

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, 173, 175, 176 and 178**

[Docket No. PHMSA-2009-0126 (HM-215K)]

RIN 2137-AE83

**Hazardous Materials: Harmonization With the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air**

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

**ACTION:** Final rule.

**SUMMARY:** This document responds to administrative appeals generated as a result of certain amendments adopted in an international harmonization final rule published on January 19, 2011. The January 19, 2011 final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were necessary to align the HMR with recent revisions to international standards for the transport of hazardous materials by all modes. In this final rule, PHMSA amends the HMR as a result of administrative appeals submitted in response to various amendments adopted in the January 19, 2011 final rule. This document also addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport and passenger notification of hazardous materials restrictions by operators. Further, this final rule adopts amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010, that revised shipper responsibilities related to packaging design variation, manufacturer notification, and recordkeeping requirements for certain packaging types.

**DATES:** *Effective:* January 1, 2013.

**ADDRESSES:** *Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

*Docket:* You may view the public docket through the Internet at <http://www.regulations.gov> or in person at U.S. Department of Transportation, Docket Operations (M-30), 1200 New Jersey Avenue SE., Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

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**I. Background**

PHMSA published a final rule under Docket PHMSA-2009-0126 (HM-215K) on January 19, 2011 [76 FR 3308] that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to align with various international standards. The final rule adopted amendments to the HMR regarding hazard communication, hazard classification including packing group assignment, packaging authorization, air transport quantity limitations, and various other international harmonization-related topics. The amendments were necessary to align the HMR with the latest revisions to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (TDG Regulations), and the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations (UN Model Regulations) to facilitate the seamless transportation of hazardous materials internationally, to, from, and within the United States. In this final rule, PHMSA is adopting amendments in response to administrative appeals filed in accordance with 49 CFR 106.110-130 regarding revisions to the HMR adopted in the January 19, 2011 final rule and to public comments submitted in response to corresponding amendments proposed in a notice of proposed rulemaking (NPRM) published on May 25, 2012 [77 FR 31274], also under this docket (PHMSA-2009-0126). Additionally, this document addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport and notification to passengers on hazardous materials restrictions an operator must provide at the point of ticket purchase and flight check-in. Further, PHMSA is adopting amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010 [75 FR 5376] under Docket PHMSA-06-25736 (HM-231) that revised shipper responsibilities related to packaging design variation and manufacturer notification recordkeeping requirements for certain packaging types.

## II. Administrative Appeals and Public Comments Submitted in Response to HM-215K Rulemaking Actions

This final rule addresses administrative appeals submitted in response to the January 19, 2011 final rule and public comments submitted in response to the May 25, 2012 NPRM from the following companies and organizations:

Administrative appeals submitted in response to the January 19, 2011 final rule:

- American Coatings Association (ACA).
- Association of Hazmat Shippers, Inc. (AHS).
- Dangerous Goods Advisory Council, Inc. (DGAC).
- Fuel Cell and Hydrogen Energy Association (FCHEA).
- Healthcare Distribution Management Association (HDMA).
- Patton Boggs, LLP, on behalf of Lilliputian Systems, Inc. (LSI).
- PPG Industries (PPG).

Public comments submitted in response to the May 25, 2012 NPRM:

- Amadeus IT Group, S.A. (Amadeus).
- Air Line Pilots Association International (ALPA).
- Airlines for America (A4A).
- Alaska Airlines (Alaska).
- American Coatings Association (ACA).
- American Veterinary Distributors Association (AVDA).
- Association of Hazmat Shippers, Inc. (AHS).
- Brookstone.
- Broward Fire Equipment and Service, Inc. (Broward).
- ChemTel, Inc. (ChemTel).
- Consumer Healthcare Products Association (CHPA).
- Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA).
- Dangerous Goods Advisory Council, Inc. (DGAC).
- Food Marketing Institute (FMI).
- Fuel Cell and Hydrogen Energy Association (FCHEA).
- Healthcare Distribution Management Association (HDMA).
- HMT Associates, L.L.C. (HMT).
- Integrated Support Services (ISS).
- Intel Corporation (Intel).
- Interactive Travel Services Association (ITSA).
- International Air Transport Association (IATA).
- International Vessel Operators Dangerous Goods Association (IVODGA).
- Patton Boggs, LLP, on behalf of Lilliputian Systems, Inc. (LSI).
- Ministry of Commerce, Peoples Republic of China (P.R. China).
- National Association of Chain Drug Stores (NACDS).
- National Association of Fire Equipment Distributors (NAFED).
- Safety Specialists, Inc. (SSI).
- UPS.
- Urethane Supply Company (USC).
- URS Corporation (URS).
- Utility Solid Waste Activities Group (USWAG).

### A. Transportation of ORM-D Material

A number of administrative appeals concern issues related to our adoption of the international system for the transportation of limited quantity material. Specifically, some appellants are concerned with the eventual phase-out of our domestic system for the transportation of limited quantity material reclassified as other regulated material (ORM-D) (i.e., the ORM-D system). Under certain conditions, the HMR and international standards allow lesser quantities of relatively low risk hazardous materials (i.e., limited quantity material) to be afforded relief from some of the requirements generally applicable to hazardous materials transported by all modes. For example, a limited quantity material is not generally required to be packaged in a Department of Transportation (DOT) or United Nations (UN) standard packaging. Most regulatory amendments resulting from adoption of the international system and the eventual phase-out of the ORM-D system involve revisions to hazard communication requirements, material quantity limitations, and the types of material authorized.

#### 1. Phase-Out of the ORM-D System

PHMSA revised the HMR to phase out its system of reclassifying and transporting limited quantity material as ORM-D. Under this system, a limited quantity of hazardous material that also meets the definition of a “consumer commodity” may be reclassified as ORM-D and is eligible for additional exceptions from regulation. See § 171.8 for the definition of “consumer commodity.” The January 19, 2011 final rule amended the HMR by phasing out the ORM-D system beginning January 1, 2013, for material transported by aircraft and, beginning January 1, 2014, for material transported by all other modes of transportation (e.g., motor vehicle). ACA and HDMA appealed our decision to phase out the ORM-D system arguing that we did so “without any debate or consideration of [1] the type of materials that use this exception; [2] the costs incurred by the regulated community; and [3] the safety benefits.” ACA claimed that many companies and organizations, including itself, asked for a separate rulemaking to address these issues. ACA is also concerned that although we provided a summary of comments against the phase-out in the preamble to the final rule, PHMSA did not discuss arguments raised in the comments. It stated we arbitrarily concluded that because there would be no immediate phase-out of the current ORM-D system, there would not

be a sizeable impact to companies on the basis that they would have sufficient time to adjust to the eventual phase-out. ACA asked us to reconsider the decision to not move forward in a separate rulemaking and to fully consider the effects of phasing out the ORM-D system. Additionally, HDMA requested that PHMSA allow for up to a 10-year phase-out based on the longevity of its packaging systems (i.e., totes) currently in use. According to HDMA, such totes are permanently marked with the “Consumer commodity, ORM-D” marking.

#### PHMSA response.

The HMR have long recognized the relatively low risk posed by the transportation of certain hazardous materials such as limited quantities or consumer commodities. Considerable efforts have been made internationally to harmonize multi-modal standards with regard to the transport of limited quantities, including consumer commodities. PHMSA held public meetings on this issue in February 2006 and again in March 2008 to discuss potential impacts on domestic stakeholders. Additionally, this issue was discussed during our pre-UN public meetings held in 2006 and 2007. There was considerable domestic interest in pursuing further harmonization internationally due to the potential for substantial savings in transportation costs and improved transportation efficiency. In the advance notice of proposed rulemaking (ANPRM) (October 21, 2009; 74 FR 53982) and NPRM (August 24, 2010; 75 FR 52070), we invited comments on this issue with regard to aligning the HMR with the UN Model Regulations for the domestic and international transport of limited quantities and consumer commodities. Of particular concern were any negative impacts on the domestic transportation of consumer commodities reclassified as ORM-D materials. While some changes adopted in the UN Model Regulations were similar to those currently in the HMR regarding limited quantities and consumer commodities (e.g., inner packaging limits and non-specification outer packagings allowed), some changes were not (e.g., marking, labeling, package gross mass). We stated that depending on the comments received and our own evaluation, we may determine that the significance of any amendments on the issue may warrant a separate rulemaking action. In the January 19, 2011 final rule, we concluded a separate rulemaking was not in the best interest of the hazardous material transportation community particularly when it involves international transportation. Further,

creating a single global system for packaging, hazard communication, and transportation of limited quantity material would facilitate the domestic and international flow of hazardous material trade and any further delay in the phase-out would not be useful. Little or no quantification of any negative impact, including costs to domestic shippers and carriers alike, was provided in response to the ANPRM or NPRM. However, the Healthcare Distribution Management Association (HDMA) did provide some cost data related to its unique practice of reusing totes permanently embossed with the ORM-D marking. Some commenters also argued against any phase-out based on the historically safe transportation of limited quantity material under the ORM-D system. Further, commenters stated that PHMSA should not adopt the international system simply based on the opportunity to align the HMR with international standards.

