

Translator and Low Power FM 100 Watt Interference.” As acknowledged by NJBA, materials in both its Petition and its Comments relate to the LPFM and FM translator services. On March 19, 2012, the Commission released a Fifth Report and Order and Fourth Further Notice of Proposed Rulemaking in MM Docket No. 99–25, published at 77 FR 20756, April 6, 2012, a proceeding that relates specifically to those services. Given the common subject matter, the materials in the proceeding that the NJBA seeks to keep open are applicable to and may be filed again in ongoing MM Docket No. 99–25. For this reason, CGB denies NJBA’s request to keep RM–11099 open.

4. The UCC requests that the Commission keep open MB Docket No. 05–6. Although the *Termination Public Notice* proposed closing this proceeding, based upon both the UCC’s comments and CGB’s additional evaluation, we find that further action in the proceeding, which proposes modification of the Commission’s rules to make more clear broadcasters’ public notice of the proposed sale of their stations, may be required. Accordingly, CGB will not terminate the proceeding at this time.

5. As a final matter, although the *Termination Public Notice* proposed closing Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets (MB Docket No. 04–256) and 1998 Biennial Regulatory Review—Review of Accounts Settlement in the Maritime Mobile and Mobile-Satellite Radio Services (IB Docket No. 98–96), upon further sua sponte evaluation, CGB finds that further action may also be necessary in these docketed proceedings. Accordingly, CGB will not terminate these proceedings at this time. In addition, the Media Bureau has concluded that the termination of the proceeding Retention by Broadcasters of Program Recordings (MB Docket No. 04–232) will not affect the Commission’s authority to initiate enforcement actions, as it deems appropriate, and accordingly CGB terminates that proceeding as dormant.

#### Regulatory Flexibility Act

6. The Commission’s action does not require notice and comment and is not subject to the Regulatory Flexibility Act of 1980, as amended. See 5 U.S.C. 601(2), 603(a). The Commission nonetheless notes that it anticipates that the rules adopted will not have a significant economic impact on a substantial number of small entities. As described above, the Commission primarily changes its own internal

procedures and organizations and does not impose substantive new responsibilities on regulated entities. There is no reason to believe termination of certain dormant proceedings would impose significant costs on parties to Commission proceedings. To the contrary, the Commission takes the actions herein with the expectation that overall they will make dealings with the Commission quicker, easier, and less costly for entities of all size.

#### Congressional Review Act

The Commission will not send a copy of document DA 12–1545 pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the Commission is not adopting, amending, revising, or deleting any rules.

#### Ordering Clauses

Pursuant to sections 1, 4(i), and 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and (j) and § 0.141 of the Commission rules, the proceedings listed in the Attachment to DA 12–1545, which can be downloaded in Word or Portable Document Format (PDF) at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1545A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1545A1.doc) or [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1545A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1545A1.pdf), are terminated.

Federal Communications Commission.

**Kris Anne Monteith,**

*Acting Chief, Consumer and Governmental Affairs Bureau.*

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**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**49 CFR Parts 107, 171, 172, 173, 175, 178, and 179**

**RIN 2137–AE90**

**[Docket No. PHMSA–2012–0080 (HM–244E)]**

#### Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR)

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

**ACTION:** Final rule.

**SUMMARY:** This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the

accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

**DATES:** *Effective:* October 5, 2012.

*Incorporation by reference date:* The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register as of September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Standards and Rulemaking Division, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section-by-Section Review
- III. Regulatory Analyses and Notices
  - A. Statutory/Legal Authority for the Rulemaking
  - B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
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  - G. Unfunded Mandates Reform Act
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  - J. Regulation Identifier Number (RIN)
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#### I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to identify typographical errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors, incorrect Code of Federal Regulations (CFR) references and citations, inconsistent use of terminology, misstatements of certain regulatory requirements, and inadvertent omissions of information. Because these amendments do not impose new requirements, notice and public comment are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next published revision of the 49 CFR.

#### II. Section-by-Section Review

The following is a section-by-section summary of the minor editorial corrections and clarifications made in this final rule.

##### Part 107

##### Section 107.202

This section describes the standards in 49 U.S.C. 5125 for determining

preemption of a State, local, or Indian tribe requirement applicable to the transportation of hazardous material. Paragraph 5125(b)(1)(D) was recently amended in the "Moving Ahead for Progress in the 21st Century" (MAP-21) Act (Pub. L. 112-141 § 33006(d), 126 Stat. 835, July 6, 2012) which added the words "other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident." Because this additional language simply sets forth the wording of the Federal hazardous material transportation law, it is considered an editorial change.

