retrofitted protection; consequently, it was not listed. Based on similar analysis, elevated temperature materials were not listed. Despite this, the regulations promulgated under a final rule published on September 21, 1995 (HM-175A; 60 FR 49073), require retrofit by July 1, 2006, for all commodities not specifically listed in Appendix Y. In this NPRM we are proposing to lessen the burden on shippers of molten sulfur and elevated temperature materials by explicitly removing these commodities from the requirement to retrofit tank cars.

#### Section 173.150

Paragraph (f)(1) defines the term "combustible liquid" and states that a flammable liquid reclassified as "combustible liquid" may not be transported by air or vessel, except when other means of transportation is impracticable. Section 173.120 Class 3-Definitions, paragraph (b)(2), contains the same information. In this NPRM, we are proposing to remove paragraph (f)(1) to eliminate the redundancy.

#### Section 173.225

Currently, the Note to paragraph (e)(3)(vi) directs the reader to Appendix 5 of the UN Manual of Tests and Criteria

for an example of a method to determine the size of emergency-relief devices. The American Institute of Chemical Engineers (AIChE), in a document published in the Process Safety Progress Journal (*see* § 171.7 preamble), describes an alternative method to determine the size of emergency-relief devices on portable tanks transporting organic peroxides. In this NPRM, we are proposing to also authorize this alternative method.

#### Section 173.241

For clarity, in paragraph (c), we are proposing to add a reference to certain additional requirements in § 176.340 that apply when offering combustible liquids in portable tanks for transportation by vessel.

#### Section 173.301

In paragraph (a)(9), we are proposing to revise the second sentence containing a requirement that the outside packaging must conform to the requirements in § 173.25. Because of their thin walls, size, or shape, 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be offered in a combination packaging, where the cylinder is the inner packaging contained in a strong non-bulk outer packaging. In addition to the applicable marking and labeling requirements in subparts D and E, respectively, the outer packaging must be marked with an indication that the inner packaging conform to the applicable specifications. This change will remove the implication that the outer packaging is an overpack and, as such, each inner packaging must meet the applicable part 172 marking and labeling requirements.

In paragraph (l)(2), we are proposing to revise the wording to state clearly that foreign cylinders filled for export must be fitted with pressure relief devices when required by the HMR for the gas contained within the cylinder. In a final rule published on August 8, 2002 (HM-220D; 67 FR 51645), we revised the language stating that the cylinders must meet the specifically listed requirements "in addition to other requirements of this subchapter." In removing the wording "in addition to other requirements of this subchapter," we inadvertently overlooked that the wording included compliance with the pressure relief device requirements.

We are proposing to editorially revise paragraph (m) by adding the parenthetical phrase "(IBR, *see* § 171.7 of this subchapter)" after the first occurrence of the term "Canadian Transport of Dangerous Goods (TDG) Regulations."

#### Section 173.302a

In paragraph (a), we are proposing a minor editorial change.

In paragraph (d), we are proposing to authorize use of a DOT 3AL1800 cylinder for the transportation of diborane and diborane mixtures.

We are proposing to add paragraph (e) to reinstate the requirement that a cylinder containing fluorine may not be charged to over 400 psig at 21 °C (70 °F) and may not contain more than 2.7 kg (6 lbs) of gas. It was brought to our attention that this requirement was removed in HM-220D and, for safety concerns, should be reinstated.

#### Section 173.304a

In the paragraph (a)(2) table, in column 3, we are proposing to remove several references to DOT specification 4, 4A, 9, 38, 40 and 41 cylinders. In a final rule published August 8, 2002 (HM-220D; 67 FR 51647) we discontinued authorization for the use of DOT 3C, 3D, 4, 4A, 4B240X, 4B240FLW, 4C, 9, 25, 26, 33, 38, 40 and 41 cylinders. Also, for the entry Bromotrifluoromethane, we propose to correct "DOT-3AL40" to read "DOT-3AL400" in column 3.