Allowing dual systems indefinitely for offering and transporting packages of limited quantity material would likely cause confusion and place unreasonable burdens on carriers and some shippers to train their hazmat employees to recognize and comply with both systems. We believe adopting a single global system for the transportation of limited quantity material will greatly improve safety and efficiency by decreasing the aforementioned potential for delays and confusion during transportation, and by removing the burden of providing training in dual systems used to communicate the transportation of limited quantity material. However, we recognize the need to provide sufficient time for domestic shippers and carriers to adjust to the revised system and are sympathetic to the concerns expressed by ACA, HDMA and others regarding this need. Therefore, in the NPRM we proposed to authorize the ORM-D classification and the use of packages marked "Consumer commodity, ORM-D" until December 31, 2015 for domestic highway, rail, and vessel transportation.

Based on the merits of public comment received, we are extending authorization of the ORM-D classification and the use of packages marked "Consumer commodity, ORM-D" until December 31, 2020 for domestic highway, rail, and vessel transportation.

## 2. Overpacks Containing Limited Quantity or ORM-D Material

In the January 19, 2011 final rule, PHMSA revised the regulation for overpacks (as defined in § 171.8) by

requiring the "OVERPACK" marking on an overpack containing limited quantity packaging if all markings are not visible. DGAC expressed concern over the manner in which the language in the requirement is phrased, and indicated that it implies all markings on each packaging in the overpack must be visible. DGAC noted that this is not consistent with the UN Model Regulations which states the overpack "shall be marked with the word "OVERPACK" and the marking required by this Chapter unless the markings representative of all dangerous goods in the overpack are visible." See 3.4.11 of the 16th Revised Edition of the UN Model Regulations. It is DGAC's understanding that this requirement refers to the limited quantity marking and not to all markings that may be required by the UN Model Regulations. Its understanding is that use of the term "representative" communicates a requirement that only one limited quantity package marking needs to be visible to represent all limited quantity packaging. DGAC requested that PHMSA revise the overpack requirements in § 173.25(a)(6) to be consistent with the UN Model Regulations.

### *PHMSA response.*

The HMR do not currently require that every individual mark (or label) on each package contained in an overpack be visible. For example, as stated in § 173.25(a)(2), an overpack must be marked with the proper shipping name and identification number (when applicable) for each hazardous material contained in the overpack, unless marking and labels representative of each hazardous material in the overpack are visible. We recommend where packages are stacked and/or banded on a pallet as part of an overpack, the packages should be positioned, when possible, so that the markings and labels are visible on the outside of the overpack. However, this does not mean that every package marking (or label) must be visible or the overpack must be marked accordingly. With regard to the "OVERPACK" marking requirement for overpacks containing limited quantity and ORM packages, in this final rule we are accepting DGAC's appeal and are adopting, as proposed, the revision of § 173.25(a)(6) to clarify that not all limited quantity and ORM markings must be visible and that the marking requirement is only applicable to the limited quantity and ORM mark itself. Additionally, a new § 173.25(a)(7) is adopted as proposed and is added for clarity to separate limited quantity and ORM overpack marking requirements

from excepted quantity overpack marking requirements.

### *B. Use of the Square-On-Point and ID Number Limited Quantity Marking*

Formerly, § 172.315 excepted for other than transportation by aircraft, a package containing a limited quantity substance or article from being marked with the proper shipping name if it was marked with a square-on-point limited quantity marking containing the UN identification (ID) number of the limited quantity substance or article. In the January 19, 2011 final rule, we provided a one-year transition period to authorize continued use of this marking before the revisions to the limited quantity markings become effective. ACA, DGAC, and PPG all stated the one-year transition period does not allow sufficient time to deplete stock(s) of packages pre-printed with the square-on-point mark containing the ID number, and requested an extension of three- to five-years. Specifically, ACA requested a three- to five-year timeframe while DGAC and PPG ask for a three-year timeframe. ACA, DGAC, and PPG maintained that without a longer transition period, shippers will be forced to remark packaging at their cost and there is no impact to safety by allowing continued use of the existing marking. Appellants also pointed out this alternative limited quantity marking communicates more information than the newly adopted markings or the original ORM-D markings. They stated that PHMSA already provides for a two- to three-year transition period for the phase-out of the ORM-D marking, depending on the mode of transportation. In addition, commenters also requested that, for clarification, any transition periods be included in § 171.14 (transitional provisions) and § 172.300 (marking applicability).

### *PHMSA response.*

We agree that shippers should be provided with the same transition period to continue using the square-on-point mark containing the UN identification (ID) number that was provided for the continued use of the ORM-D marking(s). In the administrative appeal final rule (HM-215K; RIN 2137-AE76), we granted the appeals submitted by ACA, DGAC, and PPG and revised § 172.315 accordingly to extend the transition period to December 31, 2013. The administrative final rule also authorized, for domestic air transportation, use of the square-on-point mark containing the ID number to continue until December 31, 2012.

Based on the merits of public comment received, we are extending authorization of the ORM-D

classification and the use of packagings marked "Consumer commodity, ORM-D" until December 31, 2020 for domestic highway, rail and vessel transportation. However, in this final rule we are only extending authorization to continue using the square-on-point mark containing the UN identification (ID) number until January 1, 2015, as proposed in the May 25, 2012 NPRM, for other than transportation by aircraft.

### C. Fuel Cell Cartridges Transported in Passenger Checked Baggage

In the January 19, 2011 final rule, we revised the 49 CFR 175.10 passenger exceptions to allow passengers and crew members to place certain spare fuel cell cartridges containing a flammable liquid (Class 3) or corrosive material (Class 8) in checked baggage. We limited the fuel cell cartridge chemistries allowed in checked baggage by excluding fuel cell cartridges containing Divisions 2.1 (flammable gas) and 4.3 (dangerous when wet) material. Although this is inconsistent with the ICAO Technical Instructions, we believed that the prohibition should include spare fuel cell cartridges containing Division 2.1 materials. Flammable gases are generally prohibited from transportation on passenger-carrying aircraft as cargo. When combined with the uncertainty of the effect of baggage handling on the durability of these products when stowed in a passenger's checked baggage, the safety risks posed are of concern. In their administrative appeals, FCHEA and LSI requested that PHMSA revise § 175.10 to align with the ICAO Technical Instructions and allow spare fuel cell cartridges containing Division 2.1 flammable gas to be carried in checked baggage.

#### PHMSA response.

In the May 25, 2012 NPRM, we granted the appeal for reconsideration by providing additional opportunity for public comment on the issue. In response, one commenter (ALPA) opposed lifting the prohibition on spare fuel cell cartridges containing Division 2.1 flammable gas for carriage in checked baggage. The remaining commenters (IATA, P.R. China, Intel, DGAC, FCHEA, LSI, and Brookstone) all support lifting the U.S. prohibition and recommend alignment with the ICAO Technical Instructions. Points leading to the Department's decision are:

- Passenger authorizations for hazardous materials are outside the scope of the traditional hazardous materials transportation regulatory system. Many of the critical safety requirements of the HMR that would apply to these items when in

transportation as cargo do not apply to passengers, for example, hazard communication, pilot notifications and cargo stowage requirements for hazardous materials.

- Passengers are not trained to recognize potential hazards. Although passengers pack, handle, and (in many cases) should communicate the hazardous materials carried onboard to an air carrier, the HMR does not require training for passengers. In most instances, passengers are unlikely to be aware of the safety implications if certain commodities are subject to improper packaging or handling.

- Recognition of the limitations of fire suppression and detection systems. We recognize that aircraft fire detection and suppression systems do not prevent fires nor are they designed to completely extinguish fires.

- Article Design Management. One example DOT may consider in the future could be similar to its approach in regulating portable oxygen concentrators (POCs). That is, before any POC design is allowed onboard aircraft, the design must be tested and demonstrate a certain level safety prior to being authorized onboard passenger-carrying aircraft.

- Cumulative risk of additional passenger authorizations. We believe that when new passenger authorizations are granted consideration must be given to the cumulative risk of the new authorization combined with existing authorizations.

Accordingly, we deny Lilliputian's administrative appeal that requests the HMR be revised to allow spare Division 2.1 fuel cell cartridges in checked baggage.

### D. Consumer Commodity by Air

In the January 19, 2011 final rule, PHMSA adopted requirements for certain consumer commodities intended for transportation by aircraft in new § 173.167. The new description and identification number (ID8000) are consistent with the consumer commodity entry in the ICAO Technical Instructions in Packing Instruction Y963. In its appeal submitted in response to the final rule, DGAC expressed concerns that the alignment between the two standards was not consistent. For example, DGAC pointed out that absorbent material requirements and stack test criteria were not included in the § 173.167 packaging section.

#### PHMSA response.

DGAC is correct in its assessment of the inconsistencies that exist between the consumer commodity provisions adopted in the HMR and the ICAO Technical Instructions. Therefore, we

are adopting the language proposed in DGAC's administrative appeal, and revising § 173.167 accordingly. (See the detailed discussion of revisions to § 173.167 in Section V.)