#### Part 171

##### Section 171.7

Section 171.7, paragraph (a), lists materials incorporated by reference into the HMR. In paragraph (a)(3), the tensile strength of "1100" MPa for the entries "ISO 9809-1," and "ISO 9809-2," has an unnecessary space and reads "1 100." We are removing this additional space in this final rule.

##### Section 171.8

Section 171.8 provides definitions and abbreviations used throughout the HMR. We are making two revisions to this section.

The spelling of the entry for "Containership" is amended by revising the word to read "Container ship." Although both spellings are correct, we are revising the spelling for consistency throughout the HMR, which should aid in HMR searches. This is an editorial change that does not impact any statements, shipping papers, et cetera.

The last sentence of the definition for "Hazardous material" reads in part, "and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter." For clarification and consistency with other sections in the HMR, we are revising the sentence to read "and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter."

#### Part 172

##### Section 172.101

This section contains the Hazardous Materials Table (HMT) and explanatory text for each of the columns in the HMT. A final rule published on January 19, 2011 [76 FR 3308] under Docket PHMSA 2009-0126 (HM-215K) entitled "Hazardous Materials: Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and

the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air," revised the § 172.101(c)(10)(i) instruction for the proper shipping name description of a mixture or a solution of a single predominant hazardous material under certain conditions. Currently, § 172.101(c)(10)(ii) states that if one or more of the conditions in § 172.101(c)(10)(i) is satisfied, a proper shipping name shall be selected as prescribed in § 172.101(c)(12)(ii). For clarification, in this final rule, we are correcting the citation so that the sentence reads "that if one or more of the conditions in § 172.101(c)(10)(i)(A) through(F) is satisfied, the proper shipping name selection process in § 172.101(c)(12)(ii) must be used."

##### Section 172.101 The Hazardous Materials Table

In the HMT, Special Provision B37 is erroneously applied to Column (7) for the Packing Group I entry of "Cyanide solutions, n.o.s.," UN1935. Special Provision B37 once applied to "Nitric oxide, compressed," but does not address or apply to cyanide solutions. Therefore, in this final rule, Special Provision B37 is being removed from Column (7) of the HMT for "Cyanide solutions, n.o.s.," UN1935. (Also, see § 172.102.)

In a final rule published on March 5, 1999 [64 FR 10742] under Docket Number RSPA-98-4185 (HM-215C) entitled "Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions," a plus (+) sign was added to Column (1) of the HMT for the entry "Aminophenols (*o*-; *m*-; *p*-)," UN2512. During the printing process, the isomers were inadvertently changed from Italic font to Roman font. In this final rule, we are correcting the font to Italic. Words in italics are not part of the proper shipping name, but may be used in addition to the proper shipping name.

##### Section 172.102

This section prescribes the special provisions assigned to § 172.101 HMT entries. Special provisions with a "B" code apply to bulk packagings. Special provisions with an "N" code apply to non-bulk packagings. Aside from the entry "Cyanide solutions, n.o.s.," UN1935, the Special Provisions B37, B50, B60, and N72 are not assigned to any entries in the HMT and are being removed from § 172.102 in this final rule. In addition, Special Provision B37 is being removed from the entry,

"Cyanide solutions, n.o.s.," UN1935 (see preamble discussion under "§ 172.101, The Hazardous Materials Table"). For background information on the "B" and "N" codes being removed, the following is provided:

- Special Provision B37 required that the amount of nitric oxide charged into any tank car tank not exceed 1,379 kPa (200 psig) at 21 °C (70 °F).

- Special Provision B50 required that, when transported in a multi-unit tank car tank, each valve outlet of a multi-unit tank car tank was to be sealed by a threaded solid plug or a threaded cap with inert luting or gasket material. Valves were to be stainless steel and the caps, plugs, and valve seats were to be of a material that would not deteriorate as a result of contact with the lading.

- Special Provision B60 authorized certain entries in the HMT to be transported in DOT Specification 106A500X multi-unit tank car tanks that were not equipped with a pressure relief device of any type. For the transportation of phosgene, the outage was required to be sufficient to prevent tanks from becoming liquid full at 55 °C (130 °F).

