



The Fertilizer Institute

Nourish, Replenish, Grow

Pamela D. Guffain
Vice President,
Member Services

MEMORANDUM

TO: TFI Affiliated State and Regional Associations

CC: TFI Regular Members
TFI Transportation Council

FROM: Pam Guffain, Vice President of Member Services

SUBJECT: Special Permits 13554 and 10950 – Incorporated into DOT Regulations

DATE: February 1, 2011

Today, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), issued its long awaited final rule incorporating several long-standing special permits into the federal hazardous materials regulations. Special permits 10950 and 13554, held by The Fertilizer Institute (TFI) on behalf of its members, were included in this rulemaking. The effective date of the final rule is March 3, but voluntary compliance is authorized immediately.

As a result of this final rule, nurse tanks mounted on field trucks (SP-10950) and nurse tanks with missing or illegible dataplates (SP-13554) will no longer need to be marked with the special permit number, but the requirements contained in the special permits for continued operation, will still need to be met. **Please carefully review the requirements contained in Section 173.315 (m) (1) and (2) for operating nurse tanks with missing or illegible dataplates; and, Section 173.315 (m) (1) and (3) for nurse tanks mounted on field trucks of the attached notice.**

PHMSA is not addressing any alternations to these special permits as several associations suggested. For example, the FarWest Agribusiness Association suggested that PHMSA extend the 50 mile limitation in SP-10950 to 100 miles and TFI suggested that PHMSA require the same testing of all nurse tanks, not just those with the missing or illegible dataplates. PHMSA states that any modifications will need to be submitted as a petition for rulemaking. In this regard, TFI previously submitted a petition for rulemaking for testing of all nurse tanks and PHMSA will be addressing our petition in a separate rulemaking proceeding.

If you have any questions, please contact me by telephone at (202) 515-2704 or via e-mail at pguffain@tfi.org.

Outreach & Implementation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Policy, tel.: 202/622-4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

Following the December 19, 2010 presidential elections in Belarus and the announcement by state-run media on election night that President Lukashenko had received approximately 80 percent of the vote, some opposition candidates and their supporters gathered at Independence Square in the Belarusian capital, Minsk, to protest. Belarusian riot police beat and arrested over 600 protesters, including most of the opposition candidates and many journalists, human rights activists, and civil society representatives. Press reports indicate that as of January 18, at least 31 protesters (including several opposition candidates) remain in jail, facing up to 15 years in prison on charges of organizing or participating in mass riots. Since the demonstration, the government has engaged in a further crackdown against offices and members of political parties, civil society and independent media.

While the Organization for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) noted that the presidential election showed certain improvements over previous elections, ODIHR observed significant flaws during the vote count. ODIHR determined that the lack of transparency in the vote count undermined any improvements in the electoral process. The post-election violence further marred the presidential elections and drew condemnation from the United States and the European Union. On December 23, 2010, U.S. Secretary of State Hillary Clinton and EU High Representative Catherine Ashton issued a joint statement calling for the immediate release of all opposition protesters taken into custody following the presidential elections. Secretary Clinton and High Representative Ashton

also deemed the flawed vote count and post-election violence an "unfortunate step backwards" for democracy and human rights in Belarus.

In light of these recent developments and the decision by the Government of Belarus to close the Minsk office of the OSCE, OFAC is amending the Belarus Sanctions Regulations, 31 CFR part 548 (the "Regulations"), to revoke the general license in section 548.509 authorizing U.S. persons to engage until May 31, 2011, in all otherwise prohibited transactions with two blocked entities, Lakokraska OAO and/or Polotsk Stoklovolokno OAO. This license had been issued in 2008 in response to the Belarusian Government's release of its political prisoners. The revocation of the general license in section 548.509 of the Regulations will be effective on February 11, 2011. This delayed effective date gives U.S. persons a reasonable period of time to wind down and terminate any transactions previously entered into with Lakokraska OAO and/or Polotsk Stoklovolokno OAO under section 548.509 of the Regulations.

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 548

Administrative practice and procedure, Banks, Banking, Belarus, Blocking of assets, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Services.

For the reasons set forth in the preamble, the Department of the

Treasury's Office of Foreign Assets Control amends 31 CFR part 548 as follows:

PART 548—BELARUS SANCTIONS REGULATIONS

■ 1. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 548.509 [Removed]

■ 2. Remove § 548.509.

Dated: January 25, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011-2178 Filed 1-31-11; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA-2010-0017 (HM-245)]

RIN 2137-AE56

Hazardous Materials: Incorporation of Certain Cargo Tank Special Permits Into Regulations

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations by incorporating provisions contained in certain widely used or longstanding cargo tank special permits that are granted to multiple parties and have established safety records. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. The revisions are intended to provide wider access to the regulatory flexibility offered in the special permits and eliminate the need for numerous renewal requests, thereby facilitating commercial activity and reducing paperwork burdens while continuing to maintain an appropriate level of safety.

DATES: *Effective date:* The effective date of this final rule is March 3, 2011.

Incorporation by reference: The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 3, 2011.

Voluntary Compliance date:

Immediate voluntary compliance with the requirements of this final rule is authorized as of February 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre or Matthew Nickels, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), or John Van Steenburg, Office of Enforcement and Compliance, (202) 366–5125, Federal Motor Carrier Safety Administration (FMCSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

- I. Background
- II. List of Commenters, General Comments, and Beyond-the-Scope Comments
- III. Discussion of Amendments and Applicable Comments
- IV. Regulatory Analyses and Notices

I. Background

On July 21, 2010, PHMSA issued a notice of proposed rulemaking (NPRM; 75 FR 42364) proposing to incorporate into the Hazardous Materials Regulations (HMR) provisions contained in six widely used and longstanding cargo tank special permits that are granted to multiple parties and have established safety records. We discussed how this action would reduce paperwork and compliance burdens, lower cost burdens on both industry and government by removing the need to apply for and renew special permits, and facilitate commerce while maintaining a level of safety equal to or greater than that of the current HMR requirements. We proposed to incorporate the provisions of six special permits into the HMR. We did not propose to materially change the special permits, nor did we seek comments for revising the special permits. (*See Beyond-the-Scope discussion under “II. Comments to the NPRM.”*)

The six special permits addressed in the NPRM were:

- *Special Permit (SP) 11209*—Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes.
- *SP 13113*—Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT specification MC 306 and DOT 406

cargo tank motor vehicles and DOT 57 portable tanks that are used exclusively for agricultural purposes.

- *SP 12284*—Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks.

- *SP 13341*—Authorization for private motor carriers to transport LPG in consumer storage containers filled to greater than five percent of the container's water capacity.

- *SP 10950*—Authorization to transport nurse tanks securely mounted on field trucks.

- *SP 13554*—Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions.