### E. Incident Reporting for Limited Quantity Material

The detailed hazardous materials incident reporting requirements of the HMR allow for exceptions from these requirements. Specifically, § 171.16(d)(2) excepts, under certain conditions, the unintentional release of a hazardous material properly classed as ORM-D and a PG III material in Class or Division 3, 4, 5, 6.1, 8, or 9, from the written reporting requirements. ACA indicated in its appeal that the reporting requirements as they apply to limited quantity material should be reviewed based on the eventual phase-out of the ORM-D hazard class and suggested the exception for ORM-D material should be extended to limited quantity packagings.

#### PHMSA response.

We agree with ACA that relief from incident reporting previously provided to ORM-D material should continue to be provided for such materials now transported as limited quantities. In the May 25, 2012 NPRM, we did not propose to extend the exception from incident reporting to limited quantity Class 7 (radioactive) material, instruments, and articles due to the unique nature of the hazard and because this type of material was never authorized to be reclassified and transported as ORM-D. Additionally, we stated this exception was not applicable to air transportation. Thus, the amendment is adopted as proposed.

### F. Materials of Trade

Materials of Trade (MOTs) are hazardous materials, other than hazardous waste, that are carried on a motor vehicle: (1) To protect the health and safety of the motor vehicle operator or passengers, such as insect repellent or a fire extinguisher; (2) To support the operation or maintenance of a motor vehicle (including its auxiliary equipment), such as a spare battery or gasoline; or (3) To directly support a principal business of a private motor carrier (including vehicles operated by a rail carrier) that is other than transportation by motor vehicle—for example, landscaping, pest control, painting, plumbing, or welding services. The MOTS exceptions of the HMR generally allow certain hazardous material articles and substances, including ORM-D, to be transported by motor vehicle as part of a business

operation under less regulation without compromising safety.

In the May 25, 2012 NPRM, PHMSA proposed to apply the same eligibility to limited quantity packages as it currently does to ORM-D packages as MOTS. PHMSA believes that because small quantities of a limited number of low-risk materials are eligible in a properly prepared and marked limited quantity package, allowing such packages as MOTS will not compromise transportation safety. One commenter, ChemTel, opposes such authorization on the basis that because the package is not marked with a common name, it somehow compromises safety. On the other hand, USWAG fully supports the concept of limited quantity packages being eligible for transportation as MOTS.

#### *PHMSA response.*

Similar to the applicability of written incident reporting exceptions to limited quantity material, our review of the HMR indicated that we did not amend the MOTS exceptions under the January 19, 2011 final rule to reflect the eventual phase-out of the ORM-D system. Similar to the revisions to the written incident reporting requirements, we believe there is no impact to safety in authorizing limited quantity material to be transported as MOTS in the same manner as always provided for ORM-D. Most materials reclassified as ORM-D are limited quantity material themselves; an ORM-D is a limited quantity material that also meets the definition of a "consumer commodity." See § 171.8 for the definition of "consumer commodity."

In this final rule, we are applying the MOTS exceptions to limited quantity packages consistent with the exception provided to ORM-D material. Additionally, we are clarifying that exceptions for limited quantity material also include limited quantity material authorized under § 173.63(b) for certain Division 1.4S explosives, § 173.306 for compressed gases, and § 173.309 for certain fire extinguishers.

### **III. Recent Changes to Part 8 of the ICAO Technical Instructions**

At the 23rd Meeting of the ICAO Dangerous Goods Panel (DGP), held October 11–21, 2011, the DGP recommended amending Part 8 of the ICAO Technical Instructions applicable to passengers and crew members and the hazardous materials (dangerous goods) they may introduce aboard an aircraft in either checked or carry-on baggage, or on one's person. Such provisions form the basis of exceptions for passengers, crewmembers, and air operators provided in § 175.10 of the

HMR. One recommendation adopted by the DGP addressed concerns over wheelchairs and other mobility aids found activated after flight. Additionally, the DGP addressed the absence of any reference to mobility aids powered by nickel metal hydride batteries, and wheelchairs and other mobility aids specifically designed to allow its battery or batteries to be removed from the device and carried aboard the aircraft by a passenger within a protective bag or pouch. In this final rule, PHMSA is adopting, as proposed, amendments to the HMR that address the potential for unintended activation of all stowed devices on an aircraft and provide for the intentional removal of a lithium ion battery from a device and its stowage in the passenger cabin. As explained in the May 25 NPRM, PHMSA intends to address remaining Part 8 and § 175.10 revisions, including wheelchairs and other mobility aids powered by nickel metal hydride batteries, in a separate rulemaking under Docket PHMSA–2012–0027 (HM–215L).

The ICAO Technical Instructions and the HMR limit lithium ion batteries used to power portable electronic devices and medical devices to 160 watt-hours and 25 grams aggregate equivalent lithium content, respectively. Additionally, the ICAO Technical Instructions and the HMR limit to carry-on baggage only any spare lithium ion batteries used to power portable electronic devices and medical devices. At its 23rd Meeting, the DGP was informed of lithium ion batteries developed for wheelchairs and other mobility aids which did not exceed 160 watt-hours (13.5 grams aggregate equivalent lithium content). Subsequently, the DGP adopted a proposal introduced by the International Air Transport Association (IATA) to include spare lithium ion batteries for battery-powered wheelchairs and other mobility aids in Part 8 consistent with the provisions for spare lithium ion batteries used to power portable electronic devices and medical devices. In this final rule, PHMSA is adopting as proposed similar provisions and revising § 175.10(a)(17) accordingly.

The DGP was also informed of new mobility aid designs which require the lithium ion battery to be removed from the device to permit efficient and effective stowage and transport of the mobility aid in the cargo compartment of the aircraft. The DGP agreed it would be safer to require that the removed lithium ion battery be carried in the passenger cabin rather than being stowed as checked baggage with the mobility aid. Subsequently, at the same

meeting, the DGP was informed of mobility aid designs equipped with lithium ion batteries, which required removal for stowage (e.g., collapsible), that exceed the 160 watt-hour limit (13.5 grams aggregate equivalent lithium content). The DGP Panel therefore adopted an upper limit of 300 watt-hours (25 grams aggregate equivalent lithium content) for batteries which must be removed and carried aboard in the passenger cabin. The DGP Panel agreed that when applicable, the battery must be removed by the user. Because the HMR currently places an upper limit on such batteries to 25 grams aggregate equivalent lithium content (300 watt-hours), no corresponding revision to § 175.10(a)(17) of the HMR is necessary.

In this final rule, PHMSA is adopting amendments to the HMR that are consistent with the ICAO DGP/23 Panel recommendations. This final rule also clarifies and corrects some related amendments adopted in the original January 19, 2011 final rule. See the discussion of specific amendments adopted in § 175.10 under the "V. Section-by-Section Review of Changes" section of this rulemaking.

### **IV. Administrative Appeal Submitted in Response to the HM–231 Final Rule**

In this final rule, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions) and required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow them greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

On March 3, 2010, we received an administrative appeal from DGAC requesting that PHMSA delay the effective date of the final rule for two years to provide sufficient time for packaging manufacturers to review their current packaging design manufacturer notification (including closure instructions) for compliance with the new requirement to ensure closure instructions provide a repeatable method of closing the packaging consistent with the way it was closed prior to performing qualification testing on the packaging design.

We did not grant the DGAC administrative appeal in our September 30, 2010 final rule (75 FR 60333) that responded to a petition for rulemaking and several other administrative appeals. Specifically, we did not grant DGAC's request for a two-year extension of the effective date. However, we did agree that aligning the review and preparation of a packaging's manufacturer notification with its periodic retest merited consideration because it would facilitate the packaging manufacturer's and distributor's compliance with new packaging manufacturer notification requirements adopted in the rule. Thus, in the September 30, 2010 final rule, we revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency.

DGAC submitted a follow-up administrative appeal objecting to our revision in the September 30, 2010 final rule to the recordkeeping requirement for manufacturer notification and requested that PHMSA return the recordkeeping duration to the 365 days adopted under the February 2, 2010 final rule. DGAC stated that while the preamble discussion in the September 30, 2010 final rule recognized its concerns in the initial appeal, the regulatory response did not grant its request for the extension of the effective date and, instead, created a recordkeeping requirement of two years that is more difficult to comply with than the original one-year (365-day) requirement in the February 2, 2010 final rule. DGAC claimed there is no need for a shipper to retain a copy of a packaging's manufacturer notification (including closure instructions) for longer than 365 days. DGAC also asked whether the words "supporting documentation" were intentionally omitted from the September 30, 2011 final rule revision to 49 CFR 178.601(g)(1). Further, DGAC requested that PHMSA amend 49 CFR 171.14 to extend the effective date of the February 2, 2010 final rule to October 1, 2011.

*PHMSA response.*

Although not clearly stated in both final rules, it was our intent that the new manufacturer notification requirements apply to all applicable hazardous materials packagings manufactured on or after October 1, 2010. Packagings manufactured before this date should already conform to HMR performance standards for their design type in effect at the time of manufacture. As we stated in the February 2, 2010 final rule, we revised

this regulation to address an increase in hazardous materials releases as a result of improperly closed packagings. In our opinion, review of existing manufacturer notifications for packaging designs that should already be in compliance with the HMR would involve much less effort than DGAC described in its administrative appeal. We also believe sufficient time has elapsed since the February 2, 2010 final rule was published to complete this task and any additional time is not warranted.