#### Sections 173.314 and 173.319

Currently the HMR require a shipper to notify the Bureau of Explosives (BOE) whenever a rail car containing a time-sensitive product is not received by the consignee within 20 days from shipment. We are proposing to revise the requirement to require notification to the appropriate office in the Federal Railroad Administration.

#### Section 173.315

We are proposing to revise the paragraph (a) table by adding a new Note 27 which authorizes the use of non-specification cargo tanks for the entry "Ammonia, anhydrous or Ammonia solutions, with greater than 50 percent ammonia."

#### Section 173.337

In the introductory text, we are proposing to reinstate a requirement that a cylinder containing nitric oxide may be charged to a pressure of not more than 5,170 kPa (750 psig) at 21 °C (70 °F). It was brought to our attention that this requirement was inadvertently removed in HM-220D and, for safety concerns, should be reinstated.

#### Part 178

#### Sections 178.338-2 and 178.345-2

We are proposing to remove the reference to ASTM Standard A 607 and add ASTM Standards A 1008/A 1008M

and A 1011/A 1011M in its place. See § 171.7 preamble discussion.

#### Section 178.606

In paragraph (c)(2), we are proposing to correct the formula for calculating the pressure to be applied when a packaging containing a solid is subjected to a dynamic compression test. The formula currently in the HMR is applicable to liquids.

#### Part 179

#### Section 179.200-7

We are proposing to amend paragraph (e) by adding a reference to § 171.7 for a standard that is incorporated by reference.

#### Part 180

#### Section 180.205

In paragraph (c)(2), we are proposing to add a reference to new § 180.212. See § 180.212 preamble discussion. Also, we are proposing to broaden the provisions in paragraph (I)(2) to allow a composite cylinder that is condemned to have the wording "CONDEMNED" displayed instead of stamped on the cylinder. The use of a label is currently authorized in some exemptions.

#### Section 180.212

The HMR authorize the repair of DOT 4-series cylinders, but not DOT 3-series cylinders. In this NPRM, we are proposing to allow repairs to a DOT 3-series cylinder under the terms of an approval issued by the Associate Administrator under subpart H of part 107. In addition, the person that performs the repair work must have an approval as currently required under subpart I of part 107.

Note in this regard, however, that certain repairs to cylinders will not require an approval. For example, an approval will not be required for the removal and replacement of non-pressure components on a DOT 3-series cylinder, such as a neck ring or foot ring; the replacement material must be equivalent to that used at the time of original manufacture. Such repairs were authorized in former § 173.34(h) of the HMR for DOT 3A, 3AA, 3B, and the obsolete 3C cylinder when performed by a manufacturer of these types of cylinders, tested and repaired under the supervision of an inspector, and reported in accordance with the original specification. We removed § 173.34(h) from the HMR in HM-220D. In this NPRM, we propose to add these requirements back into the regulations and also allow repairs to be made by a DOT authorized repair facility.

Additionally, no approval will be required for the repair of worn or damaged cylinder neck threads when performed by the original cylinder manufacturer in accordance with the cylinder's specification requirements and under the supervision of an independent inspection agency. CGA Pamphlets C-6 and C-6.1 contain guidelines for inspection of the cylinder neck areas for damaged threads. The cylinder must be rejected if the required number of effective threads are not engaged to provide a gas-tight seal. The rejected cylinder may qualify for repair to restore the effectiveness of the threads. If the threads cannot be repaired, the cylinder must be condemned. We proposed to update the reference to CGA Pamphlet C-6.1 from the 1995 to the 2002 edition in an NPRM published on September 10, 2003 (HM-220F; 68 FR 53318). The 2002 edition contains criteria for inspection of cylinder neck threads for abnormal thread conditions resulting from structural defects, corrosion, or damage. Currently CGA is updating CGA Pamphlet C-6 to better address inspection for neck areas on high pressure and low pressure steel cylinders. We will consider adopting the revised pamphlet in a future notice of proposed rulemaking.