The decision to consider the incorporation of these special permits into the HMR is based on special permits issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127) and the length of time these special permits have been in use with demonstrated records of safety. A special permit sets forth alternative requirements to the HMR by means that achieve a level of safety equal to or greater than that required by regulation and that are consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

As discussed in the NPRM, the HMR generally are performance-oriented regulations that provide the regulated community with a certain amount of flexibility in meeting safety requirements. However, not every transportation situation can be anticipated and included in the regulations. Innovation is one of the strengths of our economy and the hazardous materials community is particularly strong at developing new technologies and pioneering ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into the production and transportation stream, thereby providing a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with established safety records for adoption into the HMR. Adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special

permits. Factors that influence whether a special permit is a candidate for regulatory incorporation include: the safety record of the special permit; the properties of the hazardous material; the transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities. Special permits reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers. Converting special permits into regulations reduces paperwork burdens.

Although PHMSA does not issue special permits to industry associations, PHMSA may issue a special permit to members of an industry association when many of its members have a common interest in obtaining authority to perform a specific transportation activity. Special permits issued to the members of associations are potentially among the most suitable types of special permits for later adoption into the HMR. Such special permits have broad applicability, and many of them have been in effect for a number of years and have proven safety records.

II. List of Commenters, General Comments, and Beyond-the-Scope Comments

PHMSA received 16 comments in response to the NPRM. Some of the commenters requested that we expedite the issuance of this final rule because of impending expiration dates for certain special permits. We recognize their concerns and have made every effort to finalize this rulemaking in an expeditious manner. While the majority of the commenters supported the proposals in the NPRM, some commenters had suggestions for additional revisions and one commenter questioned the safety of certain special permits. Comments that addressed the recommendation of additional revisions are beyond the scope of this rulemaking (*see Beyond-the-Scope comments following the list of commenters*). The comments, as submitted to this docket, may be accessed via <http://www.regulations.gov> and were submitted by the following individuals, companies and associations:

- (1) Far West Agribusiness Association; PHMSA–2010–0017–0002.
- (2) Dusty Farm Co-Op; PHMSA–2010–0017–0003.
- (3) The Fertilizer Institute; PHMSA–2010–0017–0004.

(4) Trinity Containers, LLC; PHMSA–2010–0017–0005.

(5) Lisa Anderson; PHMSA–2010–0017–0006.

(6) North Central AG; PHMSA–2010–0017–0007.

(7) James T. Osterhaus; PHMSA–2010–0017–0008.

(8) National Propane Gas Association; PHMSA–2010–0017–0009.

(9) American Trucking Associations, Inc.; PHMSA–2010–0017–0010.

(10) American Welding and Tank, LLC; PHMSA–2010–0017–0011.

(11) National Tank Truck Carriers, Inc.; PHMSA–2010–0017–0012.

(12) Fisk Tank Carrier; PHMSA–2010–0017–0013.

(13) National Fire Protection Association; PHMSA–2010–0017–0014 and 0018.

(14) Agricultural Retailers Association; PHMSA–2010–0017–0015.

(15) CHS Inc.; PHMSA–2010–0017–0016.

(16) CHS Agri Service Center; PHMSA–2010–0017–0017.

Beyond-the-Scope Comments

Comments that addressed the recommendation of additional revisions to those proposed in the NPRM are beyond the scope of this rulemaking and, therefore, cannot be addressed for incorporation into the HMR in this final rule. Such revisions must first be presented in an NPRM to provide opportunity for comment from industry and the public. While we agree that certain beyond-the-scope issues merit PHMSA's consideration, we urge those commenters who submitted beyond-the-scope issues to request a change in the regulations by filing the recommendations as petitions for rulemakings in accordance with §§ 106.95 and 106.100.

Beyond-the-Scope comments to this rulemaking include the following:

- The National Tank Truck Carriers (NTTC) had concerns about carrier-type status and limitations to non-agricultural operations, stating that all special permits should have these limitations removed. This rulemaking addresses incorporating special permits as currently written.

- For SP 11209 and SP 13113, the American Trucking Association (ATA) contended that the special permits should not be limited to private motor carriers and agricultural operations, adding that PHMSA must provide evidence that for-hire carriers and non-agricultural activities are unsafe. As stated previously, this rulemaking addresses incorporating special permits as currently written. ATA is encouraged to further explain its arguments in favor

of wider applicability of the provisions and submit a petition for rulemaking.

- For SP 11209, the National Fire Protection Association (NFPA) questioned why the special permit requires that the cargo tanks be painted white, aluminum, or other light reflecting color, because it is not a requirement in NFPA 58 for propane storage tanks. This rulemaking addresses incorporating special permits as currently written.

- For SP 11209, NTTC asked whether a carrier should follow the HMR requirements or the NFPA requirements in cases where the HMR adopts an NFPA requirement by citing it in the HMR regulatory text. NTTC states that in such cases, there are a number of places in NFPA pamphlets that conflict with requirements in the HMR. The commenter suggests that special permits should include a statement that cargo tanks must conform to a certain NFPA requirement unless that requirement conflicts with an HMR requirement. In its comment, NFPA provided the following example: "NFPA requires double bulkheads between compartments on cargo tanks hauling flammable liquids while Title 49 CFR does not." While this may be an issue that requires further investigation, SP 11209 authorizes the transport of liquefied petroleum gases, not flammable liquids. We are unaware of conflicts between NFPA Pamphlet 58 and SP 11209 or any other incorporated by reference material, but we invite NTTC to identify any conflicts and present their issues in a petition for rulemaking. This rulemaking addresses incorporating special permits as currently written.

- For SP 13113, the Agricultural Retailers Association (ARA) suggested that movements of liquid pesticide fumigants in MC 306, DOT 406, and DOT 57 containers should be authorized from distribution point to retail facility. The association stated that there is no safety difference between movements from distribution point to retail facility and movements from retail facility to farm. This rulemaking addresses incorporating special permits as currently written.

- For SP 10950, the Far West Agribusiness Association, the Fertilizer Institute, and Dusty Farm Co-Op support the rulemaking, but recommend that we expand the current 50 air mile radius to a 100 air mile radius for consistency with the Federal Motor Carrier Safety Administration's (FMCSA) regulations. This rulemaking addresses incorporating special permits as currently written.

- For SP 13554, Trinity Containers requested that, for nurse tanks, a percentage of the actual material thickness or five percent be used for the head and shell minimum thickness allowance. ARA stated that when SP 13554 was originally granted, the specifications of older nurse tanks were used to determine a minimum head and body thickness for a tank to pass the thickness test. The commenter stated that, currently, nurse tanks are built with a different diameter and grade of material, which allows the tanks to be built thinner than previously built, yet still conform to the ASME Code standards. The result is that many new nurse tanks do not meet the thickness thresholds in SP 13554 due to improved engineering. American Welding and Tank LLC stated that PHMSA should take into consideration the ASME Code thickness changes throughout the years applicable to one thickness for heads and one for shells. The commenter states that the head and shell minimum thickness allowance does not consider the tank diameter or the edition of the ASME Code in effect when the tanks were manufactured. American Welding requests that we incorporate an allowable reduction material thickness based on the actual thickness of the tank. This rulemaking addresses incorporating special permits as currently written.

