

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket Nos. PHMSA-2009-0126 (HM-215K)]

RIN 2137-AE45

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

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

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: PHMSA is considering amending the Hazardous Materials Regulations (HMR) by incorporating various amendments to international standards and modal regulations, including changes to proper shipping names, hazard classes, packing groups, special provisions, and packaging authorizations. These amendments may be necessary to harmonize the HMR with revised editions of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations and Manual of Tests and Criteria, the International Maritime Organization's Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air and Transport Canada's Transport of Dangerous Goods Regulations. In this notice, we are soliciting public comment regarding the safety consequences,

regulatory burden, and cost implications of some of the more significant amendments adopted or under consideration for adoption in these international standards.

DATES: Comments must be received by [INSERT DATE 90 DAYS FROM PUBLICATION DATE OF ANPRM].

ADDRESSES:

Comments: You may submit comments identified by the docket number PHMSA–2009–0126 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Fax: 1–202–493–2251.

- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the Federal eRulemaking Portal, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of

an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), which may also be found at <http://www.dot.gov>.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Michael Stevens, Office of Hazardous Materials Standards, telephone (202) 366-8553, or Shane Kelley, International Standards, telephone (202) 366-0656, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., 2nd Floor, Washington, DC. 20590-0001.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. International Standards and Modal Regulations for Review
 - A. Sixteenth Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations (UN Model Regulations)
 1. Noteworthy Amendments
 2. Additional Amendments
 - B. Fourth Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)
 - C. 2011-2012 Edition of the International Civil Aviation Organization's

Technical Instructions for the Safe Transport of Dangerous Goods (ICAO
Technical Instructions)

- D. 2010 Edition (Amendment 35-10) of the International Maritime Dangerous Goods Code (IMDG Code)
- E. Amendments 6 and 7 to Transport Canada's Transport of Dangerous Goods Regulations (TDG Regulations)
- F. Amendments to the International Standards and Modal Regulations Under Consideration in Separate Dockets

III. Request for Comments

IV. Regulatory Analyses and Notices

- A. Executive Order 12866 and DOT Regulatory Policies and Procedures
- B. Executive Order 13132
- C. Executive Order 13175
- D. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures
- E. Paperwork Reduction Act
- F. Environmental Assessment
- G. Privacy Act
- H. International Trade Analysis
- I. Statutory/Legal Authority for the Rulemaking
- J. Regulatory Identifier Number (RIN)

I. Background

On December 21, 1990, the Research and Special Programs Administration

(RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (Docket HM-181; 55 FR 52402) based on the UN Model Regulations to comprehensively revise the Hazardous Materials Regulations (HMR), 49 CFR parts 171 to 180, for harmonization with the international standards. Since publication of the 1990 final rule, we have issued seven additional international harmonization final rules, (Dockets HM-215A, 59 FR 67390; HM-215B, 62 FR 24690; HM-215C, 64 FR 10742; HM-215D, 66 FR 33316; HM-215E, 68 FR 44992; HM-215G, 69 FR 76044; and HM-215J, 74 FR 2199). The rulemakings provided additional harmonization with international transportation requirements by aligning the HMR with corresponding updates of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, United Nations Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods, International Maritime Dangerous Goods Code, and Transport Canada's Transport of Dangerous Goods Regulations.

The UN Model Regulations are not regulations, but rather are recommended standards issued by the UN Sub-Committee of Experts on the Transport of Dangerous Goods (UN Sub-Committee of Experts). These recommendations are amended and updated biennially and serve as the basis for many national, regional and international modal regulations.

The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101, et seq.) requires PHMSA to align the HMR with international transport standards and requirements to the extent practicable (see § 5120). Harmonization of

domestic and international standards becomes increasingly important as the volume of hazardous materials transported in international commerce grows and the cost of conducting international commerce increases. Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials to and from the United States. By facilitating compliance with international standards, harmonization also tends to enhance safety for international movements, but only if the international standards themselves provide an appropriate level of safety. To that end, PHMSA actively participates in the development of international standards for the transportation of hazardous materials, frequently advocating the adoption in international standards of particular HMR requirements. When considering the adoption of international standards and regulations under the HMR, we review and consider each amendment on its own merit, including an assessment of its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue burdens on the regulated public.

In this notice, we are soliciting comments on amendments made to or proposed for the international standards and modal regulations to aid in our review and consideration of whether the changes should be adopted into the HMR. We encourage interested parties to review the changes made to these international standards and modal regulations through the links to resources that we provide below.