#### Section 180.417

In paragraph (b)(2)(v), we are proposing to reinstate the requirement that each test or inspection report completed for a repaired cargo tank must include the ASME or National Board Certificate of Authorization number of the facility performing the repairs.

### Regulatory Analyses and Notices

#### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and 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). The costs and benefits of this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation.

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update and add

references to standards that are incorporated in the HMR. These clarifications and updates of the HMR will enhance safety.

#### B. 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.

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 as final, 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 RSPA issues a regulation concerning any of the covered subjects, RSPA 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. RSPA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

#### C. 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, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### D. 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. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a 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 our own initiatives and also on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and would update references to consensus standards that are incorporated in the HMR. The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

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. The changes proposed in this Notice will enhance safety, and I certify that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

#### E. Paperwork Reduction Act

This proposed rule may result in a minimal change in information collection and recordkeeping burden under OMB Control Number 2137-0559, due to editorial changes to §§ 173.314 and 173.319 regarding HMR requirements to notify BOE whenever a

rail car containing a time-sensitive product is not received by the consignee within 20 days from shipment. Since BOE no longer exists, we are proposing to remove references to BOE in §§ 173.314 and 173.319, and replace them with references to FRA. This proposed rule may result in a minimal change in burden since FRA instead of BOE will now be notified if a rail car containing a time-sensitive product is not received within 20 days from shipment. RSPA currently has an approved information collection under OMB Control Number 2137-0559, "Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail" with 2,759 burden hours which expires on May 31, 2006.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that RSPA will submit to OMB for approval based on the requirements in this proposed rule.

RSPA has developed burden estimates to reflect changes in this proposed rule. RSPA estimates the total information and recordkeeping burden as proposed in this rule as: Requirements for Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail" OMB Number 2137-0559:

Total Annual Number of Respondents: 266.  
Total Annual Responses: 16,781.  
Total Annual Burden Hours: 2,689.  
Total Annual Burden Cost: \$102,586.25.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590-0001, telephone (202) 366-8553.

All comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking, and received prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the RSPA Desk Officer, OMB, at fax number 202-395-6974. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

#### *F. 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.

#### *G. 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 \$120.7 million 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.

#### *H. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of the proposed revisions on the environment and whether a more comprehensive environmental impact statement may be required. We have tentatively concluded that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

#### *I. 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://dms.dot.gov>.

#### **List of Subjects**

##### *49 CFR Part 171*

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

##### *49 CFR Part 172*

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

##### *49 CFR Part 173*

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

##### *49 CFR Part 178*

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

##### *49 CFR Part 179*

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 180*

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

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

#### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

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

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

2. In § 171.7:

a. In the paragraph (a)(3) table:

(1) A new entry for the American Institute of Chemical Engineers is added to the table in appropriate alphabetical order;

(2) Under the entry "American Society for Testing and Materials," the entry for ASTM Standard A 607-98 is removed and two new standards are added in appropriate numerical order;

(3) Under the entry "Chlorine Institute, Inc.," the entries for Chlorine Institute Emergency Kit "A" and "B" are revised;

(4) Under the entry "Department of Defense (DOD)," a new entry is added in appropriate alphabetical order; and

(5) Under the entry "Transport Canada," the entry is revised.

b. In the paragraph (b) table, the entry "National Association of Corrosion Engineers" is removed.

The revisions and additions read as follows:

**§ 171.7 Reference material.**(c) *Table of material incorporated by reference.* \* \* \*

(a) \* \* \*

Source and name of material	49 CFR reference
American Institute of Chemical Engineers, 3 Park Avenue, New York, NY 10016-5991, AICChE Process Safety Progress Journal, June 2002, issue (Vol. 21, No. 2), An Example of a Text Method for Vent Sizing—OPPSD/SPI Methodology .....	173.225
American Society for Testing and Materials,  ASTM A 1008/A 1008M—03 Standard Specification for Steel, Sheet, Cold-Rolled, Carbon, Structural, High-Strength Low-Alloy and High Strength Low-Alloy with Improved Formability .....	178.338–2; 178.345–2
ASTM A 1011/A 1011M—03a Standard Specification for Steel, Sheet and Strip, Hot-Rolled, Carbon, Structural, High-Strength Low Alloy and High Strength Low-Alloy with Improved Formability .....	178.338–2; 178.345–2
The Chlorine Institute, Inc.,  Chlorine Institute Emergency Kit “A” for 100-lb. & 150 lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 10, June 2003 .....	173.3
Chlorine Institute Emergency Kit “B” for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks), Edition 9, June 2003 .....	173.3
Department of Defense, (DOD),  Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B .....	173.7
Transport Canada,  Transportation of Dangerous Goods (TDG) Regulations, August 2001 including Clear Language Amendments SOR/2001–286, and Amendment 1 SOR/2002–306), Amendment 2 (SOR/2003–273), and Amendment 3 (SOR/2003–400) .....	171.12a; 172.401; 172.502; 172.519; 172.602; 173.301.

**§ 171.8 [Amended]**

3. In § 171.8, the definition for “Materials of trade” is amended by removing the wording “in direct support of a principal business that is other than transportation by motor vehicle”.

4. In § 171.12a, paragraph (b)(2) is revised to read as follows:

**§ 171.12a Canadian shipments and packagings.**

\* \* \* \* \*

(b) \* \* \*

(2) A material designated as a hazardous material under this subchapter which is not subject to the requirements of the TDG Regulations or is afforded hazard communication or packaging exceptions not authorized in this subchapter (e.g., paragraph 1.16 of the TDG Regulations excepts quantities of hazardous materials less than or equal to 500 kg gross transported by

highway or rail) may not be transported under the provisions of this section.

\* \* \* \* \*

**§ 171.14 [Amended]**

5. In § 171.14, paragraph (d)(3) is removed and reserved.

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

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

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

7. In § 172.101, the first and second sentence in paragraph (i)(3), are revised and a new paragraph (i)(5) is added to read as follows:

**§ 172.101 Purpose and use of the hazardous materials table.**

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \* Column 8C specifies the section in part 173 of this subchapter which prescribes packaging requirements for bulk packagings, subject to the limitations, requirements and additional authorizations of Columns 7 and 8B. A “None” in Column 8C means bulk packagings are not authorized, except as may be provided by special provisions in Column 7 and in Column 8B. \* \* \*

\* \* \* \* \*

(5) *Cylinders.* For cylinders, both non-bulk and bulk packaging authorizations are set forth in Column 8B. Notwithstanding a designation of “None” in Column 8C, a bulk cylinder

may be used when specified through the  
section reference in Column 8B.

\* \* \* \* \*

8. In § 172.101, the Hazardous  
Materials Table is amended by  
removing, adding and revising, in the

appropriate alphabetical sequence, the  
following entries to read as follows:



§ 172.101.—HAZARDOUS MATERIALS TABLE

Sym- bols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identifica- tion num- bers	PG	Label codes	Special provisions (§172.102)	Packaging (§ 173.***)			Quantity limitations (9)		Vessel stowage (10)	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air- craft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE:]												
		*	*	*	*	*	*	*	*	*	*		
+	Bromine or Bromine solutions.	8	UN1744	I	8, 6.1	1, A3, A6, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden		12, 40, 66, 74, 89, 90
		*	*	*	*	*	*	*	*	*	*		
		*	*	*	*	*	*	*	*	*	*		
	[ADD:]												
+	Bromine	8	UN1744	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine so- lutions.	8	UN1744	I	8, 6.1	1, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	226	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
+	Bromine so- lutions.	8	UN1744	I	8, 6.1	2, B9, B64, B85, N34, N43, T22, TP2, TP10, TP12, TP13.	None	227	249	Forbidden	Forbidden	D	12, 40, 66, 74, 89, 90
D	Denatured alcohol.	3	NA1987	II	3	172, T8, T31	150	202	242	5L	60L	B	
				III	3	172, B1, T7, T30	150	203	242	60L	220L	A	
		*	*	*	*	*	*	*	*	*	*		
	[REVISE:]												
		*	*	*	*	*	*	*	*	*	*		
	Alcohols, n.o.s.	3	UN1987	I	3	172, T11, TP1, TP8, TP27	None	201	243	1 L	30 L	E	
				II	3	172, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	
				III	3	172, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
D	Sec-Butyl chloroformate.	6.1	NA2742	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100
D	Isobutyl chloroformate.	6.1	NA2742	I	6.1, 3, 8	2, B9, B14, B32, B74, T20, TP4, TP12, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	A	12, 13, 22, 25, 40, 48, 100