- Under its SP 13554 comments, ATA recommends that PHMSA incorporate standards that are available free of charge. No new standards were proposed to be incorporated into the HMR, nor adopted in this final rule. The free-of-charge comment is beyond the scope of this rulemaking.

- Fisk Tank Carrier requested that we add the provisions of a seventh special permit, SP 14980, which authorizes the one-way transportation in commerce of liquefied petroleum gas (LPG) in certain non-DOT specification storage tanks by private carrier motor vehicle.

- NFPA suggested that we incorporate by reference the 2011 edition of the NFPA 58 that was published in September of 2010. If not possible due to time constraints, they recommend that we adopt the 2008 edition.

- NTTC objected to PHMSA incorporating by reference materials that are prepared by third party private entities when the material is not made publicly available to the regulated industry.

- The Fertilizer Institute requested that we address a petition for rulemaking that they previously submitted and that requested PHMSA to require the testing of all nurse tanks

regardless of illegible identification plates. The petition will be addressed in a separate future rulemaking.

III. Discussion of Amendments and Applicable Comments

The six special permits addressed in this final rule that authorize cargo tank transportation operations not specifically permitted under the HMR were initially issued to members of industry associations or similar organizations. They have well-established safety records and therefore PHMSA has determined that they are excellent candidates for incorporation into the HMR. Incorporating these special permits into the HMR will eliminate the need for over 10,000 current grantees to reapply for the renewal of six special permits every four years and for PHMSA to process the renewal applications, thereby eliminating a significant paperwork burden both on industry and the government.

A discussion of incorporating the provisions of six special permits into the HMR and their applicable comments follows below. As discussed earlier in this preamble, most of the commenters are supportive of this rulemaking. Those comments that are within the scope of this rulemaking are discussed below.

The Fertilizer Institute pointed out that in the NPRM's preamble, we reversed the paragraph numbers in the preamble from the regulatory text for § 173.315(m)(2) and (m)(3). The NPRM's preamble error is noted. The regulatory text was correct in the proposed regulatory text, and the preamble discussion in this final rule reflects the correction of the printing error.

Lisa Anderson is opposed to incorporating some of the proposed special permits because she contends that they do not provide an equivalent level of safety as cargo tanks tested under the current requirements in Part 180 of the HMR. As discussed in the preambles of the NPRM and this final rule, we chose the six permits addressed in this rulemaking precisely because of their demonstrated safety records. Although the comment is duly noted, we do suggest that the commenter submit a petition for rulemaking.

A. Moveable Fuel Storage Tenders

SP 11209 authorizes the transportation of LPG in non-DOT specification cargo tank motor vehicles, commonly known as moveable fuel storage tenders, used exclusively for agricultural purposes. Moveable fuel storage tenders are used to supply LPG fuel to farmers for crop drying, crop irrigation, flame weeding, plant

defoliation prior to harvest, and other agricultural operations.

This special permit has been in effect since 1994 and has been utilized by over 3,400 grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit over the past ten years. Each vehicle operated under this special permit conforms to the ASME Code in effect at the time of its manufacture. Provisions governing the design and use of these vehicles are included in NFPA 58, Liquefied Petroleum Gas Code.

Mr. James T. Osterhaus, NPGA, CHS Inc., and CHS Agri Service Center, submitted the following comments (*see* their full comments at <http://www.regulations.gov>). James Osterhaus took issue with the following sentence from the preamble text of the NPRM: "In addition, transportation of a moveable fuel storage tender to an LPG distribution facility for re-filling would be permitted only if it contains no more than five percent of its water capacity." Mr. Osterhaus is correct that this sentence could be misleading because moveable fuel storage tenders are not permitted to be "refilled" at any location except the point of use. However, we believe that proposed § 173.5(d)(9), taken from the special permit, is clear: "Transportation of the moveable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized *only if the cargo tank contains no more than five percent of its water capacity.*" Mr. Osterhaus suggests that we add the following language for clarity, "A moveable fuel storage tender may only be filled at the consumer's premises or point of use. Transportation of a moveable fuel storage tender containing more than five percent of its water capacity from a liquefied distribution facility to a consumer's premises or point of use is prohibited." We agree that the first sentence of Mr. Osterhaus' suggestion would ensure clarity, and we have added it to § 173.5(d)(9). We believe the addition of the second sentence would be redundant.

The National Fire Protection Association (NFPA) recommends that we revise "NFPA Pamphlet 58" to read more correctly as "NFPA 58, Liquefied Petroleum Gas Code." We agree and have made the correction each place it appears in this rulemaking (§§ 173.5 and 173.315 for SP 11209 and SP 13554, respectively). NFPA also recommends that we incorporate a more current edition of this Code into the HMR (*see* Beyond-the-Scope comments in Section II of this preamble).

Additionally, NFPA suggests that we revise the regulatory text for incorporating SP 11209 into § 173.5 by removing paragraphs (d)(1), (d)(2), (d)(3) and (d)(6) because the paragraphs duplicate the requirements in NFPA 58, Liquefied Petroleum Gas Code. We disagree with NFPA. We believe that deleting these paragraphs from the HMR is unnecessary and that the inclusion of the paragraphs provides a user-friendly aspect to this section. We are, therefore, leaving the paragraphs in place.

This final rule incorporates the terms of SP 11209 into the HMR as proposed in the NPRM with the exception of the addition of the following sentence to § 173.5(d)(9) for clarification: "A moveable fuel storage tender may only be filled at the consumer's premises or point of use." PHMSA is amending § 173.5 to authorize the transportation of LPG in moveable fuel storage tenders used exclusively for agricultural purposes and operated by a private motor carrier. (A "private motor carrier," as defined in interpretation letters issued by PHMSA, is a carrier who transports the business's own products and does not provide such transportation service to other businesses). As proposed in the NPRM, a non-DOT specification cargo tank motor vehicle used as a moveable fuel storage tender must: (1) Have a minimum design pressure of 250 psig; (2) conform to the requirements of the ASME Code in effect at the time the cargo tank was manufactured and marked accordingly; (3) have a water capacity of 1,200 gallons or less; (4) conform to applicable requirements in NFPA 58, Liquefied Petroleum Gas Code; and (5) be mounted securely on a motor vehicle. In addition, the cargo tank must be filled as prescribed in § 173.315(b). When filled, transportation of a moveable fuel storage tender would be limited to movements over local roads between fields using the shortest practical distance. In addition, transportation of a moveable storage fuel tender to a moveable fuel storage tender facility would be permitted only if it contains no more than five percent of its water capacity.

B. Liquid Soil Pesticide Fumigants

SP 13113 authorizes the transportation of Division 6.1 liquid soil pesticide fumigants in MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks used exclusively for agricultural purposes. Liquid soil pesticide fumigants are used by farmers as an alternative to the agricultural use of methyl bromide to ensure the adequate protection of crops from pest infestation and to preserve agricultural

productivity. Transportation of these materials is limited to private motor carriage and must be between a bulk loading facility and farms (including between farms) not exceeding 150 miles from one another.