- Special Provision N72 required that packagings used to transport the material for certain entries in the HMT were to be examined by the Bureau of Explosives and approved by the Associate Administrator.

##### Section 172.204

This section prescribes requirements for the shipper's certification. In paragraph (a)(2), the spelling of the word "labelled" is revised to read "labeled." Although both spellings are correct, we are revising this spelling for consistency throughout the HMR. It should be noted that this is merely an editorial change and does not invalidate certification statements that have the "labelled" spelling.

##### Section 172.514

This section prescribes the placarding requirements for a bulk packaging containing a hazardous material as specified for the material in §§ 172.504 and 172.505. In paragraph (c)(4), as amended under a final rule published on July 20, 2011 [76 FR 43510] under Docket PHMSA-2009-0151 (HM-218F) entitled "Hazardous Materials: Miscellaneous Amendments," we are correcting two errors that occurred during the printing process of this section. In this final rule, we are adding the wording "white square-on-point" for consistency with the identification number marking requirements under § 172.332, and making an editorial and punctuation correction at the end of the

sentence to return the paragraph (c) exceptions to an “and” clause. Prior to the July 20, 2011 rulemaking, if any of the five conditions specified in paragraph (c) were satisfied, the labeling alternative to placarding was authorized. Changes under HM–218F made this less clear.

#### Part 173

##### Section 173.12

This section prescribes the exceptions for the shipment of waste materials. In paragraphs (b)(2)(ii)(B) and (b)(2)(ii)(C), the unit conversions of 3 mils and 6 mils to inches is corrected in this final rule from “0.12 inches” and “0.24 inches” to read “0.003 inches” and “0.006 inches,” respectively.

##### Section 173.35

This section prescribes the requirements for hazardous materials in intermediate bulk containers (IBCs). Paragraph (h)(2) was revised in a final rule published on February 2, 2010 [75 FR 5376] under Docket PHMSA–06–25736 (HM–231) entitled “Hazardous Materials; Miscellaneous Packaging Amendments.” The revision in that rule corrected an error in the pressure limitation for metal IBC’s. During the printing process, paragraph (h) introductory text was inadvertently omitted and its intended subparagraphs were mistakenly added to paragraph (g). We are correcting these errors in this rulemaking. The subparagraphs mistakenly added to paragraph (g) are reinserted into paragraph (h) and paragraph (g) will again stand alone as intended and submitted to the **Federal Register**.

##### Section 173.134

This section prescribes the definitions and exceptions for Class 6, Division 6.2 hazardous materials. In § 173.134, the last paragraph addressing transitional provisions was inadvertently alphanumerically numbered with a “(c),” which mistakenly duplicates another alphanumeric number in this section. This oversight is corrected in this final rule by renumbering the paragraph as “(e).” We will remove this paragraph in a future rulemaking. However, until that time, it will remain in the HMR as an informational paragraph to state that the authorization for the continued use of the criteria for packing group assignments in effect on December 31, 2006 ended on January 1, 2012.

##### Section 173.159a

This section prescribes the exceptions for non-spillable batteries. In this final rule, we are clarifying the introductory

text for § 173.159a(c) that the exception from the packaging requirements in § 173.159 does not include an exception from the vibration and pressure differential tests in § 173.159(f) for determination of a wet battery as non-spillable. Specifically, we are revising the wording to read “non-spillable batteries, as determined in accordance with § 173.159(f) of this subpart, are excepted from the packaging requirements of § 173.159 under the following conditions:”

##### Section 173.319

This section prescribes the requirements for cryogenic liquids in tank cars. We are revising paragraph (a)(3) to update the email address and telephone number for the shipper to contact the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment.

##### Section 174.435

This section contains the table of A<sub>1</sub> and A<sub>2</sub> values for radionuclides. The entry for “Sm–147” contains a printing error. In the seventh column for specific activity in TBq/g, the value is missing a “0” in the exponent. We are correcting “8.5 × 10<sup>–1</sup>” to read “8.5 × 10<sup>–10</sup>.”

#### Part 175

##### Section 175.702

This section specifies the separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft. In the first column of the § 175.702(a)(2)(ii) table heading, a typographical error is corrected by revising “of predesignated area” to read “or predesignated area.”

