

same transport vehicle under the exemption program under certain conditions with a safe and satisfactory transportation experience. The exemptions affected are DOT-E 11153 and 11294.

Section 173.13

Section 173.13 excepts Class or Division 3, 4.1, 4.2, 4.3, 5.1, 6.1, 8 or 9 materials from labeling and placarding requirements of the HMR if the material is packaged in accordance with the provisions of this section. The current exception applies to hazardous materials being transported by motor vehicle, rail car, or cargo aircraft. For transportation by cargo aircraft, the hazardous material must also be permitted to be transported on cargo aircraft in column (9B) of the Hazardous Materials Table (HMT). Section 173.13 restricts the net quantity per inner packaging to 1 L (0.3 gallon) for liquids and 2.85 kg (6.25 lbs.) for solids and requires triple packaging which exceeds the packaging standard currently authorized. For many years, we have also authorized transportation by passenger aircraft with certain limitations with a safe and satisfactory transportation experience. The affected exemptions are DOT E-7891, 8249, 9168, 10672, 10962, 10977, 11248, 12177, 12230, and 12401. Therefore, we are proposing to expand the exception to include transportation by passenger aircraft with certain limitations for materials that are permitted to be transported on passenger aircraft in Column (9A) of the HMT. The proposed exception provides the same level of safety as was previously provided under the exemption program.

Section 173.22a

We are proposing to revise paragraph (b) of § 173.22a by removing the requirement that a copy of each exemption that authorizes use of a packaging must be maintained at each facility where the package is being used in connection with the transportation of a hazardous material. Currently, the "Special Provisions" section of each exemption states where the exemption must be maintained, if we believe it is necessary. We believe that such a requirement should be handled on a case-by-case basis and see no need for an across-the-board requirement in the HMR. This proposal also responds to a petition for rulemaking (P-1293) submitted by W.W. Grainger, Inc. We are also proposing to revise paragraph (c) of § 173.22a to clarify that a "current" copy of an exemption must be provided to the carrier by each person offering hazardous materials under the

terms of an exemption when the exemption contains requirements that apply to the carrier. Additionally, we are proposing to add the website address where a copy of an exemption can be obtained.

Part 174

Section 174.81

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

Part 176

Section 176.83

We are proposing to add a new paragraph (a)(11) to reference a segregation exception in § 173.12(e) for lab packs containing cyanides and cyanide mixtures or solutions transported with acids, and for Division 4.2 materials in lab packs transported with Class 8 liquids. See § 173.12 preamble discussion.

Section 176.84

We are proposing to add a Note to paragraph (b), Code "52" cross-referencing § 173.12(e) for cyanides and cyanide mixtures or solutions in lab packs. See § 173.12 preamble discussion.

Part 177

Section 177.848

We are proposing to revise paragraph (c) by adding a cross-reference to § 173.12(e) for cyanides, cyanide mixtures or solutions as well as Division 4.2 materials. See § 173.12 preamble discussion. We are also proposing to editorially revise paragraph (d) for clarity.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this proposed rule provide a relaxation of

the regulations and, as such, would impose little or no additional costs to affected industry.

B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that 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. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or
- (5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted as final, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA 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.