Therefore, in this final rule, we are denying DGAC's appeal to extend the effective date of the rule. However, we are amending § 178.2(c)(1)(ii) of the HMR based on DGAC's request to revert to the original recordkeeping retention duration for manufacturer notification to the 365-day period adopted in the February 2, 2010 final rule. Additionally, PHMSA is amending § 173.22(a)(4)(ii) as proposed to require a shipper who sells or transfers a packaging or closes and offers a package for transportation to retain manufacturer notification (including closure instructions) for a period of 90 days once a package is offered to the initial carrier for transportation in commerce. Subsequent downstream offerors of a filled and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions).

Additionally, in this final rule, PHMSA is adopting as proposed the clarification that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are exempted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) if such information is permanently embossed or printed on the packaging. This exception was only provided with such packagings in mind and was originally adopted as a result of public comment.

For clarification, we did not revise § 178.601(g)(1) in the September 30, 2010 final rule as DGAC asserts; we did correct punctuation in §§ 178.601(g)(8)(xiii)(C) and (g)(8)(xiii)(D), which do not include references to supporting documentation. Moreover, we note that the requirement for supporting documentation adopted in the February 2, 2010 final rule remains in § 178.601(g)(1) with the statement that the method used to determine whether the inner packaging, including closure, of a Variation 1 packaging maintains an equivalent level of performance to the originally tested packaging design must be "documented in writing by the person certifying

compliance and retained in accordance with paragraph (l)" of § 178.601.

**V. Section-by-Section Review of Changes**

*Part 171*

Section 171.16

This section prescribes written hazardous material incident reporting requirements. In this final rule, we are adopting as proposed the revision to the paragraph (d) exceptions to reflect the eventual phase-out of the ORM-D system on December 31, 2020 and extending the exception provided for materials classed as ORM-D to hazardous materials authorized for transportation as limited quantity materials under Subparts C through E and Subpart G of Part 173 of the HMR. PHMSA notes that this exception is not applicable to air transportation. See section II.E for a comprehensive discussion of the adopted changes.

*Part 172*

Section 172.102

Section 172.102 prescribes special provisions associated with certain descriptions in the HMT. Special provision 18 is applicable to fire extinguishers. Because the text is now included in § 173.309, this Special provision is redundant and is being removed in this final rule.

Section 172.200

Section 172.200 prescribes the applicability of shipping paper requirements for the transportation of hazardous materials. In the January 19, 2011 final rule, paragraph (b)(3) was revised to remove the exceptions for ORM-D material in conformance with revisions made to the limited quantity requirements. In this final rule, we are adopting revisions to the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020 in response to the appeal submitted by HDMA. Additionally, we are adopting revisions to paragraph (b)(3) that correct the shipping paper applicability for vessel shipments of ORM-D material that was inadvertently adopted in the January 19, 2011 final rule. Further, we emphasize that limited quantity shipments offered for transportation by air or vessel are required to be accompanied by shipping papers as adopted in the January 19, 2011 final rule.

Section 172.315

Section 172.315 prescribes the requirements for marking packages which contain limited quantity material.

Based on administrative appeals submitted and requests to make the requirements for limited quantity marking more clear, we are adopting as proposed the revisions to § 172.315 that permit the continued use of alternative limited quantity markings (i.e., square-on-point with Identification Number) marking for the same duration as proposed in the May 25, 2012 NPRM, that is, until December 31, 2015. The expiration date for the square-on-point with Identification Number marking remains December 31, 2012 for air transportation.

#### Section 172.316

Section 172.316 prescribes marking requirements for packages containing materials classed as ORM-D and ORM-D-AIR. As adopted in the January 19 final rule, the marking prescribed in this section will no longer be authorized for limited quantities effective January 1, 2014. In this final rule, we are adopting as proposed the revisions to the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020 in response to the appeal submitted by HDMA. The expiration date for the ORM-D-AIR hazard class marking remains December 31, 2012 for air transportation.

#### Part 173

##### Section 173.6

Section 173.6 prescribes exceptions from certain requirements of the HMR for the transportation of hazardous materials defined as materials of trade (MOTS) when transported by motor vehicle. See § 171.8. In this final rule, we are adopting as proposed the revision to paragraph (d) exceptions that reflects the phase-out of the ORM-D system on December 31, 2020 and applying the exception provided ORM-D material to hazardous materials authorized for transportation as a limited quantity under subparts C through E and subpart G of part 173 of the HMR. See section II.F for a comprehensive discussion of these adopted amendments.

##### Section 173.22

Section 173.22 prescribes shipper responsibilities. In this final rule, PHMSA is responding to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM-231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22

for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation.

In this final rule, PHMSA is adopting as proposed the revisions to § 173.22(a)(4) by clarifying that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are excepted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) (shipper responsibilities) if such information is permanently embossed or printed on the packaging. Additionally, PHMSA is amending § 173.22(a)(4)(ii) as proposed to require a person who sells or transfers a packaging or closes and offers a package for transportation to retain manufacturer notification (including closure instructions) for a period of 90 days once a package is offered to the initial carrier for transportation in commerce. Subsequent downstream offerors of a filled and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions). See Section III of this preamble for a more comprehensive discussion of these amendments.

##### Section 173.25

Section 173.25 prescribes requirements for the transportation of authorized packages in overpacks used for protection or convenience of handling or to consolidate packages. In this final rule, we are adopting as proposed the revisions to § 173.25(a)(6) by clarifying that all markings on each package containing a limited quantity or ORM-D material in an overpack are not required to be visible, but rather, that markings representative of each hazardous material in the overpack must be visible as specified in § 173.25(a)(2) and (a)(3). Additionally, we are adopting as proposed the correction of an error in the January 19, 2011 final rule and revising paragraphs (a)(6) and the new (a)(7) applicable to overpacked packages of limited quantities, ORM-D, and excepted quantity materials to reaffirm that an overpack is only required to be marked with the word "OVERPACK" if specification markings, when required, are not visible.

##### Section 173.63

Section 173.63 prescribes packaging exceptions for certain Division 1.4S explosive articles authorized for

reclassification and transport as ORM-D. Currently, such articles in Division 1.4S may be reclassified as ORM-D and offered for transportation until December 31, 2013. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020.

##### Section 173.144

Section 173.144 defines "Other Regulated Materials, ORM-D." In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020.

Sections 173.150, 173.151, 173.152, 173.153, 173.154, and 173.155

Sections 173.150 through 173.155 prescribe exceptions for certain Class 3, 8 and 9 and Division 2.1, 2.2, 4.1, 4.2, 5.1, 5.2, 6.1 hazardous materials under the HMR. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020. This is accomplished by revising each of these sections' consumer commodity paragraphs, where applicable.

##### Section 173.156

Section 173.156 prescribes exceptions for the Other Regulated Materials, ORM-D hazard class. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020.

## Section 173.161

Section 173.161 prescribes packaging requirements for chemical kits and first aid kits containing small amounts of hazardous materials. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020.

## Section 173.165

In the January 19, 2011 final rule, a new § 173.165 was added to prescribe packaging and other requirements for “Polyester resin kits, UN3269” formerly contained in § 172.102, special provision 40, and § 173.152(b)(4) of the HMR. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2020.

## Section 173.167

In the January 19, 2011 final rule, a new § 173.167 was added to indicate authorized materials and quantity limits for articles and substances that may be described as “ID8000, Consumer commodity,” and are eligible for transport by aircraft and authorized transportation by all modes. This final rule addresses inconsistencies with the ICAO Technical Instructions brought to our attention in appeals submitted in response to the January 19, 2011 final rule. For example, DGAC pointed out that absorbent material requirements and stack test criteria were not included in the § 173.167 packaging section. Additionally, HMT correctly asserts that Packing Instruction Y963 in the ICAO Technical Instructions only requires that friction-type closures be secured by positive and not secondary means. COSTHA, HMT, and DGAC correctly state that Consumer commodities prepared under the requirements of § 173.167 should not be subject to Subpart B of Part 173. For other than applicable § 173.27(f)(2) provisions, PHMSA agrees. Further, DGAC and HMT suggest the HMR be revised to be consistent with the ICAO Technical Instructions by using the words “glass,”

“earthenware,” and “brittle plastic” instead of use of the undefined term “fragile” as proposed in § 173.167(a)(3) and (a)(5). We agree and are replacing the word “fragile” with the terms used in ICAO Technical Instructions.

## Section 173.230

Section 173.230 prescribes the requirements for fuel cells offered for transportation by all modes. As published in the January 19, 2011 final rule, in paragraph (g) of this section, PHMSA adopted limited quantity provisions for such articles by aircraft consistent with the ICAO Technical Instructions. In paragraph (h), PHMSA also adopted a prohibition of reclassification to “Consumer commodity, ORM-D-AIR” for transportation by aircraft. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class, for other than air transportation, from December 31, 2013, to December 31, 2020.