II. International Standards and Modal Regulations for Review

This notice solicits comments regarding the sixteenth revised edition of the UN

Model Regulations, the fourth revised edition of the UN Manual of Tests and Criteria, the 2011-2012 edition of the ICAO Technical Instructions, the 2010 edition of the IMDG Code (Incorporating Amendment 35-10), and Amendments 6 and 7 of the TDG Regulations. We are particularly interested in data and information demonstrating possible transportation safety impacts, which will help us to evaluate whether to propose adoption of any of the international revisions into the HMR. We are also seeking data and information on potential compliance costs that would result from adoption into the HMR of the international revisions.

A. Sixteenth Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations (UN Model Regulations)

Recently, the UN Sub-Committee of Experts issued amendments to be incorporated in the upcoming sixteenth revised edition of the UN Model Regulations. The amendments range from routine editorial corrections to significant changes to standards for classification criteria, hazard communication and authorized packaging. We are in the process of reviewing these amendments and will be considering the amendments for adoption in the HMR.

1. Noteworthy Amendments

We believe a number of the amendments to the UN Model Regulations may be of particular interest to the regulated community. We are highlighting these amendments to give interested parties an opportunity to provide comment and feedback on the transportation safety impacts, economic implications, and compliance burdens of these amendments. Information provided in response to this notice will help us determine whether to propose adoption of these amendments into the HMR. Below is a listing of

important amendments to the UN Model Regulations we believe needs public input, with a brief explanation of each amendment.

- Classification of Sour Crude Oil: At the 33rd Session of the UN Sub-Committee of Experts in July 2008, the expert from Canada noted that the transportation of sour crude oil may pose additional risks due to its inherent characteristic of “off-gassing” hydrogen sulfide, a highly toxic and flammable gas. Sour crude oil, as opposed to “sweet” crude oil, contains a high concentration of sulfur and is commonly found in North America. Off-gassing is the evolution of vapors from a liquid substance that is created due to temperature, packaging confinement, transport conditions (e.g., sloshing), bacteria and sulfur concentration, among many other potential factors. As a result, the UN Model Regulations were amended by assigning a new identification number and shipping description for sour crude oil with a flammable primary hazard and a toxic subsidiary hazard. Additionally, a new special provision which specifies the Packing Group (PG) assignment was created for this entry based on the degree of danger presented by either the flammability or inhalation toxicity hazard of the sour crude oil. For example, sour crude oil meeting flammability criteria for Class 3, PG II, and toxicity criteria for Division 6.1, PG I, poisonous-by-inhalation, would be classified as a Class 3, PG I material. We invite commenters to provide data and information concerning the impact on domestic shippers and carriers if these requirements are adopted in the HMR. We also are interested in comments addressing which hazard communication methods (e.g., package markings, shipping papers) and/or packaging requirements are most cost-effective to reduce the hazards of transporting sour crude oil. The working documents (ST/SG/AC.10/C.3/2008/12 and ST/SG/AC10/C.3/2008/96) for this issue can be found at

<http://www.unece.org/trans/main/dgdb/dgsubc/c32008.html>; and an informal document discussing this issue (UN/SCETDG/34/INF.62) can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c3inf34.html>.

- Classification of Explosives: For several Division 1.4 explosive articles (UN0323, UN0366, UN0441, UN0445, UN0455, UN0456, UN0460, and UN0500), the UN Model Regulations have been amended to require a Type 6(d) test to determine whether an article may be assigned to Compatibility Group S. The test is performed on a single package containing an explosive substance or explosive article to determine if the package is capable of containing any explosive effects in the event of an accidental initiation or ignition of its contents. The amendments include revisions to the explosives testing standards in the UN Manual of Tests and Criteria (see below) and include a new special provision that would allow the use of the above-mentioned hazardous materials table entries only if the results of test Type 6(d) successfully demonstrate that any explosive effects are confined within a package. The initial working document (ST/SG/AC.10/C.3/2007/29) considered by the UN Sub-Committee of Experts relative to this amendment can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c32007.html>. This proposal was ultimately adopted with a number of modifications, including limiting the applicability to the aforementioned identification numbers. We invite commenters to provide data and information concerning the possible safety impacts of the new test provisions and compliance costs that would be incurred if the new test is adopted in the HMR. In addition, we invite commenters to provide suggestions or recommendations concerning whether to apply the test to already approved explosives. It should also be noted that an

