

correcting the typographical error in this final rule.

Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal Hazardous Materials Transportation Law (Federal Hazmat Law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal Hazmat Law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This final rule corrects errors in a final rule published in the **Federal Register** on May 3, 2007.

B. Executive Order 12866 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). There are no cost impacts associated with this final rule.

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; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, preparation of a federalism assessment is not warranted.

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.

E. Regulatory Flexibility Act, Executive Order 12872, and DOT Procedures and Policies

I certify this final rule will not have a significant economic impact on a substantial number of small entities. This rule corrects a previously issued final rule by reinserting a dropped phrase and correcting a typographical error. There are no cost impacts associated with this rule.

F. 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 \$120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

G. Paperwork Reduction Act

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

H. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

I. 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.

List of Subjects in 49 CFR Part 171

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

■ In consideration of the foregoing, we are making the following corrections to FR Doc. 07-1959, appearing on page 25162 in the **Federal Register** of Thursday, May 3, 2007:

PART 171—[CORRECTED]

■ 1. On page 25171, in § 171.12 correct the text in paragraph (a)(2) to read as follows:

§ 171.12 North American Shipments.

(a) * * *

(2) *General packaging requirements.* When the provisions of this subchapter require a DOT specification or UN standard packaging to be used for

transporting a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used, subject to the limitations of this part, and only if it is equivalent to the corresponding DOT specification or UN packaging (see § 173.24(d)(2) of this subchapter) authorized by this subchapter.

* * *

■ 2. On page 25173, in § 171.22, correct the text in paragraphs (g)(5) and (g)(6) to read as follows:

§ 171.22 Authorization and conditions for use of international standards and regulations.

* * *

(g) * * *

(5) For export shipments, the general packaging requirements in §§ 173.24 and 173.24a of this subchapter;

(6) For export shipments, the requirements for the reuse, reconditioning, and remanufacture of packagings in § 173.28 of this subchapter; and

* * *

Issued in Washington, DC, on September 21, 2007, under authority delegated in 49 CFR part 1.

Krista L. Edwards,

Acting Administrator.

[FR Doc. E7-19259 Filed 9-27-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 173, 175 and 178

[Docket No. RSPA-04-17664 (HM-224B)]

RIN 2137-AD33

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft

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

ACTION: Final rule; response to appeals.

SUMMARY: On January 31, 2007, PHMSA published a final rule that amended requirements in the Hazardous Materials Regulations applicable to the air transportation of compressed oxygen cylinders and oxygen generators. In response to appeals submitted by entities affected by the January 31 final rule, this final rule amends requirements adopted in the January 31, 2007 final rule and delays the effective

date of these requirements from October 1, 2007 to October 1, 2008.

DATES: *Effective Date:* The effective date of the amendments in the January 31, 2007 final rule (72 FR 4442) is delayed from October 1, 2007 to October 1, 2008. The effective date of the amendments in this final rule is October 1, 2008.

Voluntary compliance: Voluntary compliance with the requirements in the January 31 final rule was authorized as of March 2, 2007. Voluntary compliance with the amendments in the January 31 final rule, including those with a delayed compliance date, is authorized as of October 29, 2007.

FOR FURTHER INFORMATION CONTACT: John A. Gale or T. Glenn Foster, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH-11, Washington, DC 20590-0001, or David Catey, Office of Flight Standards Service, telephone (202) 267-3732, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW., Washington, DC 20591.

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I. Supplementary Background

On January 31, 2007, PHMSA, in cooperation with the Federal Aviation Administration (FAA), issued a final rule under Docket No. RSPA-04-17664 (HM-224B) enhancing the safety standards for transportation by air of compressed oxygen, other oxidizing

gases and chemical oxygen generators (72 FR 4442). Specifically, the January 31 final rule:

- (1) Requires cylinders of compressed oxygen and other oxidizing gases and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft;
- (2) Revises the pressure relief device (PRD) setting limit on cylinders of compressed oxygen and other oxidizing gases transported aboard aircraft;
- (3) Limits the types of cylinders authorized for transporting compressed oxygen aboard aircraft; and
- (4) Converts most of the provisions of an oxygen generator approval into requirements in the HMR.

II. Appeals

The following organizations submitted appeals to the January 31 final rule, in accordance with 49 CFR part 106: Air Canada (AC); Barlen and Associates, Inc. (Barlen); PSI Plus, Inc. (PSI); and United Airlines, Inc. (United). Delta Airlines (Delta) also submitted a letter expressing its general support for United's formal appeal. The appellants based their appeals on several aspects of the January 31 final rule, most notably, the effective date of certain requirements in the rule, cost and availability of the required outer packaging, marking requirements, and thermal resistance testing. We also received requests for clarification of certain requirements of the January 31 final rule. The Good View Trading Company (GVT) also expressed concerns about the impact the January 31 final rule will have on the current exceptions for live fish transported aboard aircraft.

In this final rule, we are granting the request to delay the mandatory effective date from October 1, 2007 until October 1, 2008 to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. We are clarifying the thermal resistance test methods for packagings for oxygen cylinders and oxygen generators in Appendix D to part 178. We are granting the request to include DOT specification 3E and 39 cylinders among the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft. In addition, we are providing a marking option to ensure easier identification of cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements. The

appeals and issues of the appellants and other concerned parties are discussed in detail below.