Refrigerating machines, containing flammable, non-toxic, liquefied gas.	2.1	UN3358	*	.....	*	.....	2.1	.....	*	.....	306, 307	...	306	.....	306	.....	*	.....	Forbidden	.....	Forbidden	D	.....		
1,3,5-Trimethylbenzene.	3	UN2325	*	.....	III	*	.....	3	.....	B1, IB3, T2, TP1	*	.....	150	.....	203	.....	*	.....	242	.....	60 L	.....	220 L	A	.....
			*	.....		*	.....		.....		*	.....		.....		.....	*	.....		.....		*	.....		

9. In § 172.102, in paragraph (c)(1), Special revision 53, the first sentence is revised and new Special provision 172 is added in appropriate numerical order to read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

53 Packages of these materials must bear the subsidiary risk label, "EXPLOSIVE", and the subsidiary hazard class/division must be entered in parentheses immediately following the primary hazard class in the shipping description, unless otherwise provided in this subchapter or through an approval issued by the Associate Administrator, or the competent authority of the country of origin. \* \* \*

172 This entry includes alcohol mixtures containing up to 5% petroleum products.

\* \* \* \* \*

10. In § 172.203, a new paragraph (l)(4) is added to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(l) \* \* \*

(4) Except when transported aboard vessel, marine pollutants in non-bulk packagings are not subject to the requirements of this subchapter (see § 171.4 of this subchapter).

\* \* \* \* \*

11. In § 172.205, a new paragraph (i) is added to read as follows:

**§ 172.205 Hazardous waste manifest.**

\* \* \* \* \*

(i) The shipping description for a hazardous waste must be modified as required by § 172.101(c)(9).

12. In § 172.504, paragraph (g)(2) is revised to read as follows:

**§ 172.504 General placarding requirements.**

\* \* \* \* \*

(g) \* \* \*

(2) Explosive articles of compatibility groups C, D, or E, when transported with those in compatibility group N, may be placarded displaying compatibility group D.

\* \* \* \* \*

**§ 172.519 [Amended]**

13. In § 172.519, in paragraph (f), the wording "the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations," is removed and the wording "the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations (IBR, see § 171.7 of this subchapter)," is added in its place.

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

14. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

**§ 173.7 [Amended]**

15. In § 173.7, paragraph (a), the wording "Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40" is removed and the wording "Packaging of Hazardous Material, DLAD 4145.41/AR 700–143/AFJI 24–210/NAVSUPINST 4030.55B/MCO 4030.40B (IBR, see § 171.7 of this subchapter)" is added in its place.

16. In § 173.28, paragraph (b)(3) is revised to read as follows:

**§ 173.28 Reuse, reconditioning and remanufacture of packagings.**

\* \* \* \* \*

(b) \* \* \*

(3) Packagings made of paper (other than fiberboard), plastic film, or textile are not authorized for reuse;

\* \* \* \* \*

17. In § 173.31, paragraph (b)(5), the second sentence is revised to read as follows:

**§ 173.31 Use of tank cars.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \* Tank cars not requiring bottom-discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of July 1, 1996, must conform to these requirements no later than July 1, 2006, except that tank cars transporting a material that is hazardous only because it meets the definition of an elevated temperature material or because it is molten sulfur do not require bottom discontinuity protection. \* \* \*

\* \* \* \* \*

**§ 173.150 [Amended]**

18. In § 173.150, paragraph (f)(1) is removed and paragraphs (f)(2), (f)(3) and (f)(4) are redesignated as (f)(1), (f)(2) and (f)(3) respectively.