addendum has been added to the 2009-2010 ICAO Technical Instructions applicable to these eight explosive articles that requires successful demonstration of the Type 6(d) Test for transport aboard passenger aircraft after January 1, 2010 and allows explosives not yet subjected to the new test method to be transported aboard cargo aircraft until January 1, 2011. Addendum 3 to the 2009-2010 ICAO Technical Instructions can be found at <http://www.icao.int/anb/FLS/DangerousGoods/>, and the working paper (no. 66) presented to the ICAO Dangerous Goods Panel on the implementation of such policy can be found at <http://www.icao.int/anb/FLS/DangerousGoods/DGP/WorkingGroups/WG09/WPs/>.

- **IBC Rebottling**: Under the UN Model Regulations and the HMR, the replacement of the rigid plastic receptacle of a composite IBC is considered a “repair” under certain conditions and, thus, not subject to design qualification testing as a new or different design. The UN Sub-Committee of Experts issued an amendment to the UN Model Regulations that specifies a replacement bottle must be of the original tested design type but limits the replacement to a bottle from the original manufacturer. We invite comments on this amendment to the UN Model Regulations and how, if adopted in the HMR, it would impact the use of IBCs in domestic or international commerce. The working document (ST/SG/AC.10/C.3/2008/28) for this issue can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c32008.html>; an informal document discussing this issue (UN/SCETDG/32/INF.33) can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c3inf32.html>, while additional informal documents regarding this issue (UN/SCETDG/33/INF.4, 31, 60, 61 and 73) can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c3inf33.html>.

- Limited Quantities and Consumer Commodities: The HMR have long-recognized the relatively low risk posed by the transportation of certain hazardous materials as limited quantities or consumer commodities. Considerable efforts have recently been made internationally to harmonize multi-modal standards with regard to the transport of limited quantities, including consumer commodities. We held public meetings on this issue in February 2006 and 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 this notice, we invite 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 are any potential 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 related to 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). Depending on comments received and our own evaluation, we may determine that the significance of any amendments on this issue will warrant a separate rulemaking action. The working document (ST/SG/AC.10/C.3/2008/17) for this issue can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c32008.html>; informal documents

discussing this issue (UN/SCETDG/33/INF.9, 14 and 75) can be found at

<http://www.unece.org/trans/main/dgdb/dgsubc/c3inf33.html>.

- Metal Hydride Storage Systems in Conveyances: A metal hydride storage system is a single complete hydrogen storage system that includes a receptacle, metal hydride, a pressure relief device, a shut-off valve, service equipment and internal components. The HMR currently do not prescribe specific packaging or shipping methods for metal hydride storage systems containing hydrogen. However, PHMSA has issued a number of special permits to allow the use of these systems for transport. The UN Model Regulations, in new Packing Instruction P205, prescribe standards for the construction, qualification, marking and requalification of such systems. We invite comments on whether similar standards should be adopted in the HMR. The working documents (ST/SG/AC10/C.3/2008/72, 73 and 74) for this issue can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c32008.html>.

- In Vitro Testing for Corrosivity: In 1992, RSPA began recognizing an alternative test method used to determine the corrosivity of a hazardous material for transportation purposes under the terms and conditions specified in DOT-SP 10904. The UN Sub-Committee of Experts issued amendments to the UN Model Regulations adopting similar in vitro test methods prescribed in OECD Guidelines for the Testing of Chemicals No. 430, In Vitro Skin Corrosion: Transcutaneous Electrical Resistance Test (TER) (2004); No. 431, In Vitro Skin Corrosion: Human Skin Model Test (2004); and, No. 435, In Vitro Membrane Barrier Test Method for Skin Corrosion (2006). Because methods 430 and 431 can be used to determine corrosivity for other than transportation purposes, they cannot be used to determine the Packing Group assignment of a material

that tests positive for corrosivity for the purposes of hazardous materials transportation. A negative result for corrosivity under methods 430 and 431 can, however, preclude further testing to determine Packing Group assignment using method 404, the current OECD Guideline involving in vivo testing or, method 435, the newly adopted OECD Guideline involving in vitro testing. The working document (ST/SG/AC.10/C.3/2007/50) for this issue can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c32007.html>; the informal document (UN/SCETDG/32/INF.49) on this issue can be found at <http://www.unece.org/trans/main/dgdb/dgsubc/c3inf32.html>.