This special permit has been in effect since 2002 and has been utilized by hundreds of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 2002, when this material was classed as Dichloropropenes, 6.1, UN2047, PG III, it was routinely shipped, in accordance with § 173.242, in MC 306 and DOT 406 cargo tanks and DOT 57 portable tanks. The same tanks have been widely used to transport gasoline, a low flashpoint PG II liquid. The pressure relief systems and bottom discharge equipment on the cargo tanks offer equivalent safety in terms of containment and operation of pressure relief systems. Also, stainless steel DOT 57 portable tanks provide comparable containment to metal, rigid plastic, and composite Intermediate Bulk Containers (IBCs), which are authorized for transport of Division 6.1 liquid soil pesticide fumigants under § 173.202.

PHMSA is incorporating the terms of SP 13113 into the HMR by amending § 173.5. MC 306 and DOT 406 cargo tank motor vehicles used for the transportation of these fumigants must: (1) meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180; and (2) conform to the pressure relief system requirements specified in § 173.243(b)(1). In addition, MC 306 cargo tank motor vehicles must be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and DOT 406 cargo tanks must conform to the bottom outlet requirements specified in § 173.243(b)(2). DOT 57 portable tanks used to transport Division 6.1 liquid soil pesticide fumigants must be constructed of stainless steel.

C. Non-DOT Specification Cargo Tanks Used for Roadway Striping

SP 12284 authorizes the transportation in commerce of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks. These non-DOT specification cargo tanks are used for the low hazard job of applying roadway striping to paved roads throughout the United States.

This special permit has been in effect since 1999 and has been utilized by over 100 grantees. A review of the Hazardous

Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Based on this safety record, PHMSA is incorporating the provisions of SP 12284 into the HMR by adding a new paragraph (c) to § 173.5a to authorize the transportation of certain hazardous materials used for roadway striping in non-DOT specification cargo tanks provided the conditions specified in the new paragraph are met. The new paragraph (c) specifies conditions that include packaging specifications, inspection and testing requirements, requirements for maintaining records, and operational controls. Consistent with the special permit, paragraph (c) includes certain/special marking requirements that are in addition to the applicable marking and placarding requirements in subparts D and F. The section title heading is also revised to reflect the addition of non-DOT specification cargo tanks used for roadway striping into this section. Finally, § 173.242(b) is revised to include the authorization to use non-DOT specification cargo tanks used for roadway striping.

D. LPG Storage Containers

SP 13341 authorizes the transportation by private motor carrier of LPG in consumer storage containers in quantities greater than five percent of the container's water capacity. The storage containers designated in the special permit are designed for permanent installation on consumer premises. The special permit authorizes one-way transportation only, from the consumer location to the container owner's nearest LPG plant.

This special permit has been in effect since 2004 and has been utilized by several thousand grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Prior to 1998, consumer storage containers filled with LPG to greater than five percent water capacity were routinely transported without any known incidents. The prohibition of transporting containers filled to more than five percent water capacity resulted from concern of the potential for confusion between ASME and DOT tanks, as ASME tanks are not designed to be lifted by the lugs with product inside. This final rule requires lifting with slings, not by the lugs. Also, transporting a tank with some product is sometimes preferable from a safety standpoint than removing LPG from a tank at a residence. NPGA, CHS Inc., and CHS Agri Service Center offered additional safety and efficiency

information concerning this special permit in their comments (*see* their comments at <http://www.regulations.gov>).

PHMSA is incorporating the terms of SP 13341 into the HMR by revising § 173.315(j) to authorize the transportation of LPG in consumer storage containers in quantities greater than five percent of the container's water capacity. The storage container must have a water capacity not exceeding 500 gallons and be ASME "U" stamped to indicate that it was designed and constructed in accordance with ASME Code requirements. In addition, the container must be inspected for leaks, corroded or abraded areas, dents, weld distortions, or any other conditions that could make the container unsafe for transportation. PHMSA is also requiring that: (1) Only one storage container be transported at one time on a motor vehicle; (2) the storage container be lifted by slings, not by lifting lugs; and (3) the storage container be loaded and secured on the motor vehicle so that the container is well-secured against movement and completely within the envelope of the vehicle. Finally, transportation is limited to one-way movement from the consumer's premises to the container owner's nearest facility.

E. Nurse Tanks

Nurse tanks are non-DOT specification cargo tanks used to transport and apply anhydrous ammonia fertilizers. The HMR authorize the use of nurse tanks operated by private motor carriers exclusively for agricultural purposes provided that the nurse tank: (1) Has a minimum design pressure of 250 psig and meets the requirements of Section VIII of the ASME code in effect at the time the nurse tank was manufactured; (2) is equipped with pressure relief valves; (3) has a capacity of 3,000 gallons or less; (4) is loaded to a filling density no greater than 56 percent; and (5) is securely mounted on a farm wagon. Because they are non-DOT specification containers, nurse tanks that are not operating under a special permit are not subject to periodic inspection, testing, or requalification requirements.

Nurse tanks mounted on field trucks. SP 10950 authorizes the use of a nurse tank securely mounted on a field truck. Field trucks are specifically designed and equipped to improve safety and efficiency by being more maneuverable and more stable than a farm wagon when moving over hilly terrain. A definition for field trucks is specified in § 173.315 as new paragraph (m)(3)(iv). These trucks are operated in remote

rural areas in eastern Washington, Oregon, and northern Idaho within a short distance of the fertilizer distribution point. The special permit has been in effect since 1993 and has been utilized by over one hundred grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Tanks operated under this special permit are subject to the periodic testing requirements under Subpart E of Part 180.

The American Trucking Associations (ATA) supports the incorporation of the provisions in SP 10950 into the HMR. However, the organization requests that registration be a requirement, stating that PHMSA would lose the ability to track transporters of anhydrous ammonia and other hazardous materials without such a requirement, thereby losing its ability to quantify safety performance, collect data, initiate investigations and pursue enforcement actions. We believe ATA misread SP 10590 as excepting the permit holder from registration requirements. This is not the case. The special permit specifically states in Item 11, third bullet, that the permit holders must comply with the registration requirements.

For SP 10950 provisions, ATA also requested that we incorporate an exception from the security plan requirements "similar to the exemption afforded to users of anhydrous ammonia nurse tanks." If ATA is referring to SP 13554, Item 11, second bullet, that provision specifically requires conformance to the security plan requirements. Users of SP 13554 were not excepted from security requirements, and as stated earlier in this preamble, we are not deviating from the current special permit provisions in this rulemaking. Therefore, the security plan requirements in Subpart I of Part 172 will remain applicable to nurse tanks mounted on field trucks. PHMSA is incorporating the provisions of SP 10950 into the HMR by adding a new paragraph (m)(3) to § 173.315.