#### Part 178

##### Section 178.46

This section prescribes requirements for Specification 3AL seamless aluminum cylinders. Paragraph (k) addresses the duties of the inspector. In § 178.46(k)(2), the reference to performance or verification of ultrasonic inspection requirements is corrected from paragraph “(c)” to read “(b)(5).”

##### Section 178.70

This section specifies procedures for the approval of United Nations (UN) pressure receptacles. In paragraph (e)(5), we are revising the incorrect reference to “§ 178.72” to correctly read “§ 178.71.”

##### Section 178.71

This section prescribes specifications for United Nations (UN) pressure receptacles. In paragraphs (g)(1), (g)(2) and (k)(1)(i), the reference to the tensile strength of “1100” has an unnecessary space and incorrectly reads “1 100.” In this final rule, we are removing this additional space.

##### Section 178.75

This section prescribes specifications for Multiple Element Gas Containers (MEGCs). In paragraphs (d)(3)(i) and (d)(3)(ii), the reference to the tensile strength of “1100” has an unnecessary space and incorrectly reads “1 100.” In this final rule, we are removing this additional space.

##### Section 178.503

This section prescribes requirements for the marking of non-bulk performance-oriented packagings. Paragraph (e)(1) was revised under a final rule published on February 2, 2010 [75 FR 5376] under Docket PHMSA–06–25736 (HM–231) and again under a final rule published on September 30, 2010 [75 FR 60333] under Docket PHMSA–06–25736 (HM–231) both entitled “Hazardous Materials; Miscellaneous Packaging Amendments.” The revisions in these rules provided detailed requirements for the marking of the United Nations symbol on performance-oriented packaging. During the printing process, paragraph (d) was mistakenly printed with the subparagraphs intended for paragraph (e), and the introductory text for paragraph (e) was omitted altogether. The result was that this section skipped from paragraph (d) directly to paragraph (f). Under this final rule, we are revising the paragraphs with the correct numbering as intended and submitted to the **Federal Register**. Specifically, paragraph (d) is a stand-alone paragraph without the subparagraphs intended for paragraph (e). The paragraph (e) introductory text is reinserted, and the subparagraphs mistakenly printed under paragraph (d) are relocated to their correct position as subparagraphs to paragraph (e).

##### Section 178.601

This section prescribes the general requirements for the testing of non-bulk packagings and packages. The term “different packaging” is defined in paragraph (c)(4). Paragraph (c)(4)(v) of the definition excludes packagings which differ only in a lesser design height from the category of a “different packaging.” For purposes of clarification, we are revising the paragraph to link the exclusion to the

authorized packaging variations that allow a packaging to be manufactured at a lesser design height by adding a reference to the variations in paragraph (g)(3) for single packaging, and to (g)(4) for combination packaging.

#### Part 179

##### Appendix B to Part 179

Appendix B to Part 179 prescribes procedures for simulated pool and torch-fire testing. Paragraphs 2.a.(1) and 3.a.(1) are revised by correcting an erroneous mathematical calculation. This correction should improve compliance by clarifying the conversion factors.

### III. Regulatory Analyses and Notices

#### A. Statutory Authority

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to remove unnecessary cross references to the HMT, correct grammatical and typographical errors, and, in response to requests for clarification, improve the clarity of certain provisions in the HMT.

#### 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 rule is not significant 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 does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

#### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states,

the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on state and local governments. PHMSA is not aware of any state, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

This final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

#### F. Executive Order 13563 Improving Regulation and Regulatory Review

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded,

ineffective, insufficient, or excessively burdensome.

A complete review of the existing HMR led to the identification of various minor errors in the HMR. The errors identified have no effect on the intent or meaning of the regulations. The correction of these errors will clarify current text while maintaining the intent of the regulations affected. This final rule is designed to address those errors by making non-substantive changes to the HMR such as editorial changes, spelling corrections, removal of transitional requirements that are no longer applicable and formatting modifications. This final rule corrects these errors but does not require the application of Executive Order 13563. The final rule does however clarify the regulatory text thus improving the regulations.

#### G. Unfunded Mandates Reform Act of 1995

This 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 objectives of the rule.

#### H. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

#### I. Environmental Impact Analysis

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements. Therefore, PHMSA has determined that the implementation of this final rule will not have any significant impact on the quality of the human environment.

**J. Regulation Identifier Number (RIN)**

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**K. Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477-78), or at <http://www.regulations.gov>.