19. In § 173.225, the Note to paragraph (e)(3)(vi) is revised to read as follows:

**§ 173.225 Packaging requirements and other provisions for organic peroxides.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(vi) \* \* \*

**Note To Paragraph (e)(3)(vi):** Examples of methods to determine the size of emergency-

relief devices are given in Appendix 5 of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and AIChE Process Safety Progress Journal, Vol. 21, No. 2 (IBR, see § 171.7 of this subchapter).

\* \* \* \* \*

**§ 173.241 [Amended]**

20. In § 173.241, paragraph (c) is amended by adding a new last sentence to read as follows:

**§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.**

\* \* \* \* \*

(c) \* \* \* For transportation of combustible liquids by vessel, additional requirements are specified in § 176.340 of this subchapter.

\* \* \* \* \*

21. In § 173.301, paragraphs (a)(9), (l)(2) and (m) introductory text are revised to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.**

(a) \* \* \*

(9) Specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

\* \* \* \* \*

(l) \* \* \*

(2) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved.

\* \* \* \* \*

(m) *Canadian cylinders in domestic use.* A Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Canadian Transport of Dangerous Goods (TDG) Regulations (IBR, see § 171.7 of this subchapter) is authorized for the transportation of a hazardous material to, from or within the United States under the following conditions:

\* \* \* \* \*

22. In § 173.302a, new paragraph (e) is added and paragraph (a)(3) and the first sentence in paragraph (d) are revised to read as follows:

**§ 173.302a Additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders.**

\* \* \* \* \*

(a) \* \* \*

(3) *DOT 39 cylinders*. When the cylinder is filled with a Division 2.1 material, the internal volume of the cylinder may not exceed 1.23 L (75 in<sup>3</sup>).

\* \* \* \* \*

(d) \* \* \* Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AL1800 or 3AA1800 cylinder. \* \* \*

(e) *Fluorine*. Fluorine must be shipped in specification 3A1000, 3AA1000, or 3BN400 cylinders without pressure relief devices and equipped with valve protection cap. The cylinder may not be charged to over 400 psig at 21 °C (70 °F) and may not contain over 2.7 kg (6 lbs) of gas.

23. In § 173.304a, in the paragraph (a)(2) table, in column 1, for the entry "Methyl acetylene-propadiene, mixtures, stabilized" remove the phrase "DOT-3A240"; and in column 3 make the following changes:

a. For the entry "Anhydrous ammonia", remove the phrases "DOT-4;" and "DOT-4A480;"

b. For the entry "Bromotrifluoromethane", remove the phrase "DOT-4A400;" and correct the entry "DOT-3AL40" to read "DOT-3AL400;"

c. For the entry "Chlorodifluoromethane @-22)", remove the phrase "DOT-41;"

d. For the entry "Chloropentafluoroethane @-115)", remove the phrase "DOT-4A225;"

e. For the entry "Cyclopropane", remove the phrase "DOT-4A225;"

f. For the entry "Dichlorodifluoromethane @-12)", remove the phrases "DOT-4A225;" "DOT-9;" and "DOT-41;"

g. For the entry "Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R-500)", remove the phrases "DOT-4A240;" and "DOT-9;"

h. For the entry "Hydrogen sulfide", remove the phrase "DOT-4A480;"

i. For the entry "Insecticide, gases liquefied", remove the phrases "DOT-9;" "DOT-40;" and "DOT-41;"

j. For the entry "Methyl acetylene-propadiene, mixtures, stabilized", remove the phrase "DOT-4;" "DOT-41;"

k. For the entry "Methyl chloride", remove the phrases "DOT-4A225;" "DOT-4;" "DOT-38;" and "DOT-4A150;"

l. For the entry "Refrigerant gas, n.o.s. or Dispersant gas, n.o.s.", remove the phrases "DOT-4A240;" and "DOT-9;"

m. For the entry "Sulfur dioxide", remove the phrases "DOT-4A225;" and "DOT-4;" "DOT-38;"

n. For the entry "Trifluorochloroethylene, stabilized", remove the phrase "DOT-4A300;"