A. Outer Packaging That Meets Certain Flame Penetration and Thermal Resistance Requirements When Transported Aboard Aircraft

The January 31 final rule amended the HMR to require cylinders of compressed oxygen and other oxidizing gases and chemical oxygen generators to be transported in an outer packaging that: (1) Meets the same flame penetration resistance standards as required for cargo compartment sidewalls and ceiling panels in transport category airplanes; and (2) provides certain thermal protection capabilities so as to retain its contents during an otherwise controllable cargo compartment fire. The outer packaging standard adopted in the January 31 final rule addresses two safety concerns: (1) Protecting a cylinder and an oxygen generator that could be exposed directly to flames from a fire; and (2) protecting a cylinder and an oxygen generator that could be exposed indirectly to heat from a fire. These performance requirements must remain in effect for the entire service life of the outer packaging.

Under the January 31 final rule, an outer packaging for a cylinder containing compressed oxygen or another oxidizing gas and a package containing an oxygen generator must meet the standards in Part III of Appendix F to 14 CFR part 25, Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners. An outer packaging's materials of construction must prevent penetration by a flame of 1,700 °F for five minutes, in accordance with Part III of Appendix F, paragraphs (a)(3) and (f)(5) of 14 CFR part 25. A method for thermal resistance testing of packagings for oxygen cylinders and oxygen generators was added by the January 31 final rule under a new Appendix D to part 178 of the HMR. To ease understanding of and compliance with the flame penetration test requirements, in this final rule we are adding a new Appendix E to part 178, which will include the entire test procedure. This will eliminate the necessity for persons performing the flame penetration test to refer to the requirements in Appendix F to 14 CFR part 25.

In its appeal, United expresses concern about several aspects of these provisions, including international repercussions, risk assessment and analysis, effects of this rulemaking on travelers requiring medical oxygen, and the cost basis for the packaging required by the January 31 final rule.

Specifically, United contends that no test data or other substantiation of compliance with requirements for outer packaging by any packaging manufacturer was placed in the public docket. United also states that although the January 31 final rule indicates at least one packaging manufacturer appears to have addressed the flame penetration and thermal penetration standard and is able to produce the required packaging, neither this company nor any other has actually produced it. In addition, United contends that because the packaging required by the January 31 final rule does not yet exist, the cost estimates made by the agency are unreliable.

We are not persuaded that the required packagings will be unavailable or that we have underestimated the cost of bringing them to market. PHMSA issued the January 31 final rule only after reviewing test data and other materials substantiating the development of packagings meeting the performance standard. Based on consultation with companies that are able to produce similar packaging and reviewing their packaging prototypes, supporting test documentation and cost estimates, we believe the required packaging will be available in sufficient time for the affected parties to comply with this requirement. (Because of its confidential proprietary nature, we did not post this documentation in the public docket for this rulemaking.) PHMSA and FAA intend to closely monitor the availability of the required packaging as the effective date of this provision approaches and will consider an extension of the compliance date for this requirement if it is determined that a sufficient supply of the required outer packaging is not available.

Likewise, the fact that the required packaging is not yet commercially available does not make the cost estimates for this rulemaking unreasonable. As referenced in the January 31 final rule, packaging manufacturers provided estimates of costs for the existing ATA specification 300 packagings and the new outer packaging. We utilized these estimates, in addition to our own research, in the regulatory evaluation (available for review in the public docket for this rulemaking). Although some of the figures provided by the commenters were slightly higher than ours, the differences were not significant. Accordingly, we believe that our estimate of a total cost of \$10.8 million (\$7.6 million discounted to present value) over 15 years, for the transport of oxygen cylinders, and \$27.0 million (\$16.9 million discounted to present

value) over 15 years, for the costs associated with the transport of chemical oxygen generators, are reasonable estimates of the costs of this rulemaking despite the current lack of an available outer packaging in an after-market condition.

United also refers to the statement in the January 31 final rule that DOT intends to submit a paper to the International Civil Aviation Organization (ICAO) Dangerous Goods Panel to propose that the ICAO Technical Instructions be amended consistent with the requirements of the packaging required by the January 31 rulemaking. United requests that a copy of such a U.S. proposal be placed in the public docket for HM-224B, and that the views of other air carriers in the international community be considered. United states that PHMSA should collect input from the international community before concluding rulemaking action in this docket because of the international aviation environment and PHMSA's expressed stance on the benefits of global harmonization. United also recommends that if the new requirements are adopted internationally through ICAO, the compliance dates for affected carriers should coincide to avoid unnecessary compliance complexity in the aviation industry.

We agree that the international community should be considered when initiating any regulatory change that could potentially affect international commerce. As indicated in the January 31 final rule, it was PHMSA's intention to submit a working paper pertaining to this rulemaking for discussion at the meeting of the ICAO Dangerous Goods Panel (DGP). PHMSA submitted a paper to the DGP Working Group of the Whole (held April 30 to May 4, 2007) which provided information relative to the amendments to the HMR to enhance the requirements for the transportation of compressed oxygen, other oxidizing gases and chemical oxygen generators on aircraft. The working paper can be viewed on the public ICAO Web site at: <http://www.icao.int/anb/FLS/DangerousGoods/FLSDG.cfm>. A copy of this working paper has also been placed in the public docket for this rulemaking. However, we are not prepared to defer this rulemaking while changes to international standards are considered. As we explained in the January 31 final rule, the risk of an unintentional actuation of an oxygen generator or a cylinder containing oxygen or another oxidizing gas during an aircraft fire is a serious safety risk that we believe must be immediately addressed, without

waiting for the outcome of international deliberations.