Nurse tanks with missing or illegible ASME plates. As indicated above, nurse tanks must be manufactured in accordance with the applicable ASME Code requirements in effect at the time of manufacture. The ASME Code requires tanks built to its specifications to have an attached plate that lists the manufacturer, maximum allowable working pressure, minimum design metal temperature, and the year of manufacture. A number of nurse tanks are missing the required ASME plates or have illegible ASME plates. SP 13554

permits the continued use in anhydrous ammonia service of nurse tanks with missing or illegible ASME plates provided the tanks are inspected and tested. Specifically, the tanks must undergo an external visual inspection and testing using the procedures specified in § 180.407(d), a thickness test using the procedures specified in § 180.407(i), and a pressure test using the procedures specified in § 180.407(g). The special permit also establishes minimum head and shell thickness, and nurse tanks not meeting those levels must be removed from service. Nurse tanks that pass the above-described tests must be marked with a unique owner's identification number and must pass the same tests at least every five years to remain in service.

We received a comment from ATA under SP 13554 which stated concern "over PHMSA's incorporation of industry consensus standards into the HMR where such standards are developed without the benefit of formal rulemaking and where such standards are not provided to the public free of charge. This pay-to-play system of developing regulatory standards raises questions under the Administrative Procedures Act (5 U.S.C. 500 *et seq.*), which requires agencies to provide interested persons with notice and an opportunity to participate in the rulemaking process." The commenter continued, "To cure this defect, PHMSA should first publish the industry standard in the **Federal Register** and solicit comments on it prior to its incorporation in the HMR." PHMSA is not adopting any new standards in this final rule, as the Section VIII of the ASME Code was previously incorporated by reference into the HMR.

This special permit has been in effect since 2004 and has been utilized by thousands of grantees. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. Although 49 CFR 173.315(m) requires that a nurse tank "meet the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured and is marked accordingly," if the plate is missing or illegible the nurse tank cannot be used. Therefore, these additional requirements that nurse tanks operating under the special permit must follow (*i.e.*, the thickness testing, the pressure testing, and the external visual inspection), provide information about condition of the tank to ensure for the safe continued use of these tanks.

In this final rule, PHMSA is incorporating the terms of SP 13554 into the HMR by adding a new paragraph

(m)(2) in § 173.315. Existing nurse tanks with missing or illegible ASME plates that successfully pass the required inspections and tests and are marked with a unique identifier are authorized to remain in service.

In Summary

Based on the above discussion, this final rule amends the HMR by incorporating the provisions contained in six widely used and longstanding cargo tank special permits that, in summary, will provide the following:

- Authorization to transport liquefied petroleum gas (LPG) in non-DOT specification cargo tank motor vehicles known as moveable fuel storage tenders that are used exclusively for agricultural purposes (SP 11209).
- Authorization to transport Division 6.1 liquid soil pesticide fumigants in DOT Specification MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks, used exclusively for agricultural purposes (SP 13113).
- Authorization to transport certain hazardous materials used for roadway striping in non-DOT specification cargo tanks (SP 12884).
- Authorization for private motor carriers to transport LPG in consumer storage containers in quantities greater than five percent of the container's water capacity (SP 13341).
- Authorization to transport nurse tanks securely mounted on field trucks (SP 10950).
- Authorization for nurse tanks with missing or illegible ASME plates to continue to be used in anhydrous ammonia service under specified conditions (SP 13554).

Additionally, in § 171.7, we are revising the entry, American Society of Mechanical Engineers (ASME) and the National Fire Protection Association (NFPA) to reflect the addition of the incorporated by reference materials to the applicable adopted regulatory text.

In § 173.23, we are redesignating current paragraph (h) as new paragraph (i) and adding a provision to new paragraph (h) that authorizes packagings permanently marked with a special permit number for which the provisions of the special permit were incorporated into the HMR to continue to be used for the life of the packagings without removing or obliterating the special permit markings. This provision will serve to avoid imposing the burden of requiring the removal from service of such packagings while the markings are removed or obliterated.

Finally, in § 173.242, we are revising paragraph (b) to reflect the authorization of non-DOT specification cargo tanks used for roadway striping.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b), which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue special permits, which exempt a person transporting a hazardous material, or a person causing a hazardous material to be transported, from a regulation promulgated under 49 U.S.C. 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law. The conditions or "safety control measures" of each special permit must ensure that the action performed pursuant to the special permit achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. This final rule will amend the regulations by incorporating provisions from certain widely used and longstanding special permits that have established a history of safety.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

In this final rule, PHMSA is amending the HMR by incorporating alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the provisions in this NPRM will reduce the paperwork burden on industry and this agency caused by continued renewals of special permits. The provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule will 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 governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, 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:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and
- (5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard. 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. The 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. The effective date of Federal preemption is 90 days after the publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and

criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

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. 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 final rule incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, I certify this rulemaking will not have a significant economic impact on a substantial number of small entities.

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

F. Paperwork Reduction Act

This final rule does not impose new information collection requirements. PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements," currently being reviewed for renewal by OMB. This final rule may result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to the revisions to incorporate provisions contained in certain widely used or longstanding special permits that have established safety records.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an

opportunity to comment on information and recordkeeping requests.

PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden in this final rule would be decreased as follows:

OMB Control No. 2137-0051:

Decrease in Annual Number of Respondents: 185.

Decrease in Annual Responses: 185.

Decrease in Annual Burden Hours: 185.

Decrease in Annual Burden Costs: \$7,400.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone (202) 366-8553.

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 contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 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.

I. 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 that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying hazards and reducing the probability and quantity of a hazardous materials 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 by identifying the hazard class, packing group, and proper shipping name on shipping papers and with 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. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

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 transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene.

In this final rule, PHMSA is incorporating the terms of six special permits into the HMR. Several of the proposals in this NPRM involve the transportation of LPG. LPG is a Division 2.1 (flammable gas) material that poses an explosive, fire, blast, or projection hazard. If released, LPG may cause eye or skin irritation and, if inhaled, it may irritate the respiratory tract. Moderate exposure may cause headache or dizziness. Elevated exposure may cause unconsciousness or respiratory arrest. Further, by diluting the oxygen concentration in air below the level necessary to support life, LPG can act as an asphyxiant. LPG is not known to cause long-term ecological damage. The

provisions in this final rule are intended to ensure that LPG will be transported in a variety of applications with no release from its packaging and, thus, no adverse safety or environmental impacts.

One of the provisions in this final rule involves Division 6.1 liquid soil pesticide fumigants. Soil fumigation is a chemical control strategy used independently or in conjunction with cultural and physical control methods to reduce populations of soil organisms. Soil fumigants can effectively control soil-borne organisms, such as nematodes, fungi, bacteria, insects, weed seeds, and weeds. Different fumigants have varying effects on the control of these pests. Some are pest-specific, while others are broad spectrum biocides that kill most soil organisms. Soil fumigants are used in agriculture, nurseries, ornamental beddings, forest systems, and other areas where soil-borne pests can harm or devastate desirable plants. Because of treatment costs, applicators use soil fumigants primarily on high value crops, such as vegetables, fruits, and ornamentals. Control of soil-borne pests increases plant aesthetics, plant quality and vigor, crop yields, and ultimately profitability. Soil fumigants are closely regulated by the Environmental Protection Agency to prevent adverse health impacts to agricultural workers or bystanders (people who live, work, or otherwise spend time near fields that are fumigated). This final rule will help to ensure that liquid soil pesticide fumigants are transported without incident on or between farms and the bulk loading facility.