## Section 173.306

Section 173.306 prescribes requirements for limited quantity of compressed gases. In the May 25, 2012 NPRM, PHMSA proposed to extend the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class in paragraph (j)(2) from December 31, 2013 to December 31, 2015. In this final rule, we are extending the effective date for expiration of the authorization to reclassify materials to the ORM-D hazard class, for other than air transportation, from December 31, 2013, to December 31, 2020.

## Section 173.309

Section 173.309 prescribes requirements for fire extinguishers. In this final rule, we are adopting revisions to the entire section for clarity. First, we are relocating the limited quantity requirements and exceptions from paragraph (b) as proposed to new paragraph (d) as we typically indicate regulation first in most sections followed by any exceptions to that regulation. Second, we are relocating regulatory text from § 172.102(c)(1) Special provision 18 to revised paragraph (a) which prescribes the conditions when specification cylinders may be described, offered, and transported in commerce as fire

extinguishers. Third, in the May 25 NPRM, we solicited public comment on whether we should consider allowing UN specification cylinders as fire extinguishers in § 173.309. Because we did not receive any comments related to this issue in support or opposition, we are not adopting revisions to this section related to UN pressure vessels at this time. Lastly, we are revising new paragraph (d) by excepting a limited quantity package of fire extinguishers from shipping papers when transported by highway or rail if marked in accordance with § 172.315. This exception is provided in addition to the existing HMR exceptions from labeling (unless offered for transportation by aircraft), placarding, and Parts 174 and 177 carrier requirements for limited quantity packages of fire extinguishers.

In general, commenters were very supportive of the revisions proposed in the May 25, 2012 NPRM (Broward, ISS, and NAFED). However, Broward and NAFED shared concerns related to scenarios where fire extinguishers were transported in private carriage without an outer packaging. This scenario typically occurs when the articles are being transported to and from a service facility for recharging, hydrostatic testing, and maintenance. In their comments, they request PHMSA allow the practice if the articles are properly secured in the vehicle and are marked and labeled as required by the HMR.

*PHMSA response.* The scenario the commenters describe would be eligible for the Materials of Trade (MOTS) exceptions under § 173.6. Provided each fire extinguisher did not exceed 100 kg (220 lbs) and the aggregate gross weight of all fire extinguishers on the vehicle did not exceed 200 kg (440 lbs), users may use the MOTS exceptions to transport the fire extinguishers unpackaged as prescribed in § 173.6(b)(5). Additionally, the fire extinguishers are required to be marked and labeled in accordance with the HMR as prescribed in § 173.6(c)(3). Users may also transport a combination of MOTS-eligible articles and substances and other hazardous materials on the same motor vehicle, provided the MOTS limits themselves are not exceeded.

Lastly, in its comments ISS offered formatting suggestions to aid the reader and to clearly distinguish the limited quantity exceptions in § 173.309(d) intended for all fire extinguishers from those fully regulated provisions for fire extinguishers in § 173.309(a), (b), and (c). PHMSA appreciates the recommendations and, in this final rule, revises the section accordingly.

*Part 175*

## Section 175.10

*Lithium ion battery-powered mobility aids.* In the January 19, 2011 final rule, we amended the HMR to align with international standards by designating paragraphs (a)(17) and (a)(18) as paragraphs (a)(18) and (a)(19), and by adding a new paragraph (a)(17) that authorized a mobility aid such as a wheelchair, powered by a lithium ion battery, to be transported aboard a passenger-carrying aircraft.

For consistency with the wheelchair or other battery-powered mobility aid provisions in § 175.10(a)(15) and (a)(16), and the provisions provided for the carriage of portable electronic devices powered by lithium ion batteries in § 175.10(a)(17) (now § 175.10(a)(18)), the final rule merged applicable provisions for the transportation of lithium ion battery-powered mobility aids into a new § 175.10(a)(17). In the final rule, we stated that removal of the battery may be necessary based on results of the required visual inspection or if the mobility aid was to be offered to the operator as checked baggage. It was not our intent to require an operator or passenger to remove a properly secured lithium ion battery from a mobility aid that was not specifically designed to allow its batteries to be removed. Furthermore, it is the operator's responsibility to determine if the wheelchair or other mobility aid is designed to have its battery removed by the user. Information provided by the user or visual inspection may be used in this process. Accordingly, revisions to certain amendments adopted in § 175.10(a)(17) of the final rule are required and are as follows:

- A mobility aid such as a wheelchair, powered by a lithium ion battery, must be transported as checked baggage aboard an aircraft. This requirement is consistent with the 14 CFR Part 382 provisions under the Air Carrier Access Act (ACAA);
- Provided the wheelchair or other mobility aid is not specifically designed to allow its lithium ion battery to be removed, battery removal is not required;
- If the battery is to remain installed, a wheelchair or other mobility aid may be loaded and stowed in any orientation determined by the operator necessary to prevent unintentional activation of the mobility aid or short circuiting of the battery and is as equally protected as the upright orientation would provide;
- The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo; and

- As adopted in the January 19, 2011 final rule, a lithium ion battery specifically designed to be removed from a mobility aid (e.g., collapsible) by the user and any spare batteries must be transported in carry-on baggage in accordance with paragraph (vii). The carry-on battery must not exceed 25 grams aggregate equivalent lithium content and a maximum of one spare battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried on.

*Lithium battery-powered medical devices.* URS commented in response to the May 25, 2012 NPRM regarding such articles also excepted from regulatory requirements under Part 8 of the ICAO Technical Instructions. Because amendments regarding such articles were not proposed in the May 25, 2012 NPRM, PHMSA cannot align with the ICAO Technical Instructions in this final rule.

## Section 175.25

Section 175.25 prescribes the notification that operators must provide to passengers regarding restrictions on the types of hazardous material they may or may not carry aboard an aircraft on their person or in checked or carry-on baggage. The January 19, 2011 final rule revised provisions in § 175.25 applicable to notification and acknowledgement of the types of hazardous materials that a passenger may or may not carry aboard an aircraft by updating the ticketing and flight check-in provisions of the HMR based on current technologies used to perform such functions.

Subsequent to issuance of the final rule, the PHMSA and FAA received several administrative appeals, and, at the August 16, 2012 public meeting, received written and oral comments requesting additional time for affected entities to implement the new provisions in a more effective and cooperative manner.

PHMSA and FAA agree that a delay in the compliance date of the revised § 175.25 is warranted, particularly if a delay supports the implementation of more effective methods for increasing passenger awareness of, and compliance with, the HMR. Therefore, PHMSA and FAA provide this notification of extending the compliance date until January 1, 2015. Additionally, we acknowledge that notification of interested parties is necessary if we wish to gain widespread support of the collaborative approach to implementing effective and value-added solutions as

discussed during the August 16, 2012 public meeting on this issue.

*Part 176*

## Section 176.905

Section 176.905 prescribes specific requirements for motor vehicles or mechanical equipment powered by internal combustion engines that are offered for transportation and transported by vessel. In the January 19, 2011 final rule, PHMSA did not revise the paragraph (i) introductory text to clarify that if any of the exceptions criteria were met, the articles were excepted from the requirements of the HMR. We are providing that clarification in this final rule. In addition, PHMSA is adopting as proposed the removal of a heading for each exception criterion in paragraph (i). These headings are not necessary and have resulted in confusion among the regulated community as some of the headings were perceived to be inconsistent with the IMDG Code.

*Part 178*

## Section 178.2

Section 178.2 prescribes HMR applicability and responsibility required of packaging manufacturers. In this final rule, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM-231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging manufacturer's notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow manufacturers greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

In response to a misunderstanding of an administrative appeal, PHMSA revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency. Subsequently, DGAC submitted another administrative appeal requesting PHMSA revise the notification retention requirements in § 178.2(c)(1)(ii) to the original one year from date of issuance. Therefore, in this final rule, we are adopting as proposed,

amendments to the HMR based on DGAC's request to revert to the original recordkeeping retention duration for manufacturer notification to one year.

Section 178.601

This section prescribes the general requirements for the testing of non-bulk packagings and packages. Paragraph (c)(4)(v) was revised in a final rule published on October 5, 2012 [77 FR 60935] under Docket PHMSA 2012-0080 (HM-244E) entitled "Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR). In the final rule, we explained that the term "different packaging" is defined in paragraph (c)(4) and that because paragraph (c)(4)(v) of the definition excluded packagings which differ only in a lesser design height from the category of a "different packaging," for purposes of clarification, we were revising the paragraph to link the exclusion to the authorized packaging variations that allow a packaging to be manufactured at a lesser design height. We provided the link by adding a reference to the variations in paragraph (g)(3) for single packagings, and to (g)(4) for combination packagings.

