



U.S. Department of Transportation
**Pipeline and Hazardous Materials Safety
Administration**
1200 New Jersey Avenue, SE
Washington, DC 20590

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MEMO TO FILE

From: Carolyn Nelson, P.E.
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Subject: **Categorical Exclusion Determination**
HM-268P: Adopting DOT-SP 21478 into the Hazardous Materials Regulations

FINAL ACTION

PHMSA is amending the Hazardous Materials Regulations (HMR) by adopting the provisions of the Department of Transportation (DOT) special permit (SP) 21478 into the HMR. PHMSA is revising 49 CFR 173.29 to add a new subparagraph, (d), that authorizes the transportation of “empty” intermediate bulk containers (IBCs) only containing a residue of a hazardous material in a similar manner to empty non-bulk packagings allowed in 49 CFR 173.29(c). PHMSA is also making conforming revisions to 49 CFR 172.331, 172.504, and 172.514. Lastly, PHMSA is amending § 172.514 to make clear that IBCs shipped in accordance with the conditions of the empty packaging exception are not subject to placarding. The revisions to the regulation will authorize IBCs containing a residue of a certain hazardous materials to be transported without shipping papers, placards, or United Nations (UN) identification (ID) numbers subject to additional operational controls. The revisions provide relief from undue burdens of hazard communication requirements for low-risk transportation of empty packagings and eliminate the need for special permit renewal requests. PHMSA believes the residue quantity limits in the proposal are enforceable and therefore safety is maintained by the revised regulation.

APPLICABLE CATEGORICAL EXCLUSION

Categorical exclusions (CE) are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or an environmental impact statement (EIS). [DOT Order 5610.1D](#), DOT’s current National Environmental Policy Act (NEPA) procedures, notes in paragraph 9(f) that “[a]n OA may apply a CE established in another OA’s procedures.” PHMSA coordinated with the Federal Highway Administration (FHWA) to determine that the following

FHWA CE is applicable to the action described above and can be used by PHMSA per Section 9(f) of DOT Order 5610.1D:

*Promulgation of rules, regulations, and directives.*¹

UNUSUAL CIRCUMSTANCES

Based on the scope of the action, PHMSA has determined that this rulemaking action does not meet the criteria for unusual circumstances listed in 23 CFR 771.117(b), which would require PHMSA to conduct appropriate environmental studies to determine if the CE classification is proper.

DETERMINATION

PHMSA analyzed the proposed rule and determined that the rulemaking will not adversely affect safety and will not significantly affect the quality of the human and natural environment. Based on the information provided in the Notice of proposed rulemaking (NPRM), including a review of unusual circumstances, PHMSA finds the final action qualifies as a Categorical Exclusion in accordance with Section 102 of the National Environmental Policy Act, 42 U.S.C. § 4332, DOT Order 5610.1D, Departmentwide National Environmental Policy Act Implementing Procedures, and 23 CFR 771.

Approved by the Environmental Analysis and Compliance Division:

¹ 23 CFR 771.117(c)(20)