Several provisions in this final rule address the transportation of anhydrous ammonia. Anhydrous ammonia is a poisonous by inhalation (PIH) material. When anhydrous ammonia is released into water, it floats on the surface, rapidly dissolving into the water as ammonium hydroxide while simultaneously boiling into the atmosphere as gaseous ammonia. High concentrations of ammonia (greater than 1700 parts per million (ppm)) in the atmosphere cause compulsive coughing and death, while lower concentrations (lower than 700 ppm) cause eye and throat irritation. Ammonia is lighter than air so that it dissipates in the atmosphere, the rate of dissipation depending on weather and wind conditions.

In an aquatic or wetland environment, ammonium hydroxide would cause fish, planktonic, and benthic organism mortality in the vicinity of the release, the amount depending on the volume of anhydrous ammonia released. The

chemical would also strip protective oils from the feathers of shore birds, causing drowning or infection. Such die-offs could spur high nutrient levels that could stimulate noxious blooms of algae. Terrestrial vegetation would also be either damaged or killed, depending on atmospheric concentrations.

The cleanup effort from a release of anhydrous ammonia would require the removal of soil containing anhydrous ammonia quickly to avoid contamination of the water table. Ammonia emissions would be released during the cleanup effort as contaminated soil is disturbed.

The provisions in this final rule will require certain nurse tanks used to transport anhydrous ammonia to, from, and between farm fields to be inspected and tested periodically to identify problems that could result in a leak or release.

There are no significant environmental impacts associated with the provisions in this final rule. In the NPRM, PHMSA specifically solicited comments on the potential environmental impacts of adopting the provisions of the six special permits, and none were received. The process through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of special permits as regulations of general applicability maintains the existing environmental protections built into the HMR. In addition, the provisions applicable to nurse tanks will enhance the integrity of those tanks, thereby reducing the possibility of an anhydrous ammonia release.

J. Privacy Act

Anyone is able to search the electronic form of all comments and written communications received into any of our dockets by the name of the individual submitting the comment (or signing the comment, 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 19477–78), or at <http://www.regulations.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 173

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

In consideration of the foregoing, 49 CFR chapter I is 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. 5101–5128, 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.

■ 2. In § 171.7, in the paragraph (a)(3) table, in the second column, “49 CFR reference,” under the entry, *National Fire Protection Association*, the entry “NFPA 58—Liquefied Petroleum Gas Code, 2001 Edition” is amended by adding the section “173.5” in appropriate numerical order.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. In § 173.5, paragraphs (d), (e), and (f) are redesignated as paragraphs (f), (g) and (h) respectively, and new paragraphs (d) and (e) are added to read as follows:

§ 173.5 Agricultural operations.

* * * * *

(d) *Moveable fuel storage tenders.* A non-DOT specification cargo tank motor vehicle may be used to transport Liquefied petroleum gas, UN1075, including Propane, UN1978, as moveable fuel storage tender used exclusively for agricultural purposes when operated by a private carrier under the following conditions:

- (1) The cargo tank must have a minimum design pressure of 250 psig.
- (2) The cargo tank must meet the requirements of the HMR in effect at the time of its manufacture and must be marked accordingly. For questions regarding these requirements, contact PHMSA by either:

(i) Telephone (800) 467–4922 or (202) 366–4488 (local); or

(ii) By electronic mail (e-mail) to: infocntr@dot.gov.

(3) The cargo tank must have a water capacity of 1,200 gallons or less.

(4) The cargo tank must conform to applicable requirements in National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code (IBR, see § 171.7 of this subchapter).

(5) The cargo tank must be securely mounted on a motor vehicle.

(6) The cargo tank must be filled in accordance with § 173.315(b) for liquefied petroleum gas.

(7) The cargo tank must be painted white, aluminum, or other light-reflecting color.

(8) Transportation of the filled moveable fuel storage tender is limited to movements over local roads between fields using the shortest practical distance.

(9) Transportation of the moveable fuel storage tender between its point of use and a liquefied petroleum gas distribution facility is authorized only if the cargo tank contains no more than five percent of its water capacity. A movable fuel storage tender may only be filled at the consumer's premises or point of use.

(e) *Liquid soil pesticide fumigants.* MC 306 and DOT 406 cargo tank motor vehicles and DOT 57 portable tanks may be used to transport liquid soil pesticide fumigants, Pesticides, liquid, toxic, flammable, n.o.s., *flash point not less than 23 degrees C*, 6.1, UN2903, PG II, exclusively for agricultural operations by a private motor carrier between a bulk loading facility and a farm (including between farms). However, transportation is not to exceed 150 miles between the loading facility and the farm, and not more than five days are permitted for intermediate stops for temporary storage. Additionally, transport is permitted only under the following conditions:

(1) *Cargo tanks.* MC 306 and DOT 406 cargo tank motor vehicles must:

(i) Meet qualification and maintenance requirements (including periodic testing and inspection) in accordance with Subpart E of Part 180 of this subchapter;

(ii) Conform to the pressure relief system requirements specified in § 173.243(b)(1);

(iii) For MC 306 cargo tanks, be equipped with stop-valves capable of being remotely closed by manual and mechanical means; and

(iv) For DOT 406 cargo tanks, conform to the bottom outlet requirements specified in § 173.243(b)(2).

(2) *Portable tanks.* DOT 57 portable tanks must—

(i) Be constructed of stainless steel; and

(ii) Meet qualification and maintenance requirements of Subpart G of Part 180 of this subchapter.

* * * * *

■ 5. In § 173.5a, the section heading is revised and new paragraph (c) is added to read as follows:

§ 173.5a Oilfield service vehicles, mechanical displacement meter provers, and roadway striping vehicles exceptions.

* * * * *

(c) *Roadway striping.* In addition to conformance with all other applicable requirements of this subchapter, non-

DOT specification cargo tanks used for roadway striping are authorized provided all the following conditions in this paragraph (c) are met.

(1) *Authorized materials.* Only the hazardous materials listed in the table below may be transported in roadway striping vehicles. Cargo tanks may not be filled to a capacity that would be greater than liquid full at 130 °F.