While our intent was to afford clarification by providing a reader-friendly link to reference the variations in paragraph (g)(3) for single packagings and to paragraph (g)(4) for combination packagings, we received appeals from the Dangerous Goods Advisory Council (DGAC). The appellant stated that by incorporating such a revision, PHMSA, among other subtle differences such as a reduction in the size of marking requirements, placed additional restrictions on packagings that differ only in a lesser design height. The appellant further stated that such

revisions constitute a substantive change which requires an opportunity for public notice and comment in accordance with the Administrative Procedure Act. Based on the response we received and upon further review, we are granting this appeal by revising this paragraph to its language prior to the publication of HM-244E, and will consider revisiting the issue at a later time.

**VI. Regulatory Analyses and Notices**

*A. Statutory/Legal Authority for This Rulemaking*

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule responds to the administrative appeal of certain amendments adopted in final rule PHMSA-2009-0126 (HM-215K) published on January 19, 2011 (76 FR 3308). Additionally, it responds to the administrative appeal of certain amendments adopted in a final rule PHMSA-2006-25736 (HM-231) published on February 2, 2010 (75 FR 5376).

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

*B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, radiopharmaceutical companies, and training companies. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials. A regulatory evaluation is available for review in the public docket for this rulemaking.

In most instances, the amendments adopted in this rulemaking reduce compliance costs of the regulated community, and these changes are possible without reducing public safety. Although we were not able to quantify all of the costs and benefits for most of the amendments, the net benefits of those we were able to quantify are approximately \$3.5 million per year. The following table summarizes the costs and benefits of the amendments adopted:

**SUMMARY OF COSTS AND BENEFITS**

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Domestic transportation of ORM-D material.	Extending the effective date of eliminating the ORM-D system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the ORM-D system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM-D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	\$7.3 million over the first two years.
Use of the Square-on-Point and ID Number Limited Quantity Marking.	Extending the effective date of eliminating the revised limited quantity marking system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the revised limited quantity marking system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM-D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.

## SUMMARY OF COSTS AND BENEFITS—Continued

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Consumer Commodity Transport by Aircraft.	No costs are anticipated as the proposal provides clarification and guidance for existing requirements adopted in the January 19, 2011 Final Rule.	Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.
Incident Reporting for Limited Quantity Material.	No costs are anticipated .....	Increased exceptions for written reporting requirements will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Materials of Trade Exceptions.	No costs are anticipated .....	Increased materials of trade exceptions will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Recordkeeping Requirements for Manufacturer Notification *.	Costs are expected to be negligible .....	Reduced costs that shippers will incur as a result of having to retain records for only 90 days as opposed to 730 days.	\$3.3 million per year.

\* Administrative appeals submitted in response to the HM-231 Final Rule.

### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”), and the President’s memorandum on “Preemption” published in the **Federal Register** on May 22, 2009 (74 FR 24693). The amendments adopted in this final rule preempt State, local and Indian tribe requirements and do not impose regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements for certain subjects. The 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 material; and
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses all the covered subject items above and preempts State, local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to incorporate revisions to the HMR based on administrative appeals submitted in response to the January 19, 2011 final rule, effective January 1, 2011. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT 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 April 8, 2013.

### 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, does not impose substantial direct compliance costs, and is required by statute, 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 unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We have completed an assessment and

placed it in the docket for this rulemaking.

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 proposed rules on small entities are properly considered.

### F. Paperwork Reduction Act

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.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements adopted in this final rule. PHMSA has developed burden estimates to reflect the changes adopted in this final rule, and estimates the information collection and recordkeeping burden as adopted in this final rule to be as follows:

- This final rule reduces the OMB Control Number 2137–0572 information collection burden by \$1,654,384 annually. PHMSA has submitted the revised information collection and recordkeeping requirements to OMB for approval.

### G. Regulatory 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 can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

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) 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. In the January 19, 2011 final rule, we developed an initial assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings concluded that there are no significant environmental impacts associated with the final rule. Consistency in the regulations for the transportation of hazardous materials aids in shippers' understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment was included with the January 19, 2011 final rule available in the public docket. Further, we do not see any additional environmental impacts associated with the amendments proposed in the May 25, 2012 NPRM and adopted unchanged in this final rule regarding the administrative appeals submitted to PHMSA in response to the January 19 final rule. Lastly, we did not receive any public comment related to the potential environmental impact of the proposals made in the May 25, 2012 NPRM.

#### J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477) or you may visit <http://www.dot.gov/privacy.html>.

#### K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of this final rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

#### List of Subjects

##### 49 CFR Part 171

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

##### 49 CFR Part 172

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

##### 49 CFR Part 173

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

##### 49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

##### 49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### 49 CFR Part 178

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

In consideration of the foregoing, PHMSA is amending Title 49, Subtitle B, Chapter I as follows:

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

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

**Authority:** 49 U.S.C. 5101–5128, 44701; 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 § 171.16, paragraph (d)(2) is revised to read as follows:

#### § 171.16 Detailed hazardous materials incident reports.

\* \* \* \* \*

(d) \* \* \*

(2) An unintentional release of a hazardous material when:

(i) The material is—

(A) A limited quantity material packaged under authorized exceptions in the § 172.101 Hazardous Materials Table of this subchapter excluding Class 7 (radioactive) material; or

(B) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(ii) The material is released from a package having a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(iii) The total amount of material released is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(iv) The material is not—

(A) Offered for transportation or transported by aircraft;

(B) A hazardous waste; or

(C) An undeclared hazardous material;

\* \* \* \* \*

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

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

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

#### § 172.102 [Amended]

■ 4. In § 172.102, in paragraph (c)(1), Special provision 18 is removed.

■ 5. In § 172.200, paragraph (b)(3) is revised to read as follows:

**§ 172.200 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(3) A limited quantity package unless the material is offered for transportation by aircraft or vessel and, until December 31, 2020, a package of ORM-D material authorized by this subchapter on October 1, 2010, when offered for transportation by highway, rail or vessel.

\* \* \* \* \*

■ 6. In § 172.315, paragraph (d) is revised to read as follows:

**§ 172.315 Limited quantities.**

\* \* \* \* \*

(d) *Transitional exceptions (1) Alternative markings.* Except for transportation by aircraft and until December 31, 2014, a package containing a limited quantity may continue to be marked in accordance with the requirements of this section in effect on October 1, 2010 (i.e., square-on-point with identification number only) as an alternative to the marking required by paragraph (a) of this section.

(2) *ORM-D marked packaging.* Except for transportation by aircraft and until December 31, 2020, a packaging marked in accordance with § 172.316 of this part is not required to be marked with the limited quantity marking required by paragraph (a) of this section. For transportation by aircraft and until December 31, 2012, a packaging marked in accordance with § 172.316(a)(1) is not required to be marked with the limited quantity “Y” marking required by paragraph (b) of this section.

■ 7. In § 172.316, paragraph (a)(2) is revised to read as follows:

**§ 172.316 Packagings containing materials classed as ORM-D.**

(a) \* \* \*

(2) Until December 31, 2020, ORM-D for an ORM-D material that is packaged in accordance with §§ 173.63, 173.150 through 173.156 and 173.306.

\* \* \* \* \*

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

■ 8. 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.

■ 9. In § 173.6, paragraph (a)(6) is added to read as follows:

**§ 173.6 Materials of trade exceptions.**

\* \* \* \* \*

(a) \* \* \*

(6) A limited quantity package prepared in accordance with §§ 173.27,

173.63(b), 173.150, 173.151(b) and (c), 173.152, 173.153, 173.154, 173.155, 173.161, 173.165, 173.167, 173.306(i), and 173.309(b) of this subchapter. Division 4.3 substances must be prepared in accordance with paragraph (a)(3) of this section. Class 7 (radioactive) substances, instruments and articles are not authorized under the provisions of this section.

\* \* \* \* \*

■ 10. In § 173.22, paragraph (a)(4) is revised to read as follows:

**§ 173.22 Shipper's responsibility.**

(a) \* \* \*

(4)(i) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

(ii) For other than a bulk package or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (see § 178.2(c) of this subchapter). For a bulk package or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (see § 178.2(c) of this subchapter), unless permanently embossed or printed on the package. A copy of the manufacturer's notification, including closure instructions (see § 178.2(c) of this subchapter), unless permanently embossed or printed on the package when applicable, must be made available for inspection by a representative of the Department upon request for at least 90 days once the package is offered to the initial carrier for transportation in commerce. Subsequent offerors of a filed and otherwise properly prepared unaltered package are not required to maintain manufacturer notification (including closure instructions).

(iii) When applicable, a person must retain a copy of any supporting documentation used to determine an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. Such documentation is to be retained by the person certifying compliance with § 178.601(g)(1) as specified in § 178.601(l).

\* \* \* \* \*

■ 11. In § 173.25, paragraph (a)(6) is revised and paragraph (a)(7) is added to read as follows:

**§ 173.25 Authorized packagings and overpacks.**

(a) \* \* \*

(6) *Limited quantities and ORM material.* The overpack is marked with a limited quantity marking prescribed in § 172.315 of this subchapter or, the ORM marking prescribed in § 172.316 of this subchapter, unless a limited quantity or ORM marking representative of the hazardous material in the overpack is visible.

(7) *Excepted quantities.* The overpack is marked with the required marking of § 173.4a of this part unless visible.