24. In § 173.314, paragraph (g)(1) is revised to read as follows:

**§ 173.314 Compressed gases in tank cars and multi-unit tank cars.**

\* \* \* \* \*

(g) \* \* \*

(1) The shipper shall notify the Federal Railroad Administration whenever a tank car is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to [Hmassist@fra.dot.gov](mailto:Hmassist@fra.dot.gov) or telephone call to (202) 493-6229.

\* \* \* \* \*

25. In § 173.315, in the paragraph (a) table, column 4, amend the entry "Ammonia, anhydrous or Ammonia solutions with greater than 50% ammonia" by removing the wording "Notes 12 and 17" and adding the wording "Notes 12, 17 and 27" in its place and following the table, add Note 27 in the appropriate numerical order to read as follows:

**§ 173.315 Compressed gases in cargo tanks and portable tanks.**

\* \* \* \* \*

(a) \* \* \*

**Note 27:** Non-specification cargo tanks may be used for transportation of Ammonia, anhydrous and ammonia solutions with greater than 50% ammonia, subject to the conditions prescribed in paragraph (m) of this section.

\* \* \* \* \*

26. In § 173.319, paragraph (a)(3) is revised to read as follows:

**§ 173.319 Cryogenic liquids in tank cars.**

\* \* \* \* \*

(a) \* \* \*

(3) The shipper shall notify the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by e-mail to [Hmassist@fra.dot.gov](mailto:Hmassist@fra.dot.gov) or telephone call to (202) 493-6229.

\* \* \* \* \*

27. In § 173.337, introductory text, the first sentence is revised to read as follows:

**§ 173.337 Nitric oxide.**

Nitric oxide must be packed in DOT 3A1800, 3AA1800, 3E1800, or 3AL1800 cylinders charged to a pressure of not more than 5,170 kPa (750 psig) at 21 °C (70 °F) and conforming to the requirements in § 173.40. \* \* \*

**PART 178—SPECIFICATIONS FOR PACKAGINGS**

28. The authority citation for part 178 continues to read as follows:

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

29. In § 178.338-2, paragraph (a), the last sentence is revised to read as follows:

**§ 178.338-2 Material.**

(a) \* \* \* All material used for evacuated jacket pressure parts must conform to the chemistry and steelmaking practices of one of the material specifications of Section II of the ASME Code or the following ASTM Specifications: A 242, A 441, A 514, A 572, A 588, A 606, A 633, A 715, A 1008/A 1008M, A 1011/A 1011M.

\* \* \* \* \*

**§ 178.345-2 [Amended]**

30. In § 178.345-2, paragraph (a)(1), the wording "ASTM A 607" is removed and the wording "ASTM A 1008/ A 1008M, "ASTM A 1011/A 1011M" is added in the appropriate numerical order.

**§ 178.606 [Amended]**

31. In § 178.606, in paragraph (c)(2)(ii), make the following changes:

a. For the formula, remove the wording "Solids: A = (n - 1) [w + (s × v × 8.3 × .95) × 1.5]" and add the wording "Solids: A = (n - 1) (m × 1.5)" in its place; and

b. In the definitions following the formula, add the wording "m=the certified maximum gross mass for the container in kilograms;" in appropriate alphabetical order.