HAZARDOUS MATERIALS DESCRIPTION

| Proper shipping name | Hazard class/division | Identification number | Packing group |
|--|-----------------------|-----------------------|---------------|
| Adhesives, containing a flammable liquid | 3 | UN1133 | II |
| Paint including paint, lacquer, enamel, stain, shellac solution, varnish, polish, liquid filler, and liquid lacquer base. | 3 | UN1263 | II |
| Paint related material including paint thinning drying, removing, or reducing compound | 3 | UN1263 | II |
| Flammable liquids, n.o.s. ^a | 3 | UN1993 | II |
| Gasoline | 3 | UN1203 | II |
| Acetone ^b | 3 | UN1090 | II |
| Dichloromethane ^b | 6.1 | UN1593 | III |
| Ethyl methyl ketone or Methyl ethyl ketone ^b | 3 | UN1193 | II |
| Ethyl acetate ^b | 3 | UN1173 | II |
| Methanol ^b | 3 | UN1230 | II |
| Organic peroxide type E, liquid (Dibenzoyl peroxide) ^c | 5.2 | UN3107 | II |
| Petroleum distillates, n.o.s. or Petroleum products, n.o.s. ^b | 3 | UN1268 | III |
| 1,1,1-Trichloroethane ^b | 6.1 | UN2831 | III |
| Toluene ^b | 3 | UN1294 | II |
| Xylenes ^b | 3 | UN1307 | II, III |
| Environmentally hazardous substance, liquid, n.o.s. ^c | 9 | UN3082 | III |
| Corrosive liquid, basic, organic, n.o.s. ^c | 8 | UN3267 | III |
| Corrosive liquids, n.o.s. ^c | 8 | UN1760 | III |
| Elevated temperature liquid, n.o.s., at or above 100 °C and below its flash point (including molten metals, molten salts, etc.) ^d . | 9 | UN3257 | III |

^a: Adhesive containing ethyl acetate.
^b: Solvent.
^c: Catalyst.
^d: Thermoplastic material non-hazardous at room temperature.

(2) *Cargo tank requirements.* Each non-DOT specification cargo tank used for roadway striping must be securely bolted to a motor vehicle and must—

(i) Be constructed and certified in conformance with the HMR in effect at the time of its manufacture and must be marked accordingly. For questions regarding these requirements, contact PHMSA by either: (1) Telephone (800) 467-4922 or (202) 366-4488 (local); or (2) by electronic mail (e-mail) to: *infocntr@dot.gov*;

(ii) Have a minimum design pressure of 100 psig;

(iii) Have a maximum capacity of 500 gallons;

(iv) For solvents and organic peroxides, the cargo tank may not contain more than 50 gallons;

(v) Be given an external visual inspection prior to each use to ensure that it has not been damaged on the previous trip;

(vi) Be retested and reinspected in accordance with § 180.407(c) of this subchapter as specified for an MC 331 cargo tank motor vehicle; and

(vii) Be securely mounted to a motor vehicle in accordance with the securement provisions prescribed in §§ 393.100 through 393.106 of this title.

(3) *Test records.* The owner or operator of the roadway striping vehicle must maintain hydrostatic test records in accordance with § 180.417(b) and must make those records available to any representative of the Department of Transportation upon request.

(4) *Marking.* A non-DOT specification cargo tank used for roadway striping must be plainly marked on both sides near the middle in letters at least two inches in height on a contrasting background “ROADWAY STRIPING”.

(5) *Operational controls.* A non-DOT specification cargo tank used for roadway striping may not be pressurized when the motor vehicle is traveling to and from job sites.

Additionally, the distance traveled by a non-DOT specification cargo tank used for roadway striping may not exceed 750 miles. Thermoplastic resin may only be heated during roadway striping operations.

■ 6. In § 173.23, paragraph (h) is redesignated as paragraph (i) and new paragraph (h) is added to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(h) A packaging that is permanently marked with a special permit number, “DOT-SP” or “DOT-E,” for which the provisions of the special permit have been incorporated into this subchapter may continue to be used for the life of the packaging without obliterating or otherwise removing the special permit number.

* * * * *

■ 7. In § 173.242, the introductory text in paragraph (b) is revised to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(b) *Cargo tanks:* Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311,

MC 312, MC 330, MC 331, DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles; and non-DOT specification cargo tank motor vehicles when in compliance with § 173.5a(c). Cargo tanks used to transport Class 3, Packing Group I or II, or Packing Group III with a flash point of less than 38 °C (100 °F); Class 6, Packing Group I or II; and Class 8, Packing Group I or II materials must conform to the following special requirements:

* * * * *

■ 8. In § 173.315, paragraphs (j) and (m) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(j) *Consumer storage containers.* (1) Storage containers for liquefied petroleum gas or propane charged to five percent of their capacity or less and intended for permanent installation on consumer premises may be shipped by private motor carrier under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) and must be marked to indicate compliance in the manner specified by the respective Code. Containers built in compliance with earlier editions starting with 1943 are authorized.

(ii) Each container must be equipped with safety devices in compliance with the requirements for safety devices on containers as specified in NFPA 58, Liquefied Petroleum Gas Code (IBR, see § 171.7 of this subchapter).

(iii) The containers must be braced or otherwise secured on the vehicle to prevent relative motion while in transit. Valves or other fittings must be adequately protected against damage during transportation. (See § 177.834(a) of this subchapter).

(2) Storage containers with a water capacity not exceeding 500 gallons charged with liquefied petroleum gas to more than five percent of their capacity and intended for permanent installation on consumer premises may be transported by private motor carrier one-way only from the consumer's premises to the container owner's nearest facility under the following conditions:

(i) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code and must be marked to indicate compliance in the manner specified by the respective Code.

(ii) Maximum permitted filling density may not exceed that specified in paragraph (b) of this section.

(iii) Prior to loading on a motor vehicle, the container must be inspected by a trained and qualified person for leaks, corroded or abraded areas, dents, distortions, weld defects, or other condition that may render the container unsafe for transportation. A record of the inspection must be legibly signed and dated by the person performing the inspection and retained by the container owner for two years. The signature on the inspection record represents a certification that the container has been inspected and has no defects that would render it unsafe for transportation under the HMR. The record of inspection must include the date of inspection, the inspector's contact information (such as a telephone number), the container's serial number and container size (water capacity), estimated amount of hazardous material, and the origin and destination of shipment.

(iv) Only one storage container may be transported on a motor vehicle.

(v) For loading on a motor vehicle, the container must be lifted by slings, which must be completely wrapped around the container. Lifting lugs may not be used. The slings must be rated to a weight sufficient to accommodate the container and its lading and shall comply with ASME B30.9 on slings used for lifting purposes, and must be visually inspected prior to each use. A sling showing evidence of tears, fraying, or other signs of excessive wear may not be used.

(vi) The storage container must be secured on a motor vehicle so that the container is completely within the envelope of the vehicle and does not extend beyond the vehicle frame.

(vii) The storage container must be placed on the vehicle in a manner, such as in a cradle, which ensures that no weight is placed on the supporting legs during transportation.

(viii) The storage container must be secured against movement during transportation. Bracing must conform with the requirements of paragraph (j)(1)(iii) of this section and § 177.834(a) of this subchapter and with Section 6–5.2 of NFPA 58, Liquefied Petroleum Gas Code. Straps or chains used as tie-downs must be rated to exceed the maximum load to be transported and conform to the requirements in §§ 393.100 through 393.106 of this title.

(ix) Tow trailers used to transport storage containers in accordance with this paragraph (j)(2) must provide rear end protection that conforms to requirements in § 393.86 of this title.

(3) Storage containers of less than 1,042 pounds water capacity (125 gallons) may be shipped when charged

with liquefied petroleum gas in compliance with DOT filling density.

* * * * *

(m) *General.* (1) A cargo tank that is commonly known as a nurse tank and considered an implement of husbandry transporting anhydrous ammonia and operated by a private motor carrier exclusively for agricultural purposes is excepted from the specification requirements of part 178 of this subchapter if it:

(i) Has a minimum design pressure of 250 psig, meets the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured, and is marked with a valid ASME plate.