\* \* \* \* \*

■ 12. In § 173.63, paragraph (b)(1)(ii) is revised to read as follows:

**§ 173.63 Packaging exceptions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Until December 31, 2012, a package containing such articles may be marked with the proper shipping name “Cartridges, small arms” or “Cartridges, power device (*used to project fastening devices*)” and reclassified as “ORM-D–AIR” material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010. Additionally, for transportation by aircraft, Cartridge, power devices must be successfully tested under the UN Test Series 6(d) criteria for reclassification as ORM-D–AIR material effective July 1, 2011. Until December 31, 2020, a package containing such articles may be marked with the proper shipping name “Cartridges, small arms” or “Cartridges, power device (*used to project fastening devices*)” and reclassified as “ORM-D” material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

\* \* \* \* \*

■ 13. Section 173.144 is revised to read as follows:

**§ 173.144 Other Regulated Material (ORM)—Definitions.**

Until December 31, 2020 and for the purposes of this subchapter, “ORM-D material” means a material such as a consumer commodity, cartridges, small arms or cartridges, power devices which, although otherwise subject to the regulations of this subchapter, presents a limited hazard during transportation due to its form, quantity and packaging. The article or substance must be a material for which exceptions are

provided in Column (8A) of the § 172.101 Hazardous Materials Table.

■ 14. In § 173.150, paragraph (c) is revised to read as follows:

**§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

\* \* \* \* \*

■ 15. In § 173.151, paragraphs (b) and (c) are revised to read as follows:

**§ 173.151 Exceptions for Class 4.**

\* \* \* \* \*

(b) *Limited quantities of Division 4.1.* Limited quantities of flammable solids (Division 4.1) in Packing Groups II and III and, where authorized by this section, charcoal briquettes (Division 4.2) in Packing Group III, are excepted from labeling requirements unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. If authorized for transportation by aircraft, the package must also conform to applicable requirements of § 173.27 of this part (e.g., authorized materials, inner packaging quantity limits and closure securement) and only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156 of this part. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Except for transportation by aircraft, the following combination packagings are authorized:

(1) For flammable solids in Packing Group II, inner packagings not over 1.0 kg (2.2 pounds) net capacity each, packed in a strong outer packaging.

(2) For flammable solids in Packing Group III, inner packagings not over 5.0 kg (11 pounds) net capacity each, packed in a strong outer packaging.

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package (including Charcoal briquettes (NA1361)) containing a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010. For transportation by aircraft, the maximum net mass for Charcoal briquettes (NA1361) is 25 kg per package.

\* \* \* \* \*

■ 16. In § 173.152, paragraph (c) is revised to read as follows:

**§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 17. In § 173.153, paragraph (c) is revised to read as follows:

**§ 173.153 Exceptions for Division 6.1 (poisonous material).**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package of poisonous material in Packing Group III or a drug or medicine in Packing Group II or III that is also a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 18. In § 173.154, paragraph (c) is revised to read as follows:

**§ 173.154 Exceptions for Class 8 (corrosive material).**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

\* \* \* \* \*

■ 19. In § 173.155, paragraph (c) is revised to read as follows:

**§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 20. Section 173.156 is revised to read as follows:

**§ 173.156 Exceptions for limited quantity and ORM.**

(a) Exceptions for hazardous materials shipments in the following paragraphs are permitted only if this section is referenced for the specific hazardous material in the § 172.101 Table or in a packaging section in this part.

(b) Packagings for limited quantity and ORM–D are specified according to hazard class in §§ 173.150 through 173.155, 173.306 and 173.309(b). In addition to exceptions provided for limited quantity and ORM–D materials elsewhere in this part, the following are provided:

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2020, materials classed and marked as ORM–D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when—

(i) Unitized in cages, carts, boxes or similar overpacks;

(ii) Offered for transportation or transported by:

(A) Rail;

(B) Private or contract motor carrier;

or

(C) Common carrier in a vehicle under exclusive use for such service; and

(iii) Transported to or from a manufacturer, a distribution center, or a retail outlet, or transported to a disposal facility from one offeror.

(2) The 30 kg (66 pounds) gross weight limitation does not apply to packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2020, materials classed and marked as ORM-D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when offered for transportation or transported by highway or rail between a manufacturer, a distribution center, and a retail outlet provided—

(i) Inner packagings conform to the quantity limits for inner packagings specified in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306 (a) and (b), and 173.309(b), as appropriate;

(ii) The inner packagings are packed into corrugated fiberboard trays to prevent them from moving freely;

(iii) The trays are placed in a fiberboard box which is banded and secured to a wooden pallet by metal, fabric, or plastic straps, to form a single palletized unit;

(iv) The package conforms to the general packaging requirements of subpart B of this part;

(v) The maximum net quantity of hazardous material permitted on one palletized unit is 250 kg (550 pounds); and

(vi) The package is properly marked in accordance with § 172.315 or, until December 31, 2020, § 172.316 of this subchapter.

■ 21. In § 173.161, paragraph (d)(2) is revised to read as follows:

**§ 173.161 Chemical kits and first aid kits.**

\* \* \* \* \*

(d) \* \* \*

(2) Consumer commodities. Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter may be renamed “Consumer commodity” and reclassified as ORM-D or, until December 31, 2012, as ORM-D-AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

\* \* \* \* \*

■ 22. In § 173.165, paragraph (c) is revised to read as follows:

**§ 173.165 Polyester resin kits.**

\* \* \* \* \*

(c) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter may be renamed “Consumer commodity” and reclassified as ORM-D or, until December 31, 2012, as ORM-D-AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

■ 23. Section 173.167 is revised to read as follows:

**§ 173.167 Consumer commodities.**

(a) Effective January 1, 2013, a “consumer commodity” (see § 171.8 of this subchapter) when offered for transportation by aircraft may only include articles or substances of Class 2 (non-toxic aerosols only), Class 3 (Packing Group II and III only), Division 6.1 (Packing Group III only), UN3077, UN3082, UN3175, UN3334, and UN3335, provided such materials do not have a subsidiary risk and are authorized aboard a passenger-carrying aircraft. Consumer commodities are excepted from the specification outer packaging requirements of this subchapter. Packages prepared under the requirements of this section are excepted from labeling and shipping papers when transported by highway or rail. Except for § 173.27(f)(2), packages prepared under the requirements of this section are not subject to Subpart B of this part. Additionally, packages prepared under the requirements of this section may be offered for transportation and transported by all modes. As applicable, the following apply:

(1) *Inner and outer packaging quantity limits.* (i) Non-toxic aerosols, as defined in § 171.8 of this subchapter and constructed in accordance with § 173.306 of this part, in non-refillable, non-metal containers not exceeding 120 mL (4 fluid ounces) each, or in non-refillable metal containers not exceeding 820 mL (28 ounces) each, except that flammable aerosols may not exceed 500 mL (16.9 ounces) each;

(ii) Liquids, in inner packagings not exceeding 500 mL (16.9 ounces) each. Liquids must not completely fill an inner packaging at 55 °C;

(iii) Solids, in inner packagings not exceeding 500 g (1.0 pounds) each; or

(iv) Any combination thereof not to exceed 30 kg (66 pounds) gross weight as prepared for shipment.

(2) *Closures.* Friction-type closures must be secured by positive means. The body and closure of any packaging must be constructed so as to be able to

adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. The closure device must be so designed that it is unlikely that it can be incorrectly or incompletely closed.

(3) *Absorbent material.* Inner packagings must be tightly packaged in strong outer packagings. Absorbent and cushioning material must not react dangerously with the contents of inner packagings. Glass or earthenware inner packagings containing liquids of Class 3 or Division 6.1, sufficient absorbent material must be provided to absorb the entire contents of the largest inner packaging contained in the outer packaging. Absorbent material is not required if the glass or earthenware inner packagings are sufficiently protected as packaged for transport that it is unlikely a failure would occur and, if a failure did occur, that it would be unlikely that the contents would leak from the outer packaging.

(4) *Drop test capability.* Breakable inner packagings (e.g., glass, earthenware, or brittle plastic) must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities as prepared for transport must be capable of withstanding a 1.2 m drop on solid concrete in the position most likely to cause damage.

(5) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(b) When offered for transportation by aircraft:

(1) Packages prepared under the requirements of this section are to be marked as a limited quantity in accordance with § 172.315(b)(1) and labeled as a Class 9 article or substance, as appropriate, in accordance with subpart E of part 172 of this subchapter; and

(2) *Pressure differential capability:* Except for UN3082, inner packagings intended to contain liquids must be capable of meeting the pressure differential requirements (75 kPa) prescribed in § 173.27(c) of this part. The capability of a packaging to withstand an internal pressure without leakage that produces the specified pressure differential should be determined by successfully testing design samples or prototypes.

