

MODIFICATION SPECIAL PERMIT—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
11666-M	Alcoa, Inc., Pittsburgh, PA.	49 CFR 173.240(b)	To modify the special permit to authorize the addition of intermodal containers and unitizing the electrodes with steel banding to wooden runners or to wooden pallets.	
11818-M	Space Systems/Loral, Palo Alto, CA.	49 CFR 180.205	To modify the special permit to authorize the transportation in commerce of a Class 9 material.	
14467-M	Brenner Tank, LLC Fond Du Lac, WI.	49 CFR 178.345-2	To modify the special permit to authorize relief from minimum thickness tables for duplex stainless steels used in the construction of DOT-400 series specification cargo tanks.	
14649-M	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.62(b), 172.10 1 column (8C), 173.60(b)(8), 172.300 and 172.400.	To modify the special permit to authorize an additional Division 1.4C hazardous material.	

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety;
Notice of Application for Special Permits

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

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the 'Nature of Application' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 23, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, Southeast, Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 12, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14796-N		Chammas Cutters Inc., Houston, TX.	49 CFR 173.228	To authorize the transportation in commerce of non-DOT specification cylinders containing Bromine trifluoride. (modes 1, 2, 3, 4, 5)
14797-N		Department of Energy, Washington, DC.	49 CFR 173.416 and 173.417.	To authorize the continued use of DOT 6M packages for the transportation in commerce of radioactive materials. (mode 1)
14798-N		Cymaco NV	49 CFR 173.302a(b) and 180.205.	To authorize the ultrasonic examination of certain DOT specification cylinders in lieu of the specified internal visual examination and hydrostatic pressure test and to allow the plus marking without determining the elastic expansion by the water jacket method. (modes 1, 2, 3, 4, 5)
14799-N		Takata-Petri CCI	49 CFR 173.30 1(a) and 173. 302a.	To authorize the manufacture, marking, sale and use of non-DOT specification cylinders similar to a OT 39 cylinder for use as components of safety systems. (modes 1, 2, 3, 4)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14801-N		CVS Transportation, L.L.C., Woonsocket, RI.	49 CFR 171.8 Materials of Trade.	To authorize the transportation in commerce of certain hazardous materials as Materials of Trade when transported by a dedicated contract carrier and meet all the provisions of 49 CFR 173.6. (mode 1)
14802-N		Sporting Arms and Ammunition Manufacturers' Institute, Inc. Newtown, CT.	49 CFR 173.6	To authorize the transportation in commerce of certain Division 1.4S explosives under the Materials of Trade exception in 49 CFR 173.6. (mode 1)

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA-00-8026 (PD-26(R))]

Massachusetts' Definitions of Hazardous Materials

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

ACTION: Notice of administrative determination of preemption.

Applicant: Boston and Maine Corporation (Boston and Maine).

Local Laws Affected: Massachusetts General Laws (M.G.L.) chapter 21 E, section 2 (ch. 21 E); and chapter 21 K, section 1 (ch. 21 K).

Applicable Federal Requirements: The Federal Hazardous Material Transportation Law (Federal Hazmat Law), 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180.

Modes Affected: Rail and Highway.

SUMMARY: The Federal Hazmat Law does not preempt the definitions of "hazardous material" in M.G.L. chs. 21 E and 21 K. As applied and enforced, the challenged provisions of Massachusetts' laws are not an "obstacle" to accomplishing and carrying out the Federal Hazmat Law, the HMR, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security. Because a regulated entity may comply with the State and Federal requirements at the same time the Massachusetts' laws are not preempted under the "dual compliance" test. These definitions and State requirements also do not concern any of the five subject areas in which State Authority is expressly preempted by the Federal Hazmat Law, and State

enforcement of these laws does not otherwise frustrate Congressional intent.

FOR FURTHER INFORMATION CONTACT: Thomas D. Seymour, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, (202) 366-4400, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room E26-322, Washington, DC 20590; e-mail: tom.seymour@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Issues Under Consideration

In this determination, PHMSA considers the definitions of "hazardous material" as contained in M.G.L. chs. 21 E and 21 K. Chapter 21 E and entitled "Massachusetts Oil and Hazardous Materials Release Prevention and Response Act" to be parallel with the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA" or "Superfund law"). Chapter 21 K, "Mitigation of Hazardous Materials," governs the State's emergency mitigation response to a release, or threat of release, of materials determined by the state to pose a risk of contamination to the local environment. This statute authorizes the Massachusetts Department of Fire Services to deploy personnel and equipment for emergency mitigation response caused by a release, or threat of release, of materials determined to be a potential environment contaminant. Chapter 21 K also provides for the dispatch of trained personnel to evaluate a potential risk of contamination to the environment.

Both M.G.L. chs. 21 E and 21 K use the term "hazardous material" to refer to substances triggering the laws' requirements. Under Chapter 21 E a "hazardous material" is defined as:

A material including but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in

combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed.

Chapter 21 K contains the same definition except that it expressly identifies "oil" as a hazardous material.

II. Background

A. Summary of Facts

On June 27, 1999, six railcars from a Boston and Maine train derailed in the Charlemont, MA area, causing an unidentified material to leak into the ground and nearby Deerfield River. The Charlemont Fire Department responded to the incident and, when it could not identify the material, called the Massachusetts Hazardous Material Response Team. When the Response team identified the material, and determined it did not pose a risk to the environment, the team abandoned further cleanup efforts and turned the scene over to Boston and Maine's personnel.

Massachusetts later presented an invoice to Boston and Maine for the cost of the response and the discontinued cleanup. Boston and Maine objected and sought relief through state administrative procedures. Subsequently, Boston and Maine filed a complaint in Massachusetts Superior Court for Middlesex County, alleging errors in law associated with the Massachusetts Department of Fire Services' assessment of the response costs. While the State civil action was pending, Boston and Maine filed the present request for an Administrative determination of preemption. (The petition was filed with the Research and Special Programs Administration (RSPA) the predecessor of the Pipeline and Hazardous Materials Safety Administration (PHMSA)). For ease of reading, this publication will refer to PHMSA in describing the agency's conduct during this proceeding.