(ii) Is equipped with pressure relief valves meeting the requirements of CGA Standard S–1.2 (IBR, see § 171.7 of this subchapter);

(iii) Is painted white or aluminum;

(iv) Has a capacity of 3,000 gallons or less;

(v) Is loaded to a filling density no greater than 56 percent;

(vi) Is securely mounted on a farm wagon or meets paragraph (m)(3) of this section; and

(vii) Is in conformance with the requirements of part 172 of this subchapter except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

(2) *Nurse tanks with missing or illegible ASME plates.* Nurse tanks with missing or illegible ASME plates may continue to be operated provided they conform to the following requirements:

(i) Each nurse tank must undergo an external visual inspection and testing in accordance with § 180.407(d) of this subchapter.

(ii) Each nurse tank must be thickness tested in accordance with § 180.407(i) of this subchapter. A nurse tank with a capacity of less than 1,500 gallons must have a minimum head thickness of 0.203 inch and a minimum shell thickness of 0.239 inch. A nurse tank with a capacity of 1,500 gallons or more must have a minimum thickness of 0.250 inch. Any nurse tank with a thickness test reading of less than that specified in this paragraph at any point must be removed from hazardous materials service.

(iii) Each nurse tank must be pressure tested in accordance with § 180.407(g) of this subchapter. The minimum test pressure is 375 psig. Pneumatic testing is not authorized.

(iv) Each nurse tank must be inspected and tested by a person

meeting the requirements of § 180.409(d) of this subchapter. Furthermore, each nurse tank must have the tests performed at least once every five years after the completion of the initial tests.

(v) After each nurse tank has successfully passed the visual, thickness, and pressure tests, welded repairs on the tank are prohibited.

(vi) After the nurse tank has successfully passed the visual, thickness, and pressure tests, it must be marked in accordance with § 180.415(b), and permanently marked near the test and inspection markings with a unique owner's identification number in letters and numbers at least ½ inch in height and width.

(vii) Each nurse tank owner must maintain a copy of the test inspection report prepared by the inspector. The test report must contain the results of the test and meet the requirements in § 180.417(b) and be made available to a DOT representative upon request.

(3) *Field truck mounted tanks.* A non-DOT specification cargo tank (nurse tank) securely mounted on a field truck is authorized under the following conditions:

(i) The tank is in conformance with all the requirements of paragraph (m)(1) of this section, except that the requirement in paragraph (m)(1)(vi) does not apply;

(ii) The tank is inspected and tested in accordance with subpart E of part 180 of this subchapter as specified for an MC 331 cargo tank;

(iii) The tank is restricted to rural roads in areas within 50 miles of the fertilizer distribution point where the nurse tank is loaded; and

(iv) For the purposes of this section, a field truck means a vehicle on which a nurse tank is mounted that is designed to withstand off-road driving on hilly terrain. Specifically, the vehicle must be outfitted with stiffer suspension (for example, additional springs or airbags) than would be necessary for a comparable on-road vehicle, a rear axle ratio that provides greater low end torque, and a braking system and tires designed to ensure stability in hilly terrain. The field truck must have low annual over-the-road mileage and be used exclusively for agricultural purposes.

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Issued in Washington, DC, on January 13, 2011 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,
*Administrator, Pipeline and Hazardous
Materials Safety Administration.*

[FR Doc. 2011–2014 Filed 1–31–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 191, 192

[Docket No. PHMSA–RSPA–2004–19854,
Amdt. Nos. 191–22; Amdt. 192–116]

RIN 2137–AE60

Pipeline Safety: Mechanical Fitting Failure Reporting Requirements

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

ACTION: Final rule.

SUMMARY: This final rule is an amendment to PHMSA's regulations involving DIMP. This final rule revises the pipeline safety regulations to clarify the types of pipeline fittings involved in the compression coupling failure information collection; changes the term "compression coupling" to "mechanical fitting," aligns a threat category with the annual report; and clarifies the Excess Flow Valve (EFV) metric to be reported by operators of gas systems. This rule also announces the OMB approval of the revised Distribution Annual Report and a new Mechanical Fitting Failure Report. Finally, this rulemaking clarifies the key dates for the collection and submission of the new Mechanical Fitting Failure Report.

DATES: This final rule takes effect April 4, 2011.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

The DIMP Notice of Proposed Rulemaking (NPRM) published on June 25, 2008, (73 FR 36015, 36033), included a proposed provision for operators to report "each material failure of plastic pipe (including fittings, couplings, valves and joints)." In the DIMP final rule published on December 4, 2009, (74 FR 63906) PHMSA deleted the proposed requirement to report plastic pipe failures but retained the requirement to report failures of couplings used in plastic pipe and proposed extending the reporting requirement to include failures of couplings used in metal pipe. The final rule also required operators to collect compression coupling failure information beginning January 1, 2010, and report the failures annually on the Annual Report Form by March 15, 2011. PHMSA used the DIMP final rule to open up a 30-day comment period to

invite public comment on the proposal to extend the reporting requirement to include the failure of couplings used in metal pipe. Comments were due by January 4, 2010. On December 31, 2009, (74 FR 69286) PHMSA extended the comment period to February 4, 2010, as requested by the American Gas Association. As a result of the comments received, PHMSA decided to revise the provisions relative to compression couplings as detailed in the comment summary below.

PHMSA also used the DIMP final rule to solicit comments on the revised Gas Distribution Annual Report. The revisions to the report were primarily made to incorporate the performance measures for the Gas Distribution Integrity Management Program. To comply with the PRA requirements, PHMSA issued a 60-day comment period with comments due by February 4, 2010, to allow for comments on the proposed revisions. Once the comment period passed, PHMSA reviewed the comments and made adjustments to the Gas Distribution Annual Report. To gather further input on the proposed revisions, PHMSA published another **Federal Register** notice on June 28, 2010, (75 FR 36615) with comments due by July 28, 2010.

PHMSA is issuing this rule to address the comments received on the notices detailed above and modify the pipeline safety regulations. In response to comments and as discussed below in more detail, PHMSA is changing the term "Compression Coupling" to "Mechanical Fitting" and providing a definition for "Mechanical Fitting." PHMSA is also using this rule to announce the revisions to the Gas Distribution Annual Report Form (PHMSA F–7100.1–1). The revisions include moving the collection of mechanical fitting failure information to the new Gas Distribution Mechanical Fitting Failure Form (PHMSA F–7100.1–2).

The comments related to the proposed coupling reporting requirements, the reporting of installed excess flow valves, and the proposed revisions to the Distribution Annual Report Form are summarized in the next section. The comments and PHMSA's responses regarding the Gas Distribution Annual Report and a new Mechanical Fitting Failure Report are discussed in the Paperwork Reduction Act section.

II. Summary of Comments

In response to the request for comments in the DIMP final rule, PHMSA received twenty-three letters commenting on the proposals regarding compression coupling reporting