■ 24. In § 173.230, paragraph (h) is revised to read as follows:

**§ 173.230 Fuel cell cartridges containing hazardous material.**

\* \* \* \* \*

(h) *Consumer commodities.* Until December 31, 2020, for other than transportation by aircraft, a limited quantity that conforms to the provisions of paragraph (g) of this section and is also a “consumer commodity” as defined in § 171.8 of this subchapter, may be renamed “Consumer commodity” and reclassified as ORM–D. In addition to the exceptions provided by paragraph (g) of this section, shipments of ORM–D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the materials meet the definition of a hazardous substance, hazardous waste, marine pollutant, or are offered for transportation by aircraft, and are eligible for the exceptions provided in § 173.156 of this part.

\* \* \* \* \*

■ 25. In § 173.306, paragraph (i)(2) is revised to read as follows:

**§ 173.306 Limited quantities of compressed gases.**

\* \* \* \* \*

(i) \* \* \*

(2) *Consumer commodities.* Until December 31, 2020, a limited quantity package containing a “consumer commodity” as defined in § 171.8 of this subchapter may be renamed “Consumer commodity” and reclassified as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

\* \* \* \* \*

■ 26. Section 173.309 is revised to read as follows:

**§ 173.309 Fire extinguishers.**

(a) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for manufacture and use as fire extinguishers under the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, non-corrosive, and commercially free from corroding components;

(2) Each fire extinguisher must be charged with a nonflammable, non-poisonous, dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of

corroding components, to not more than the service pressure of the cylinder;

(3) A fire extinguisher may not contain more than 30% carbon dioxide by volume or any other corrosive extinguishing agent; and

(4) Each fire extinguisher must be protected externally by suitable corrosion-resisting coating.

(5) Specification 3E and 4BA 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.

(b) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner non-refillable metal packagings are authorized as fire extinguishers subject to the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-corrosive as defined in this subchapter;

(2) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55 °C (130 °F);

(3) Pressure in the packaging must not exceed 1250 kPa (181 psig) at 55 °C (130 °F). If the pressure exceeds 920 kPa (141 psig) at 55 °C (130 °F), but does not exceed 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55 °C (130 °F);

(4) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55 °C (130 °F) without evidence of leakage, distortion, or other defect; and

(5) Specification 2P and 2Q 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.

(c) Non-specification cylinders are authorized as fire extinguishers subject to the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-corrosive as defined in this subchapter;

(2) The internal volume of each cylinder may not exceed 18 L (1,100 cubic inches). For fire extinguishers not exceeding 900 mL (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must

not completely fill the container at 55 °C (130 °F). Fire extinguishers exceeding 900 mL (55 cubic inches) capacity may not contain any liquefied compressed gas;

(3) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21 °C (70 °F) when shipped;

(4) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21 °C (70 °F) but not less than 825 kPa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and with the words “MEETS DOT REQUIREMENTS.” This marking is considered a certification that the fire extinguisher is manufactured in accordance with the requirements of this section. The words “This extinguisher meets all requirements of 49 CFR 173.306” may be displayed on fire extinguishers manufactured prior to January 1, 1976;

(5) Each non-specification fire extinguisher must be packaged as an inner packaging within a combination outer packaging. Examples of acceptable outer packagings for non-specification fire extinguishers include large cartons, racks, cages or other suitable enclosures; and

(6) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157.

(d) *Limited quantities:* Fire extinguishers otherwise conforming to paragraph (a), (b), or (c) of this section and are charged with a limited quantity of compressed gas to not more than 1660 kPa (241 psig) at 21 °C (70 °F) are excepted from shipping papers (except when offered for transportation by aircraft or vessel), labeling (except when offered for transportation by aircraft), placarding, the specification packaging requirements of this subchapter, and are eligible for the exceptions provided in § 173.156 when offered for transportation in accordance with this paragraph (d). Limited quantity shipments conforming to this paragraph are not subject to parts 174 and 177 of this subchapter when transported by highway or rail. In addition, limited quantity packages of fire extinguishers are subject to the following conditions, as applicable:

(1) Extinguishing agents must be nonflammable, non-poisonous, and non-

corrosive as defined in this subchapter; and

(2) Packages must be marked as specified for limited quantities in § 172.315 of this subchapter.

#### **PART 175—CARRIAGE BY AIRCRAFT**

■ 27. The authority citation for part 175 continues to read as follows:

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

■ 28. In § 175.10, paragraph (a)(17) is revised to read as follows:

##### **§ 175.10 Exceptions for passengers, crewmembers, and air operators.**

(a) \* \* \*

(17) A wheelchair or other mobility aid equipped with a lithium ion battery, when carried as checked baggage, provided—

(i) The lithium ion battery must be of a type that successfully passed each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter), as specified in § 173.185 of this subchapter, unless approved by the Associate Administrator;

(ii) The operator must verify that:

(A) Visual inspection of the wheelchair or other mobility aid reveals no obvious defects;

(B) Battery terminals are protected from short circuits (e.g., enclosed within a battery housing);

(C) The battery must be securely attached to the mobility aid; and

(D) Electrical circuits are isolated;

(iii) The wheelchair or other mobility aid must be loaded and stowed in such a manner to prevent its unintentional activation and its battery must be protected from short circuiting;

(iv) The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo;

(v) Where a lithium ion battery-powered wheelchair or other mobility aid is specifically designed to allow its battery to be removed by the user (e.g., collapsible):

(A) The battery must be removed from the wheelchair or other mobility aid according to instructions provided by the wheelchair or other mobility aid owner or its manufacturer;

(B) The battery must be carried in carry-on baggage only;

(C) Battery terminals must be protected from short circuits (by placement in original retail packaging or otherwise insulating the terminal e.g. by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch);

(D) The battery must not exceed 25 grams aggregate equivalent lithium content; and

(E) A maximum of one spare battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried;

(vi) The pilot-in-command is advised either orally or in writing, prior to departure, as to the location of the lithium ion battery or batteries aboard the aircraft.

\* \* \* \* \*

■ 29. In § 175.25, paragraphs (b) and (c)(1) are revised to read as follows:

##### **§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.**

\* \* \* \* \*

(b) *Ticket purchase.* An aircraft operator must ensure that information on the types of hazardous materials specified in paragraph (a) of this section a passenger is permitted and forbidden to transport aboard an aircraft is provided at the point of ticket purchase. During the purchase process, regardless if the process is completed remotely (e.g., via the Internet or phone) or when completed at the airport, with or without assistance from another person (e.g., automated check-in facility), the aircraft operator must ensure that information on the types of hazardous materials a passenger is forbidden to transport aboard an aircraft is provided to passengers. Information may be in text or in pictorial form and, effective January 1, 2015, must be such that the final ticket purchase cannot be completed until the passenger or a person acting on the passenger's behalf has indicated that it understands the restrictions on hazardous materials in baggage.

(c) \* \* \*

(1) Effective January 1, 2015, when the flight check-in process is conducted remotely (e.g., via the Internet or phone) or when completed at the airport, without assistance from another person (e.g., automated check-in kiosk), the aircraft operator must ensure that information on the types of hazardous materials a passenger is forbidden to transport aboard an aircraft is provided to passengers. Information may be in text or in pictorial form and should be such that the check in process cannot be completed until the passenger or a person acting on the passenger's behalf has indicated that it understands the restrictions on hazardous materials in baggage.

\* \* \* \* \*

#### **PART 176—CARRIAGE BY VESSEL**

■ 30. The authority citation for part 176 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 31. In § 176.905, paragraph (i) is revised to read as follows:

##### **§ 176.905 Stowage of motor vehicles or mechanical equipment.**

\* \* \* \* \*

(i) Exceptions—A vehicle or mechanical equipment is excepted from the requirements of this subchapter if any of the following are met:

(1) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint less than 38 °C (100 °F), the fuel tank is empty, and the engine is run until it stalls for lack of fuel;

(2) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint of 38 °C (100 °F) or higher, the fuel tank contains 418 L (110 gallons) of fuel or less, and there are no fuel leaks in any portion of the fuel system;

(3) The vehicle or mechanical equipment is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles and mechanical equipment and there are no signs of leakage from the battery, engine, fuel cell, compressed gas cylinder or accumulator, or fuel tank, as appropriate. For vehicles with batteries connected and fuel tanks containing gasoline transported by U.S. vessels, see 46 CFR 70.10–1 and 90.10–38;

(3) The vehicle or mechanical equipment is electrically powered solely by wet electric storage batteries (including nonspillable batteries) or sodium batteries; or

(4) The vehicle or mechanical equipment is equipped with liquefied petroleum gas or other compressed gas fuel tanks, the tanks are completely emptied of liquefied or compressed gas and the positive pressure in the tank does not exceed 2 bar (29 psig), the line from the fuel tank to the regulator and the regulator itself is drained of all traces of liquefied or compressed gas, and the fuel shut-off valve is closed.

\* \* \* \* \*

#### **PART 178—SPECIFICATIONS FOR PACKAGINGS**

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

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 33. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

§ 178.2 Applicability and responsibility.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Retain copies of each written notification for at least one year from date of issuance; and

\* \* \* \* \*

■ 34. In § 178.601, paragraph (c)(4)(v) is revised to read as follows:

§ 178.601 General requirements.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(v) Packagings which differ from the design type only in their lesser design height; or

\* \* \* \* \*

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Cynthia Quarterman,  
Administrator.

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