United also contends that the final rule is inconsistent with PHMSA's expressed commitment to promote risk-based, data-driven, and cost-effective standards. United asserts that PHMSA justified the January 31 rulemaking on a worst-case scenario that was not supported by actual data in the record and that affected parties therefore should be given time to review and comment on such data. As explained in the January 31 final rule, we have utilized a risk-based approach to the air transportation of compressed oxygen cylinders and oxygen generators since the tragic events of the ValuJet Airlines crash in 1996. FAA has established through testing that cylinders of compressed oxygen release their contents at temperatures well below those that aircraft cargo compartment liners and structures are designed to withstand. When the surface temperature of a cylinder of compressed oxygen reaches approximately 300 °F, the increase in internal pressure causes the cylinder's pressure relief device to open and release oxygen. The risk that such a release could vent directly into a fire significantly increases the risks posed by aircraft fires. FAA also found that use of an outer packaging specifically designed to provide both thermal protection and flame penetration may significantly lengthen the time a cylinder will retain its contents when exposed to fire or heat. Therefore, our rationale for this January 31 final rule is a continuation of our ongoing risk-based approach and is centered on the conclusions drawn from the "Evaluation of Oxygen Cylinder Overpacks Exposed to Elevated Temperatures" conducted by FAA (available for review in the public docket for this rulemaking).

United also contends that PHMSA did not adequately address the potential of the new packaging requirements to restrict air travel by individuals who need compressed oxygen to travel. It states that additional packaging cost and other related costs could dissuade air carriers from providing this service. The commenter also states that although PHMSA requested information on this scenario in the January 31 final rule, the impact could not be considered sufficiently without adequate and reliable information on the cost of the required packaging.

PHMSA is acutely aware of the specific needs of individuals who require compressed oxygen to travel, and has maintained ongoing dialogue with FAA and other agencies in an attempt to minimize requirements that

may restrict their travel. For example, PHMSA and FAA have partnered with the Office of the Secretary of Transportation to develop a rulemaking that proposes to provide greater accommodations for persons with respiratory disabilities, and provide passengers free in-flight medical oxygen in accordance with applicable safety rules. See "Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices," Docket No. OST–2005–22298, 70 FR 53108 (September 7, 2005), 70 FR 61241 (October 21, 2005).

The January 31 final rule complements the goal of providing a safer environment for people with disabilities by requiring cylinders of compressed oxygen and other oxidizing gases and packages of chemical oxygen generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft. We note that the current regulations specified in § 175.501 of the HMR allow for the use of oxygen by passengers in the aircraft cabin and provide for the stowage of a combined total of six cylinders of compressed oxygen, which, under the conditions specified in this section, do not require that they be placed in the new outer packaging.

For the reasons cited above, the appeal to the requirement that an outer packaging for a cylinder containing compressed oxygen or another oxidizing gas and a package containing an oxygen generator must meet the standards adopted in the January 31 final rule is denied.

B. Test Method in Appendix D to Part 178 and Test Protocol for Outer Packaging

The January 31 final rule amended the HMR by adding a thermal resistance test for packagings for oxygen cylinders and oxygen generators in a new appendix (Appendix D) to part 178. United recommends that PHMSA clarify the test method described in Paragraph 4.1 of this appendix, which states, "It is recommended that the cylinder be closed at ambient temperature and configured as when filled with a valve and pressure relief device. The oxygen generator must be filled and may be tested with or without packaging." United indicates that it understands from discussions that took place with PHMSA and its trade association after publication of the January 31 final rule that PHMSA did not intend to require testing of the outer packaging with inner receptacles containing hazardous

materials. If an alternative filling material was intended, the commenter requests PHMSA clarify this portion of the appendix as applicable. United suggests that "any alternate material should exhibit comparable heat-absorbing properties of compressed oxygen in the cylinder, or oxidizing solid in the generator." If, however, oven testing with packagings containing hazardous materials is required, the commenter is uncertain there is a testing facility capable of performing such a test.

In publishing the January 31 final rule, it was our intention to permit the thermal resistance test to be conducted on an oxygen cylinder that is either empty or filled with nitrogen. It was also our intention that an oxygen generator must be tested completely filled with its oxidizing agent. Therefore, in this final rule, we are granting United's request to clarify the test method described in Appendix D to Part 178. In addition, we are also providing an alternative to the use of thermocouples specified in the test methods of Appendix D to part 178.

United also expresses concern that the test protocol for outer packaging required by the January 31 final rule will change in the near future. For example, the commenter points out the footnote in the preamble at page 4444 of the January 31 final rule:

The FAA is currently evaluating other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. Some of these agents can maintain an adequate level of safety in the compartment, but the mean temperature may be slightly higher than 400 °F, which is the level found during typical halon-suppressed fires. If an alternative agent is used, the oven soak temperature level may need to be adjusted accordingly.

United states that the investment by itself and other air carriers in the newly required outer packaging is too substantial for the test performance temperature to be addressed in such vague terms. The commenter requests clarification of this statement and an assessment of the probability that it will result in a revision to the performance standard for outer packaging by, or relatively soon after, the October 1, 2007 mandatory compliance date.

We understand the commenter's concern regarding the footnote on page 4444 of the January 31 final rule which references FAA's ongoing evaluation of other non-ozone-depleting suppression agents that could eventually be used in cargo compartments. By including the footnote, our intention was to provide additional information about testing agents currently under consideration

which may affect test performance temperatures. For clarification, FAA's halon replacement program was designed to develop minimum performance standards (MPS) for the various extinguishing systems used aboard aircraft. These MPS would establish a baseline test for new agents to demonstrate that the agent had comparable fire-fighting effectiveness to that of Halon 1211 and 1301. FAA has developed the MPS for hand-held fire extinguishers, waste bins, and cargo compartments. In addition, three halocarbon agents have been approved for use in hand-held fire extinguishers. While alternative agents are currently being evaluated, none have been approved for use on aircraft. Further, the FAA informs us that it has no plans at present to mandate the use of halon replacements. Therefore, we do not anticipate that a revision to the test protocol for outer packaging required by the January 31 final rule will occur in the near future.

C. Effective Date for Pressure Relief Device Settings on Cylinders of Compressed Oxygen and Other Oxidizing Gases

The January 31 final rule revised the HMR to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. To ensure the cylinder contents are not released into an aircraft cargo compartment in the event of a fire, we amended the HMR to limit the PRD to a setting that will prevent it from releasing at temperatures the cylinder will experience while protected by the outer packaging. We also amended the HMR to require cylinders containing oxidizing gases, including oxygen, be equipped with PRDs that have a set pressure equal to the cylinder test pressure with allowable tolerances of –10 to plus zero percent. The effective date of this requirement for cylinders containing compressed oxygen and oxidizing gases was established in the January 31 final rule as the first requalification test due after October 1, 2007.

United requests that PHMSA delay the mandatory effective date from October 1, 2007 until October 1, 2008 in order to allow it and other air carriers to come into compliance with this requirement of the January 31 final rule. United states that "after cylinder manufacturers develop and implement new designs, conduct any required testing, complete the detailed approval process, and [sic] manufacture and distribute the new PRDs, it then will be

necessary to transport these cylinders as air cargo to assure global distribution to all of United's facilities where replacements might need to be installed, and to accommodate breathing-oxygen needs for impaired passengers as part of United's current effort to serve such customers." In addition, United states that procedures for oxygen cylinder maintenance and quality assurance programs must be revised, prompting additional training, testing and certification of both employees and their supervisors, and that "in addition to all the cylinders that may come due for periodic retest as early as October 1, 2007, it is assumed that any new oxygen cylinders purchased as replacement parts will need to be equipped with the new PRD as of that date." United states the demand for PRDs will likely peak around the October 1, 2007 effective date specified in the January 31 final rule, and it foresees an inadequate supply of PRDs. The commenter further states that it has over 6,500 cylinders affected by this rule and, after discussions with the manufacturers of these cylinders and external repair facilities, it is concerned that bringing its cylinders into compliance with this requirement by the January 31 final rule effective date will not be achievable.

We accept the likelihood that more time may be necessary to allow for the testing, approval, distribution, and training associated with this requirement of the January 31 final rule. Therefore, we are extending the effective date for this provision from October 1, 2007 until October 1, 2008. By this revised date, the HMR requires a new limit on the PRD settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft. The effective date of this requirement for cylinders containing compressed oxygen and oxidizing gases is established as the first requalification test due after October 1, 2008.

In the January 31 final rule, we added a new § 173.168 that would: (1) Specify the means to be incorporated into an oxygen generator to prevent inadvertent actuation; (2) require the oxygen generator to be capable of withstanding a 1.8 meter drop with no loss of contents or actuation; and (3) specify packaging, shipping paper, and marking requirements for those oxygen generators that are installed in a piece of equipment sealed or otherwise packaged so it is difficult to determine if an oxygen generator is present. The effective date of these new requirements is October 1, 2007, except for the packaging requirement in paragraph (d) of § 173.168, which becomes effective

on September 30, 2009. We received a request for clarification regarding these effective dates. One commenter requests clarification as to whether the requirements prior to the January 31 final rule pertaining to chemical oxygen generators, particularly approvals, were intended to remain in effect until the effective date of the January 31 final rule. For clarification, our intention in the January 31 final rule was for the current requirements concerning chemical oxygen generators, including approvals, to remain in effect until the overall effective date of the January 31 final rule. A similar issue was raised by the same commenter concerning the additional requirements for shipment of nonliquefied (permanent) and liquefied compressed gases in specification cylinders found in §§ 173.302a and 173.304a, respectively. The commenter asks whether it was PHMSA's intention to continue current outer packaging requirements for non-liquefied (permanent) and liquefied compressed gases in specification cylinders until the effective dates specified in these revised sections.

The answer is yes. It was also our intention in the January 31 final rule that the current requirements for the shipment of nonliquefied and liquefied compressed gases in specification cylinders remain in effect until the effective dates specified under these revised sections. In this final rule, we are revising the amendments to §§ 173.302a and 173.304a to clarify these effective dates and are redesignating them under new paragraph (f) of § 173.302—"Filling of cylinders with non-liquefied (permanent) compressed gases—" and new paragraph (f) of § 173.304—"Filling of cylinders with liquefied compressed gases—" respectively, to provide a more logical, user-friendly format. We are also revising § 173.301 to direct the user to these new paragraphs.

D. Marking Requirements

United also urges PHMSA to take further steps to ensure easier identification of cylinders equipped with the new PRD and outer packaging meeting the flame penetration and thermal resistance requirements. In its appeal, the commenter requests that PHMSA require manufacturers to distinguish between the modified cylinders, as well as the modified outer packaging, through the use of a uniform marking requirement. United asserts that such a marking requirement would have the benefit of clarifying DOT's jurisdiction over the manufacturers, specifically with respect to compliance with testing, hazmat employee training,

and record-keeping provisions. In addition, United states that a consistent visible mechanism will allow its employees and DOT enforcement officials to determine whether a UN or ATA Specification 300 outer packaging meets the new rule versus prior requirements, and to identify with reliable ease and certainty which DOT and UN cylinders are authorized to transport specific hazardous materials by air. United stresses the importance of such a provision because of the common airline industry practice of conducting code share operations and participating in loaned parts programs.

PHMSA acknowledges the commenters' concerns that current labeling and marking requirements may not fully identify cylinders equipped with the new PRD and outer packaging meeting the flame penetration and thermal resistance requirements of the January 31 final rule. However, because we did not propose any additional marking or labeling requirements in the NPRM, we cannot formally adopt a uniform marking or labeling requirement in this final rule. Any new marking or labeling requirement must be proposed in a future rulemaking to allow for public comment. Instead, PHMSA and FAA have developed a voluntary marking that may be affixed to an outer packaging meeting the flame penetration and thermal resistance requirements of the January 31 final rule to indicate compliance with these provisions of the regulations. The marking is as follows:

DOT31FP

We emphasize that this marking is not a requirement. We will consider proposing this marking as a uniform marking requirement in a future rulemaking, and, if this or some other marking is adopted, it would be incorporated into the HMR as an acceptable indication that the outer packaging meets the flame penetration and thermal resistance requirements and is in compliance with the requirements of the January 31 final rule.

E. Authorized Cylinders for Compressed Oxygen and Other Oxidizing Gases

The January 31 final rule revised the HMR to limit cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft to DOT specifications 3A, 3AA, 3AL, and 3HT in order to minimize numerous PRD setting requirements for oxygen cylinders aboard aircraft.

Barlen comments that DOT 39 and DOT 3E cylinders are safer than 3AL cylinders and questions why these

cylinders were eliminated in the January 31 final rule. PSI, a manufacturer of high-pressure steel DOT 39 and DOT 3E cylinders, requests reconsideration of the requirement to limit cylinders authorized for the transportation of compressed oxygen aboard aircraft and a delay in implementation of the requirements of the January 31 final rule. This commenter states the majority of the cylinders it manufactures are sold to companies producing gas mixtures used for gas calibration equipment and medical devices, such as blood gas analyzers. PSI notes that although DOT 3A and DOT 3AA cylinders are allowed in the January 31 final rule, these cylinders are not used for calibration gas mixtures because of their excessive weight. The commenter asserts that the requirements in the January 31 final rule would effectively ban the use of the only cylinders it manufactures. PSI adds that testing has shown steel DOT 39 and DOT 3E cylinders will survive fires for longer periods of time and be more resistant to higher failure temperatures than aluminum 3AL cylinders, and, along with Barlen, requests DOT to consider permitting the use of these cylinder types in addition to the DOT 3AL cylinders specified in the January 31 final rule. In addition, PSI requests DOT to allow limited quantities of oxygen-rich calibration gas mixtures to be transported on non-passenger aircraft such as those operated by Federal Express and UPS. Finally, PSI requests a delay in the implementation of this rule to allow for presentation of additional information.

We agree with the commenters that including DOT 39 and DOT 3E cylinders as cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft does not pose an additional safety hazard and will provide carriers more flexibility when transporting these materials aboard aircraft. Therefore, we are revising the HMR to limit cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft to DOT specifications 39, 3A, 3AA, 3AL, 3E, and 3HT, and UN pressure receptacles ISO 9809-1, ISO 9809-2, ISO 9809-3 and ISO 7866 cylinders, including a new limit on the PRD settings.

F. Miscellaneous Issues

Currently, § 173.302(c) specifies that an authorized cylinder containing oxygen continuously fed to tanks containing live fish may be offered for transportation and transported. One commenter, the Good View Trading Company (GVT), expresses concern

about the impact that the new outer packaging requirement in the January 31 final rule will have on the current exceptions for live fish transported aboard aircraft. In publishing the January 31 final rule, our intention was not to eliminate this exception. Therefore, for clarification, we are revising this section to specifically except it from the new outer packaging requirements.

In addition, on May 3, 2007, PHMSA published a final rule under Docket No. PHMSA-2005-23141 (HM-215F) in the **Federal Register** (72 FR 25161). The HM-215F final rule amended the HMR to revise and consolidate the requirements applicable to the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada's Transportation of Dangerous Goods Regulations, and the International Atomic Energy Agency's Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The revisions and reformatting provide a user-friendly format to promote understanding of the conditions and limitations on the use of international standards and regulations. In the HM-215F final rule, the ICAO Technical Instructions (formerly § 171.11) were re-designated as new § 171.24. As a result of this designation, the revisions adopted in this section under the January 31 final rule were inadvertently omitted. Therefore, we are republishing new § 171.24 as amended in the January 31 final rule for clarification.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for Rulemaking

This final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under the Regulatory Policies and Procedures of the Department of Transportation. The revisions adopted

in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the January 31, 2007 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements, but does not amend any regulation that has 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 materials transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on the following subjects:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material 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 items 2 and 5 above and preempts any State, local, or Indian tribe requirements not meeting the "substantially the same" standard.

Federal hazardous materials transportation law provides at § 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. This effective date of preemption is 90 days after the publication of this final rule in the **Federal Register**.

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 will 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

The Regulatory Flexibility Act of 1980 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. This final rule will not impose increased compliance costs on the regulated industry. The revisions, clarifications, and corrections we are making to the January 31, 2007 final rule will provide regulatory relief to persons transporting compressed oxygen, other oxidizing gases and chemical oxygen generators on aircraft by: Delaying the mandatory effective date from October 1, 2007 until October 1, 2008 to require a new limit on the pressure relief device (PRD) settings on cylinders containing compressed oxygen or other oxidizing gases when transported aboard aircraft; clarifying the thermal resistance test methods for packagings for oxygen cylinders and oxygen generators in Appendix D to Part 178, including DOT specification 3E and 39 cylinders to the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft; and providing a marking option to ensure easier identification of cylinders equipped with the new PRD and outer packagings meeting the flame penetration and thermal resistance requirements. Thus, DOT has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), DOT certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272

("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

G. Paperwork Reduction Act

PHMSA currently has approved information collections under OMB Control Number 2137-0572, "Testing Requirements for Non-Bulk Packaging" with an expiration date of March 31, 2010, and OMB Control Number 2137-0557, "Approvals for Hazardous Materials" with an expiration date of March 31, 2008. This final rule imposes no new information collection and recordkeeping requirements.

H. 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.

I. 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 you may visit <http://dms.dot.gov>.

List of Subjects*49 CFR Part 171*

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

49 CFR Part 173

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

49 CFR Part 175

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

49 CFR Part 178

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

■ In consideration of the foregoing, we are amending 49 CFR 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 § 171.24, paragraph (d)(2) as added on May 3, 2007 (72 FR 25172) effective October 1, 2007, is revised to read as follows:

§ 171.24 Additional requirements for the use of ICAO Technical Instructions.

* * * * *

(d) * * *

(2) A package containing Oxygen, compressed, or any of the following oxidizing gases must be packaged as required by Parts 173 and 178 of this subchapter: carbon dioxide and oxygen mixtures, compressed; compressed gas, oxidizing, n.o.s.; liquefied gas, oxidizing, n.o.s.; nitrogen trifluoride; and nitrous oxide.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

■ 4. In § 173.168, as added on January 31, 2007, paragraphs (d) introductory text, (d)(1), (d)(2) introductory text and (d)(2)(i) are revised to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(d) *Packaging.* A chemical oxygen generator and a chemical oxygen generator installed in equipment, (e.g., a PBE) must be placed in a rigid outer packaging that—

(1) Conforms to the requirements of either:

(i) Part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level; or

(ii) The performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container.

(2) After September 30, 2009, with its contents, is capable of meeting the following additional requirements when transported by cargo-only aircraft:

(i) The Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter;

* * * * *

■ 5. In § 173.301, paragraph (f)(3) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) * * *

(3) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2 (except oxygen and oxidizing gases transported by aircraft, see §§ 173.302(f) and 173.304(f)), beginning with the first requalification due after December 31, 2003, the burst pressure of a CG-1, CG-4, or CG-5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disk is placed inside a holder. This requirement does not apply if a CG-2, CG-3, or CG-9 thermally activated relief device or a CG-7 reclosing pressure valve is used on the cylinder.

* * * * *

■ 6. In § 173.302, paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 173.302 Filling of cylinders with non-liquefied (permanent) compressed gases.

* * * * *

(c) Notwithstanding the provisions of §§ 173.24(b)(1) and paragraph (f) of this section, an authorized cylinder containing oxygen continuously fed to

tanks containing live fish may be offered for transportation and transported.

* * * * *

(f) *Compressed oxygen and oxidizing gases by aircraft.* A cylinder containing oxygen, compressed; compressed gas, oxidizing, n.o.s.; or nitrogen trifluoride is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, and 39 cylinders, and UN pressure receptacles ISO 9809-1, ISO 9809-2, ISO 9809-3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, for DOT 39 cylinders offered for transportation after October 1, 2008, for the other DOT specification cylinders with the first requalification due after October 1, 2008, or for the UN pressure receptacles prior to initial use:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E, and 39 cylinders, and UN pressure receptacles ISO 9809-1, ISO 9809-2, ISO 9809-3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%.

(3) The cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M of this subchapter at the Packing Group I or II performance level or the performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) After September 30, 2009, is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter; and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and that the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the packaging.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter. The additional marking “DOT31FP,” is allowed to indicate that the cylinder and the outer packaging are capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR §§ 121.574, 125.219, or 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

§ 173.302a [Amended]

■ 7. In § 173.302a, as amended on January 31, 2007, paragraph (f) is removed.

■ 8. In § 173.304, a new paragraph (f) is added to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(f) *Oxidizing gases by aircraft.* A cylinder containing carbon dioxide and oxygen mixture, compressed; liquefied gas, oxidizing, n.o.s.; or nitrous oxide is authorized for transportation by aircraft only when it meets the following requirements:

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, and 39 cylinders, and UN pressure receptacles ISO 9809-1, ISO 9809-2, ISO 9809-3 and ISO 7866 cylinders are authorized.

(2) Cylinders must be equipped with a pressure relief device in accordance with § 173.301(f) and, for DOT 39 cylinders offered for transportation after October 1, 2008, for the other DOT specification cylinders with the first requalification due after October 1, 2008, or for the UN pressure receptacles prior to initial use:

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, 3E and 39 cylinders, and UN pressure receptacles ISO 9809-1, ISO 9809-2, ISO 9809-3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%.

(3) The cylinder must be placed in a rigid outer packaging that—

(i) Conforms to the requirements of either part 178, subparts L and M, of this subchapter at the Packing Group I or II performance level, or the

performance criteria in Air Transport Association (ATA) Specification No. 300 for a Category I Shipping Container;

(ii) After September 30, 2009, is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in part III of Appendix E to part 78 of this subchapter; and

(iii) Prior to each shipment, passes a visual inspection that verifies that all features of the packaging are in good condition, including all latches, hinges, seams, and other features, and the packaging is free from perforations, cracks, dents, or other abrasions that may negatively affect the flame penetration resistance and thermal resistance characteristics of the container.

(4) After September 30, 2009, the cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(5) The cylinder and the outer packaging must both be marked and labeled in accordance with part 172, subparts D and E of this subchapter. The additional marking "DOT31FP," is allowed to indicate that the cylinder and the outer packaging are capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

(6) A cylinder of compressed oxygen that has been furnished by an aircraft operator to a passenger in accordance with 14 CFR 121.574, 125.219, or 135.91 is excepted from the outer packaging requirements of paragraph (f)(3) of this section.

§ 173.304a [Amended]

■ 9. In § 173.304a, as amended on January 1, 2007, paragraph (f) is removed.

PART 175—[AMENDED]

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

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

■ 11. In § 175.501, as amended on January 1, 2007, paragraph (e)(5)(i) is revised to read as follows:

§ 175.501 Special requirements for oxidizers and compressed oxygen.

* * * * *

(e) * * *

(5) * * *

(i) Sections 173.302(f) and 173.304(f) of this subchapter, subpart C of part 172 of this subchapter, and, for passengers

only, subpart H of part 172 of this subchapter;

* * * * *

PART 178—[AMENDED]

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

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

■ 13. In appendix D to part 178, as added on January 1, 2007, paragraph 2.2 and paragraph 4.1 are revised to read as follows:

Appendix D to Part 178

Thermal Resistance Test

* * * * *

2. * * *

2.2 *Thermocouples.* At least three thermocouples must be used to monitor the temperature inside the oven and an additional three thermocouples must be used to monitor the temperature of the cylinder. The thermocouples must be 1/16 inch, ceramic packed, metal sheathed, type K (Chromel-Alumel), grounded junction with a nominal 30 American wire gauge (AWG) size conductor. The thermocouples measuring the temperature inside the oven must be placed at varying heights to ensure even temperature and proper heat-soak conditions. For the thermocouples measuring the temperature of the cylinder: (1) Two of them must be placed on the outer cylinder side wall at approximately 2 inches (5 cm) from the top and bottom shoulders of the cylinder; and (2) one must be placed on the cylinder valve body near the pressure relief device. Alternatively, the thermocouples may be replaced with other devices such as a remote temperature sensor, metal fuse on the valve, or coated wax, provided the device is tested and the test report is retained for verification. Under this alternative, it is permissible to record the highest temperature to which the cylinder is subjected instead of temperature measurements in intervals of not more than five (5) minutes.

* * * * *

4. * * *

4.1 It is recommended that the cylinder be closed at ambient temperature and configured as when filled with a valve and pressure relief device. The oxygen generator must be filled with an oxidizing agent and may be tested with or without packaging.

* * * * *

■ 14. A new Appendix E to part 178 is added to read as follows:

Appendix E to Part 178—Flame Penetration Resistance Test

(a) *Criteria for Acceptance.* (1) At least three specimens of the outer packaging materials must be tested;

(2) Each test must be conducted on a flat 16 inch x 24 inch test specimen mounted in the horizontal ceiling position of the test apparatus to represent the outer packaging design;

(3) Testing must be conducted on all design features (latches, seams, hinges, etc.) affecting the ability of the outer packaging to safely prevent the passage of fire in the horizontal ceiling position; and

(4) There must be no flame penetration of any specimen within 5 minutes after application of the flame source and the maximum allowable temperature at a point 4 inches above the test specimen, centered over the burner cone, must not exceed 205 °C (400 °F).

(b) *Summary of Method.* This method provides a laboratory test procedure for measuring the capability of cargo compartment lining materials to resist flame penetration with a 2 gallon per hour (GPH) #2 Grade kerosene or equivalent burner fire source. Ceiling and sidewall liner panels may be tested individually provided a baffle is used to simulate the missing panel. Any specimen that passes the test as a ceiling liner panel may be used as a sidewall liner panel.

(c) *Test Specimens.* (1) The specimen to be tested must measure 16 ± 1/8 inches (406 ± 3 mm) by 24 ± 1/8 inches (610 ± 3 mm).

(2) The specimens must be conditioned at 70 °F. ± 5 °F. (21 °C. ± 2 °C.) and 55% ± 5% humidity for at least 24 hours before testing.

(d) *Test Apparatus.* The arrangement of the test apparatus must include the components described in this section. Minor details of the apparatus may vary, depending on the model of the burner used.

(1) *Specimen Mounting Stand.* The mounting stand for the test specimens consists of steel angles.

(2) *Test Burner.* The burner to be used in testing must—

(i) Be a modified gun type.

(ii) Use a suitable nozzle and maintain fuel pressure to yield a 2 GPH fuel flow. For example: An 80 degree nozzle nominally rated at 2.25 GPH and operated at 85 pounds per square inch (PSI) gauge to deliver 2.03 GPH.

(iii) Have a 12 inch (305 mm) burner extension installed at the end of the draft tube with an opening 6 inches (152 mm) high and 11 inches (280 mm) wide.

(iv) Have a burner fuel pressure regulator that is adjusted to deliver a nominal 2.0 GPH of #2 Grade kerosene or equivalent.

Burner models which have been used successfully in testing are the Lenox Model OB-32, Carlin Model 200 CRD and Park Model DPL.

(3) *Calorimeter.* (i) The calorimeter to be used in testing must be a total heat flux Foil Type Gardon Gage of an appropriate range (approximately 0 to 15.0 British thermal unit (BTU) per ft.² sec., 0–17.0 watts/cm²). The calorimeter must be mounted in a 6 inch by 12 inch (152 by 305 mm) by 3/4 inch (19 mm) thick insulating block which is attached to a steel angle bracket for placement in the test stand during burner calibration as shown in Figure 2 of this part of this appendix.

(ii) The insulating block must be monitored for deterioration and the mounting shimmed as necessary to ensure that the calorimeter face is parallel to the exit plane of the test burner cone.

(4) *Thermocouples.* The seven thermocouples to be used for testing must be

$\frac{1}{16}$ inch ceramic sheathed, type K, grounded thermocouples with a nominal 30 American wire gage (AWG) size conductor. The seven thermocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 8 inches from the ceiling liner panel and 2 inches from the sidewall liner panel. The burner stand should have the capability of allowing the burner to be swung away from the test specimen during warm-up periods.

(6) *Instrumentation.* A recording potentiometer or other suitable instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the thermocouples.

(7) *Timing Device.* A stopwatch or other device must be used to measure the time of flame application and the time of flame penetration, if it occurs.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and allowed to stabilize, and the burner fuel flow must be adjusted as specified in paragraph (d)(2).

(f) *Calibration.* To ensure the proper thermal output of the burner the following test must be made:

(1) Remove the burner extension from the end of the draft tube. Turn on the blower portion of the burner without turning the fuel or igniters on. Measure the air velocity using a hot wire anemometer in the center of the draft tube across the face of the opening. Adjust the damper such that the air velocity is in the range of 1550 to 1800 ft./min. If tabs are being used at the exit of the draft tube, they must be removed prior to this measurement. Reinstall the draft tube extension cone.

(2) Place the calorimeter on the test stand as shown in Figure 2 at a distance of 8 inches (203 mm) from the exit of the burner cone to simulate the position of the horizontal test specimen.

(3) Turn on the burner, allow it to run for 2 minutes for warm-up, and adjust the damper to produce a calorimeter reading of 8.0 ± 0.5 BTU per ft.² sec. (9.1 ± 0.6 Watts/cm²).

(4) Replace the calorimeter with the thermocouple rake.

(5) Turn on the burner and ensure that each of the seven thermocouples reads 1700 °F. ± 100 °F. (927 °C. ± 38 °C.) to ensure steady state conditions have been achieved. If the temperature is out of this range, repeat steps 2 through 5 until proper readings are obtained.

(6) Turn off the burner and remove the thermocouple rake.

(7) Repeat (1) to ensure that the burner is in the correct range.

(g) *Test Procedure.* (1) Mount a thermocouple of the same type as that used for calibration at a distance of 4 inches (102 mm) above the horizontal (ceiling) test specimen. The thermocouple should be centered over the burner cone.

(2) Mount the test specimen on the test stand shown in Figure 1 in either the

horizontal or vertical position. Mount the insulating material in the other position.

(3) Position the burner so that flames will not impinge on the specimen, turn the burner on, and allow it to run for 2 minutes. Rotate the burner to apply the flame to the specimen and simultaneously start the timing device.

(4) Expose the test specimen to the flame for 5 minutes and then turn off the burner. The test may be terminated earlier if flame penetration is observed.

(5) When testing ceiling liner panels, record the peak temperature measured 4 inches above the sample.

(6) Record the time at which flame penetration occurs if applicable.

(h) *Test Report.* The test report must include the following:

(1) A complete description of the materials tested including type, manufacturer, thickness, and other appropriate data.

(2) Observations of the behavior of the test specimens during flame exposure such as delamination, resin ignition, smoke, etc., including the time of such occurrence.

(3) The time at which flame penetration occurs, if applicable, for each of the three specimens tested.

Issued in Washington, DC, on September 17, 2007 under authority delegated in 49 CFR part 1.

Krista Edwards,

Acting Administrator.

[FR Doc. E7-19207 Filed 9-27-07; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 300 to 399, revised as of October 1, 2006, on page 276, in Appendix A to Part 386, reinstate Section IV to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$2,100 per violation. (For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during

the period the driver was placed out of service.

Penalty—Up to \$16,000 per violation. (This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—\$2,100 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty—Up to \$16,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$650 per violation.

f. Violation—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$16,000 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Conducting operations during a period of suspension under §§ 386.83 or 386.84 for failure to pay penalties.

Penalty—Up to \$11,000 for each day that operations are conducted during the suspension period.

[FR Doc. 07-55515 Filed 9-27-07; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126-AB12

Civil Penalties Adjustments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule specifies inflation adjustments to civil penalties