2. Additional Amendments

A number of other amendments may be considered based on the changes adopted in the sixteenth revised edition of the UN Model Regulations. A complete record of amendments included in the sixteenth revised edition of the UN Model Regulations is contained in the report document ST/SG/AC.10/36/Add.1 and may be obtained and reviewed at <http://www.unece.org/trans/main/dgdb/dgcomm/ac10rep.html>.

Supporting documents for the amendments can be obtained and reviewed at <http://www.unece.org/trans/main/dgdb/dgsubc/c32009.html>.

B. Fourth Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)

The UN Sub-Committee of Experts issued several amendments to the UN Manual of Tests and Criteria. One of the amendments is discussed in detail in section II.A.1. As a result, we are soliciting comments on the potential impact of requiring an additional test for certain Division 1.4 explosive materials when determining eligibility for inclusion in Compatibility Group S. A record of all the amendments to the fourth revised edition of

the UN Manual of Tests and Criteria is contained in the report document ST/SG/AC.10/36/Add.2 and may be obtained and reviewed at <http://www.unece.org/trans/main/dgdb/dgcomm/ac10rep.html>. Working documents and information documents submitted to the UN Subcommittee of Experts for consideration as amendments are available at:

<http://www.unece.org/trans/main/dgdb/dgsubc/c32009.html>.

C. 2011-2012 Edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods (ICAO Technical Instructions)

The ICAO Dangerous Goods Panel (ICAO DGP) has proposed a number of amendments to the 2011-2012 edition of the ICAO Technical Instructions and will be finalized in November 2009. When available, these amendments will be posted on the ICAO DGP Website at <http://www.icao.int/anb/FLS/DangerousGoods/dgp/>. We will consider these amendments for adoption in the HMR under either this rulemaking or under docket HM-231A, discussed in section II.E. A record of the proposed amendments to the Packing Instructions of the 2011-2012 edition of the ICAO Technical Instructions may be reviewed at <http://www.icao.int/anb/FLS/DangerousGoods/PackingInstructions/>.

D. 2010 Edition (Amendment 35-10) of the International Maritime Dangerous Goods Code (IMDG Code)

Upon review of the Maritime Safety Committee's amendments to the IMDG Code, we will consider these amendments for adoption in the HMR. When available, information regarding future IMDG Code amendments will be posted on our website at <http://www.phmsa.dot.gov/hazmat/regs/international>.

E. Amendments 6 and 7 to Transport Canada's Transport of Dangerous Goods

Regulations (TDG Regulations)

We are considering updating § 171.7, Matter Incorporated by Reference, to include Amendment 6 (SOR/2008-34) and Amendment 7 (SOR/2007-179) to the TDG Regulations and are soliciting public comment on authorizing their use under the HMR. The revised TDG Regulations, including Amendments 6 and 7, can be found and reviewed at <http://www.tc.gc.ca/tdg/clear/tofc.htm>.

F. Amendments to the International Standards and Modal Regulations Under Consideration in Separate Dockets

The following is a partial listing of those international harmonization issues that we will not be considering for adoption under this docket and a brief explanation of why the issues will be considered in separate rulemakings:

- Requirements for Lithium Batteries: At this time, we are not considering any amendments made to provisions for the carriage of lithium batteries in the UN Model Regulations for adoption in the HMR under this docket. Instead, we have initiated a separate rulemaking to consider a broad range of measures to enhance the safe transportation of lithium batteries by all modes (Docket No. PHMSA-2009-0095 (HM-224F)).
- Amendments to Air Transportation Packaging Requirements: At this time, we are not considering any amendments made to provisions for packaging of hazardous materials for transportation by aircraft made to the upcoming 2011-2012 ICAO Technical Instructions for adoption in the HMR under this docket. We are considering adoption of the amendments to packaging provisions for air transport in a separate rulemaking project under Docket No. PHMSA-2007-29364 (HM-231A). All documents submitted to the

docket thus far can be found and reviewed at <http://www.regulations.gov/>.

- Requirements for Electronic Data: As part of a separate rulemaking project, PHMSA's Office of Hazardous Materials Safety in collaboration with DOT modal administrations, emergency response organizations and industry representatives, is exploring prospects for the electronic transfer of information in order to provide better, faster, and more accurate communication of hazard information. Under the current paper-based system, emergency response efforts can be delayed due to a lack of timely and accurate information and poor communication between transportation partners. We are working to determine regulatory guidelines for the use of electronic communication as a complement, and potentially as an alternative, to hard copies of shipping papers. Under a PHMSA initiative titled HM-ACCESS (Hazardous Materials — Automated Cargo Communication for Efficient and Safe Shipments), we have developed a roadmap that will guide our efforts to promote the adoption of paperless systems both domestically and internationally. Additionally, we are working within the UN Sub-Committee of Experts to develop a baseline of current documentation requirements and consider potential international regulatory amendments that will facilitate the use of electronic documentation within the transportation system. Additional information on the HM-ACCESS initiative and its roadmap can be found in the docket for this rulemaking notice at www.regulations.gov.

- Requirements for Radioactive Materials: At this time, we are not considering any amendments made to provisions for Class 7 (radioactive) materials in the UN Model Regulations for adoption in the HMR under this docket. The HMR provisions for the carriage of Class 7 (radioactive) materials are normally based on changes contained in the

International Atomic Energy Agency (IAEA) publication, “IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Materials.” Due to their complexity, we have initiated a separate rulemaking to address changes to provisions for the transportation of radioactive materials (Docket No. PHMSA-2009-0063 (HM-250)).

III. Request for Comments

Interested parties are urged to carefully consider the implications of adopting or not adopting amendments to the international standards and modal regulations into the HMR. We urge you to consider the effects on transportation safety, transportation costs, and compliance burdens. In addition to the specific questions regarding areas of concern discussed above, we invite interested parties to submit data and information on any other amendments with regard to the following questions:

1. What safety concerns, if any, are associated with the adoption or non-adoption of amendments made to the international standards and modal regulations into the HMR?
2. What significant costs would be associated with the adoption or non-adoption of amendments made to the international standards and modal regulations into the HMR?
3. What other compliance burdens may be associated with the adoption or non-adoption of amendments made to the international standards and modal regulations into the HMR?

IV. Regulatory Analyses and Notices

PHMSA will base any future proposal for changes on the suggestions and comments provided by interested parties and our own initiatives. Additionally, any proposals would include the analyses required under the following statutes and executive orders in the event we determine that rulemaking is appropriate:

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

Executive Order (E.O.) 12866 requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with revisions to the HMR based on the international harmonization issues presented in this notice. A rule that is considered significant under E.O. 12866 must be reviewed and cleared by the Office of Management and Budget before it can be issued.

B. Executive Order 13132

E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We invite state and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR relative to international harmonization may cause.

C. Executive Order 13175

E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that “significantly or uniquely affect” Indian communities and that impose “substantial and direct compliance costs” on such communities. We invite Indian tribal governments to provide comments if they believe there will be an impact.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and

Procedures

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If you believe that revisions to the HMR relative to international harmonization would have a significant economic impact on small entities, please provide information on such impacts.

Any future proposed rule would be 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 on small entities of a regulatory action are properly considered.

E. Paperwork Reduction Act

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 collection and recordkeeping requests. It is possible that new or revised information collection requirements could occur as a result of any future rulemaking action.

F. Environmental Assessment

The National Environmental Policy Act, 42 USC §§ 4321-4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant

impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 C.F.R. § 1508.9(b). PHMSA welcomes any data or information related to environmental impacts that may result from a future harmonization rulemaking.

G. 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>.

H. International Trade Analysis

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that

they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we would assess the effects of any rule to ensure that it does not exclude imports that meet this objective. Accordingly, any proposals would be consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

I. Statutory/Legal Authority for this Rulemaking

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Harmonization serves to facilitate international transportation; at the same time, harmonization promotes the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to consider aligning the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as explained in the corresponding sections above, we may not propose harmonization with certain specific provisions of the UN Recommendations, the IMDG Code, and the ICAO TI. Moreover, when proposing amendments to the HMR, consideration is given to providing exceptions for domestic transportation that minimizes compliance burden on the regulated community.

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. This notice considers potential amendments to the HMR that would maintain alignment with international standards by incorporating various amendments. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent. The majority of amendments in any harmonization rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

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

Issued in Washington, DC on October 15, 2009 under authority delegated in 49 CFR part 106.

Dr. Magdy El-Sibaie
Acting Associate Administrator for Hazardous Materials Safety

[FR Doc. 2009-25358 Filed 10/20/2009 at 8:45 am; Publication Date: 10/21/2009]