**List of Subjects**

**49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

**49 CFR Part 171**

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

**49 CFR Part 172**

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

**49 CFR Part 173**

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

**49 CFR Part 175**

Hazardous materials transportation, 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.

**49 CFR Part 179**

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

■ 1. The authority citation for part 107 is revised to read as follows:

**Authority:** 49 U.S.C. 5101-5128, 44701; Pub. L. 101-410 section 4 (28 U.S.C. 2461

note), Pub. L. 104-121 sections 212-213; Pub. L. 104-134 section 31001; Pub. L. 112-141 section 33006; 49 CFR 1.45 and 1.53.

■ 2. In § 107.202, paragraph (a)(4) is revised to read as follows:

**§ 107.202 Standards for determining preemption.**

(a) \* \* \*

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident.

\* \* \* \* \*

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

■ 3. 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.

■ 4. In § 171.7, in the paragraph (a)(3) Table of material incorporated by reference, in the first column, for the entries "ISO 9809-1" and "ISO 9809-2," the source and name of material is revised to read as follows:

**§ 171.7 Reference material.**

(a) \* \* \*

(3) \* \* \*

Source and name of material

49 CFR reference

*	*	*	*	*	*	*
ISO 9809-1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., First edition, June 1999, (E)						
ISO 9809-2: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., First edition, June 2000, (E)						
*	*	*	*	*	*	*

\* \* \* \* \*

■ 5. Section 171.8 is revised as follows:

■ a. The term "Containership" is removed and "Container ship" is added in its place; and

■ b. The definition of "Hazardous material" is revised.

The revisions read as follows:

**§ 171.8 Definitions and abbreviations.**

\* \* \* \* \*

*Container ship* \* \* \*

\* \* \* \* \*

*Hazardous material* means a substance or material that the Secretary of Transportation has determined is

capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

\* \* \* \* \*

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

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

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

■ 7. In § 172.101, paragraph (c)(10)(ii) is revised to read as follows:

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

\* \* \* \* \*  
(c) \* \* \*  
(10) \* \* \*

(ii) If one or more of the conditions in paragraphs (c)(10)(i)(A) through (F) of this section is satisfied then the proper shipping name selection process in (c)(12)(ii) must be used.

\* \* \* \* \*

■ 8. In § 172.101, in the Hazardous Materials Table, the following entries are revised to read as follows:

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

\* \* \* \* \*



\* \* \* \* \*

§ 172.102 [Amended]

- 9. Amend § 172.102 as follows:
  - a. In paragraph (c)(3), Special Provisions B37, B50 and B60 are removed.
  - b. In paragraph (c)(5), Special Provision N72 is removed.

§ 172.204 [Amended]

- 10. In § 172.204, in paragraph (a)(2), the wording “labelled/placarded” is revised to read “labeled/placarded”.
- 11. In § 172.514, paragraph (c)(4) is revised to read as follows:

§ 172.514 Bulk packagings.

\* \* \* \* \*

(c) \* \* \*

(4) An IBC. For an IBC labeled in accordance with subpart E of this part instead of placarded, the IBC may display the proper shipping name and UN identification number in accordance with the size requirements of § 172.302(b)(2) in place of the UN number on an orange panel, placard or white square-on-point; and

\* \* \* \* \*

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

- 12. 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.

- 13. In § 173.12, paragraphs (b)(2)(ii)(B) and (C) are revised to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

(B) At a minimum, a double-walled UN 4G fiberboard box made out of 500 pound burst-strength fiberboard fitted with a polyethylene liner at least 3 mils (0.003 inches) thick and when filled during testing to 95 percent capacity with a solid material, successfully passes the tests prescribed in §§ 178.603 (drop) and 178.606 (stacking), and is capable of passing the tests prescribed in § 178.608 (vibration) to at least the Packing Group II performance level for liquids or solids; or

(C) A UN 11G fiberboard intermediate bulk container (IBC) or a UN 11HH2

composite IBC, fitted with a polyethylene liner at least 6 mils (0.006 inches) thick, that successfully passes the tests prescribed in Subpart O of Part 178 and § 178.603 to at least the Packing Group II performance level for liquids or solids; a UN 11HH2 is composed of multiple layers of encapsulated corrugated fiberboard between inner and outer layers of woven coated polypropylene.

\* \* \* \* \*

- 14. In § 173.35, paragraphs (g) and (h) are revised to read as follows:

§ 173.35 Hazardous materials in IBCs.

\* \* \* \* \*

(g) Each IBC used for transportation of solids which may become liquid at temperatures likely to be encountered during transportation must also be capable of containing the substance in the liquid state.

(h) Liquid hazardous materials may only be offered for transportation in a metal, rigid plastic, or composite IBC that is appropriately resistant to an increase in internal pressure likely to develop during transportation.

(1) A rigid plastic or composite IBC may only be filled with a liquid having a vapor pressure less than or equal to the greater of the following two values: The first value is determined from any of the methods in paragraphs (h)(1)(i), (ii) or (iii) of this section. The second value is determined by the method in paragraph (h)(1)(iv) of this section.

(i) The gauge pressure (pressure in the IBC above ambient atmospheric pressure) measured in the IBC at 55 °C (131 °F). This gauge pressure must not exceed two-thirds of the marked test pressure and must be determined after the IBC was filled and closed at 15 °C (60 °F) to less than or equal to 98 percent of its capacity.

(ii) The absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) in the IBC at 50 °C (122 °F). This absolute pressure must not exceed four-sevenths of the sum of the marked test pressure and 100 kPa (14.5 psia).

(iii) The absolute pressure (vapor pressure of the hazardous material plus atmospheric pressure) in the IBC at 55 °C (131 °F). This absolute pressure must not exceed two-thirds of the sum of the marked test pressure and 100 kPa (14.5 psia).

(iv) Twice the static pressure of the substance, measured at the bottom of

the IBC. This value must not be less than twice the static pressure of water.

(2) Liquids having a vapor pressure greater than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F) may not be transported in metal IBCs.

\* \* \* \* \*

- 15. In § 173.134, in the last paragraph, the second alphanumerical number (c) for transitional provisions, is renumbered to (e) and revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

\* \* \* \* \*

(e) Transitional provisions. The authorization for continued use of the criteria for packing group assignments in effect on December 31, 2006 ended on January 1, 2012.

- 16. In § 173.159a, paragraph (c) introductory text is revised to read as follows:

§ 173.159a Exceptions for non-spillable batteries.

\* \* \* \* \*

(c) Non-spillable batteries, as determined in accordance with § 173.159(f) of this subpart, are excepted from the packaging requirements of § 173.159 under the following conditions:

\* \* \* \* \*

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

§ 173.319 Cryogenic liquids in tank cars.

(a) \* \* \*

(3) The shipper must notify the Federal Railroad Administration whenever a tank car containing any flammable cryogenic liquid is not received by the consignee within 20 days from the date of shipment. Notification to the Federal Railroad Administration may be made by email to [HMAssist@dot.gov](mailto:HMAssist@dot.gov) or telephone call to (202) 493–6245.

\* \* \* \* \*

- 18. In § 173.435, in the Table of A<sub>1</sub> and A<sub>2</sub> values for radionuclides, the entry “Sm-147” is revised to read as follows:

§ 173.435 Table of A<sub>1</sub> and A<sub>2</sub> values for radionuclides.

\* \* \* \* \*



Symbol of radionuclide	Element and atomic number	A <sub>1</sub> (TBq)	A <sub>1</sub> (Ci) <sup>b</sup>	A <sub>2</sub> (TBq)	A <sub>2</sub> (Ci) <sup>b</sup>	Specific activity	
						(TBq/g)	(Ci/g)
Sm-147 .....		Unlimited	Unlimited	Unlimited	Unlimited	8.5 × 10 <sup>-10</sup>	2.3 × 10 <sup>-8</sup>

**PART 175—CARRIAGE BY AIRCRAFT**

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

**Authority:** 49 U.S.C. 4101–51128; 44701; 49 CFR 1.45 and 1.53.

■ 20. In § 175.702, in paragraph (a)(2)(ii), the table heading is revised to read as follows:

**§ 175.702 Separation distance requirements for packages containing Class 7 (radioactive) materials in cargo aircraft.**

	Centimeters	Inches
(a)	*	*
(2)	*	*
(ii)	*	*

Transport index or sum of transport indexes of all packages in the aircraft or predesignated area	Minimum separation distances	
	Centimeters	Inches
*	*	*

**PART 178—SPECIFICATIONS FOR PACKAGINGS**

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

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

■ 22. In § 178.46, paragraph (k)(2) is revised to read as follows:

**§ 178.46 Specification 3AL seamless aluminum cylinders.**

\* \* \* \* \*

(k) \* \* \*

(2) The inspector must verify ultrasonic inspection of all material by inspection or by obtaining the material producer's certificate of ultrasonic inspection. Ultrasonic inspection must be performed or verified as having been performed in accordance with paragraph (b)(5) of this section.

\* \* \* \* \*

**§ 178.70 [Amended]**

■ 23. In § 178.70, in paragraph (e)(5), the reference “§ 178.72” is removed and the reference “§ 178.71” is added in its place.

■ 24. In § 178.71, paragraphs (g)(1), (g)(2) and (k)(1)(i) are revised to read as follows:

**§ 178.71 Specifications for UN pressure receptacles.**

\* \* \* \* \*

(g) \* \* \*

(1) ISO 9809–1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than

1100 MPa. (IBR, see § 171.7 of this subchapter).

(2) ISO 9809–2: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa. (IBR, see § 171.7 of this subchapter).

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(i) ISO 9809–1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa.

\* \* \* \* \*

■ 25. In § 178.75, paragraphs (d)(3)(i) and (d)(3)(ii) are revised to read as follows:

**§ 178.75 Specifications for MEGCs.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) ISO 9809–1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa. (IBR, see § 171.7 of this subchapter);

(ii) ISO 9809–2: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa. (IBR, see § 171.7 of this subchapter);

\* \* \* \* \*

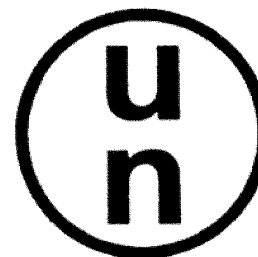
■ 26. In § 178.503, paragraphs (d) introductory text and (e) are revised to read as follows:

**§ 178.503 Marking of packagings.**

\* \* \* \* \*

(d) *Marking of remanufactured packagings.* For remanufactured metal drums, if there is no change to the packaging type and no replacement or removal of integral structural components, the required markings need not be permanent (e.g., embossed). Every other remanufactured drum must bear the marks required in paragraphs (a)(1) through (a)(6) of this section in a permanent form (e.g., embossed) on the top head or side. If the metal thickness marking required in paragraph (a)(9)(i) of this section does not appear on the bottom of the drum, or if it is no longer valid, the remanufacturer also must mark this information in permanent form.

(e) *The following are examples of symbols and required markings.* (1)(i) The United Nations symbol is:



(ii) The circle that surrounds the letters “u” and “n” may have small breaks provided the following provisions are met:

(A) The total gap space does not exceed 15 percent of the circumference of the circle;

(B) There are no more than four gaps in the circle;

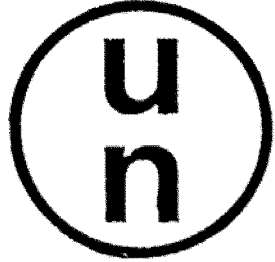
(C) The spacing between gaps is separated by no less than 20 percent of

the circumference of the circle (72 degrees); and

D) The letters "u" and "n" appear exactly as depicted in § 178.503(e)(1)(i) with no gaps.

(2) Examples of markings for a new packaging are as follows:

(i) For a fiberboard box designed to contain an inner packaging:

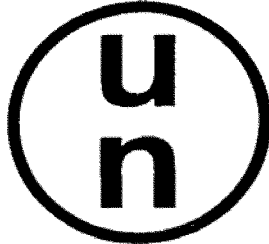


4G/Y145/S/83

USA/RA

(as in § 178.503 (a)(1) through (9) of this subpart).

(ii) For a steel drum designed to contain liquids:



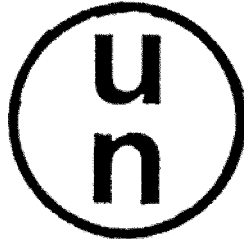
1A1/Y1.4/150/83

USA/VL824

1.0

(as in § 178.503 (a)(1) through (10) of this subpart).

(iii) For a steel drum to transport solids or inner packagings:

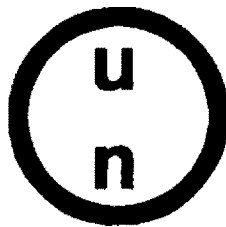


1A2/Y150/S/83

USA/VL825

(as in § 178.503 (a)(1) through (8) of this subpart).

(3) Examples of markings for reconditioned packagings are as follows:



1A1/Y1.4/150/92

USA/RB/93 RL

(as in § 178.503(c)(1)).

\* \* \* \* \*

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

§ 178.601 General requirements.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(v) A packaging identified in paragraph (g)(3) or (g)(4) of this section,

which differs from the design type only in a lesser design height; or

\* \* \* \* \*

## PART 179—SPECIFICATIONS FOR TANK CARS

■ 28. The authority citation for part 179 is revised to read as follows:

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

■ 29. In Appendix B to Part 179, paragraphs 2.a.(1) and 3.a.(1) are revised to read as follows:

### Appendix B to Part 179—Procedures for Simulated Pool and Torch-Fire Testing.

\* \* \* \* \*

#### 2. Simulated pool fire test.

a. A pool-fire environment must be simulated in the following manner:

(1) The source of the simulated pool fire must be hydrocarbon fuel with a flame temperature of 871 °C plus or minus 55.6 °C (1600 °F plus-or-minus 100 °F) throughout the duration of the test.

\* \* \* \* \*

#### 3. Simulated torch fire test.

a. A torch-fire environment must be simulated in the following manner:

(1) The source of the simulated torch must be a hydrocarbon fuel with a flame temperature of 1,204 °C plus-or-minus 55.6 °C (2,200 °F plus or minus 100 °F), throughout the duration of the test. Furthermore, torch velocities must be 64.4 km/h ±16 km/h (40 mph ±10 mph) throughout the duration of the test.

\* \* \* \* \*

Issued in Washington, DC, on September 27, 2012 under authority delegated in 49 CFR part 1.

**Timothy P. Butters,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2012–24263 Filed 10–4–12; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XC152

### 2012–2013 Accountability Measure and Closure for Commercial Black Sea Bass in the South Atlantic

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for the commercial sector of black sea bass in the exclusive economic zone (EEZ) of the South Atlantic through this temporary final rule. NMFS has determined that the annual catch limit (ACL) (equal to the commercial quota) for black sea bass will have been reached by October 8, 2012. Therefore, NMFS closes the commercial sector for black sea bass in the EEZ of the South Atlantic. This closure is necessary to protect the black sea bass resource.

**DATES:** Closure is effective 12:01 a.m., local time, October 8, 2012, through 12:01 a.m., local time, on June 1, 2013.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Hayslip, telephone 727–824–5305, email

*Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), and black sea bass is a species contained in that FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS published a temporary rule to delay the start of the 2012–2013 fishing season for the commercial sector of black sea bass from June 1, 2012 to July 1, 2012 (77 FR 28305, May 14, 2012). The commercial ACL (commercial quota) for black sea bass in the South Atlantic is 309,000 lb (140,160 kg), gutted weight, for the current fishing year (July 1, 2012, through May 31, 2013) as specified in 50 CFR 622.42(e)(5).

### Background

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed under the FMP by the Council from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south to the boundary between the South Atlantic and Gulf of Mexico (Gulf) Councils, off of Key West, Florida. The boundary between the South Atlantic and Gulf Councils coincides with the line of demarcation between the Atlantic Ocean and the Gulf, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson-Stevens Act, and 83°00' W. long., proceeds northward along that meridian to 24°35' N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel,

through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Cape Hatteras Light, North Carolina, through to the boundary between the South Atlantic and Gulf Councils (off of Key West, Florida), as described above.

The AM at 50 CFR 622.49(b)(5)(i) requires NMFS to close the commercial sector for black sea bass when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Also, under 50 CFR 622.43(a), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined that the available commercial ACL (commercial quota) of 309,000 lb (140,160 kg), gutted weight, for black sea bass will be reached on or before October 8, 2012. Accordingly, NMFS is implementing an AM to close the commercial sector for black sea bass in the South Atlantic EEZ at 12:01 a.m., local time, on October 8, 2012 from 35°15.19' N. lat., the latitude of Cape Hatteras Light, North Carolina, south to the boundary between the South Atlantic and Gulf Councils, as previously described in this temporary rule. The commercial sector for black sea bass will remain closed until 12:01 a.m., local time, on June 1, 2013. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having black sea bass onboard must have landed and bartered, traded, or sold such black sea bass prior to 12:01 a.m., local time, October 8, 2012.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(vii) and (d)(2), respectively, apply to all harvest or possession of black sea bass in or from the South Atlantic EEZ, and the sale or purchase of black sea bass taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or