**PART 179—SPECIFICATIONS FOR TANK CARS**

32. The authority citation for part 179 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR part 1.53.

33. In § 179.200-7, paragraph (e), the first sentence is revised to read as follows:

**§ 179.200-7 Materials.**

\* \* \* \* \*

(e) *Nickel plate*. Nickel plate must comply with the following specification (IBR, see § 171.7 of this subchapter):

\* \* \*

\* \* \* \* \*

**PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

34. The authority citation for part 180 continues to read as follows:

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

35. In § 180.205, paragraphs (c)(2)(I), (I)(2) and (I)(3) are revised to read as follows:

**§ 180.205 General requirements for requalification of cylinders.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or 180.212, as appropriate; or

\* \* \* \* \*

(i) \* \* \*

(2) When a cylinder must be condemned, the requalifier must —

(i) Stamp a series of X's over the DOT specification number and the marked pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp;

(ii) For composite cylinders, securely affix a label with the word "CONDEMNED", overcoated with epoxy near but not obscuring the original manufacturer's label, to the cylinder; or

(iii) As an alternative to the stamping or labeling as described in this paragraph (I)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

(3) No person may remove or obliterate the "CONDEMNED" marking. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

36. A new section 180.212 is added to read as follows:

**§ 180.212 Repair of DOT-3 series specification cylinders.**

(a) *General requirements for repair of DOT 3 series cylinders.* No person may repair a DOT 3-series cylinder unless prior approval has been obtained in accordance with this section. The repair facility must hold an approval as specified in § 107.805 of this subchapter. The repair and the inspection must conform to the requirements of the applicable cylinder specification contained in part 178 of this subchapter and, except as provided in paragraph (b) of this section, the provisions of an approval issued under subpart H of Part 107 of this subchapter. The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA, or 3B cylinder that does not affect a pressure part of the cylinder when performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and defective cylinders must be rejected. The heat treatment, testing and inspection of the repair under the supervision of an inspector must be performed in accordance with the original specification.

(2) External re-threading of a DOT 3AX, 3AAX or 3T cylinder or internal re-threading of a DOT-3 series cylinder to restore the total number of neck threads engaged to the condition specified in the applicable specification. The repair work must be performed by the original manufacturer of the cylinder. Upon completion of the re-threading, the threaded opening must be inspected by an independent inspection agency and gauged in accordance with Federal Standard H-28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the words "RETHREAD" on the shoulder, top head, or neck. No cylinder may be re-threaded more than one time without approval of the Associate Administrator.

37. In § 180.417, paragraph (b)(2)(v) is revised to read as follows:

**§ 180.417 Reporting and record retention requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) ASME or National Board Certificate of Authorization number of facility performing repairs, if applicable;

\* \* \* \* \*

Issued in Washington, DC on August 5, 2004, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 040726216-4216-01; I.D. 070804B]

**RIN 0648-AS49**

**Atlantic Highly Migratory Species; Reducing Sea Turtle Interactions With Fishing Gear**

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); request for comments.

**SUMMARY:** NMFS is considering adjustments to the regulations governing the Atlantic highly migratory species (HMS) pelagic longline fishery based upon a June 1, 2004, Biological Opinion (2004 BiOp) regarding Atlantic sea turtles. NMFS issues this ANPR to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles in the Atlantic pelagic longline fishery as well comments on as the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur.

**DATES:** Written comments on this ANPR must be received no later than October 12, 2004.

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

• Email: [ID070804B@noaa.gov](mailto:ID070804B@noaa.gov).

Include in the subject line the following identifier: I.D. 070804B.

• Federal e-Rulemaking Portal: <http://www.regulations.gov>.

• Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

• Fax: (301)713-1917.

Related documents, including the 2004 BiOp, are available upon request at the mailing address noted above or on the HMS Management Division's web page at: <http://www.nmfs.noaa.gov/sfa/hms>. In addition, the main resource laws that guide NMFS can be found at [www.nmfs.noaa.gov/legislation.htm](http://www.nmfs.noaa.gov/legislation.htm).

**FOR FURTHER INFORMATION CONTACT:** Russell Dunn, 727-570-5447; fax: 727-570-5656.

**SUPPLEMENTARY INFORMATION:** The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery