

## § 173.22

## 49 CFR Ch. I (10–1–11 Edition)

points where the consumable refrigerant may be procured, or where repairs to, or replacement of, the mechanical refrigeration unit may be accomplished.

(E) The vehicle operator shall maintain the written temperature-control procedures, and the written record of temperature measurements specified in paragraph (f)(3)(i)(C) of this section, if applicable, in the same manner as specified in § 177.817 of this subchapter for shipping papers.

(F) If the control temperature is maintained by use of a consumable refrigerant (e.g., dry ice or liquid nitrogen), the quantity of consumable refrigerant must be sufficient to maintain the control temperature for twice the average transit time under normal conditions of transportation.

(G) A material that has a control temperature of 40 °C (104 °F) or higher may be transported by common carrier. A material that has a control temperature below 40 °C (104 °F) must be transported by a private or contract carrier.

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in Chapter 7.7 of the IMDG Code (IBR, see § 171.7 of this subchapter).

(g) Packages which give off a flammable gas or vapor, released from a material not otherwise subject to this subchapter, likely to create a flammable mixture with air in a transport vehicle.

(h) Packages containing materials (other than those classed as explosive) which will detonate in a fire.

(1) For purposes of this paragraph, “detonate” means an explosion in which the shock wave travels through the material at a speed greater than the speed of sound.

(2) When tests are required to evaluate the performance of a package under the provisions of this paragraph, the testing must be done or approved by one of the agencies specified in § 173.56.

(i) Except for a package containing a lighter design sample that meets the requirements of § 173.308(b)(2), a package containing a lighter (see § 171.8 of this subchapter) containing a Division 2.1 material, of a design that has not been examined and successfully tested

by an authorized person under the criteria specified in § 173.308(a)(4) or, a lighter design containing a Class 3 material, that has not been approved by the Associate Administrator.

(j) An organic peroxide of the “ketone peroxide” category which contains more than 9 percent available oxygen as calculated using the equation in § 173.128(a)(4)(ii). The category, ketone peroxide, includes, but is not limited to:

Acetyl acetone peroxide  
Cyclohexanone peroxide(s)  
Diacetone alcohol peroxides  
Methylcyclohexanone peroxide(s)  
Methyl ethyl ketone peroxide(s)  
Methyl isobutyl ketone peroxide(s)

(k) Notwithstanding any other provision of this subchapter, including subpart C of part 171 and 175.10(a)(2) of this subchapter, an oxygen generator (chemical) as cargo on a passenger-carrying aircraft. This prohibition does not apply to an oxygen generator for medical or personal use of a passenger that meets the requirements of § 175.10(a)(7) of this subchapter.

[Amdt. 173–224, 55 FR 52609, Dec. 21, 1990]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 173.21, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 173.22 Shipper's responsibility.

(a) Except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following:

(1) The person shall class and describe the hazardous material in accordance with parts 172 and 173 of this subchapter, and

(2) The person shall determine that the packaging or container is an authorized packaging, including part 173 requirements, and that it has been manufactured, assembled, and marked in accordance with:

(i) Section 173.7(a) and parts 173, 178, or 179 of this subchapter;

(ii) A specification of the Department in effect at the date of manufacture of the packaging or container;

(iii) National or international regulations based on the UN Recommendations (IBR, see §171.7 of this subchapter), as authorized in §173.24(d)(2);

(iv) An approval issued under this subchapter; or

(v) An exemption or special permit issued under subchapter A of this chapter.

(3) In making the determination under paragraph (a)(2) of this section, the person may accept:

(i) Except for the marking on the bottom of a metal or plastic drum with a capacity over 100 L which has been reconditioned, remanufactured or otherwise converted, the manufacturer's certification, specification, approval, or exemption or special permit marking (see §§178.2 and 179.1 of this subchapter); or

(ii) With respect to cargo tanks provided by a carrier, the manufacturer's identification plate or a written certification of specification or exemption or special permit provided by the carrier.

(4) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with §178.2 of this subchapter. A person must maintain a copy of the manufacturer's notification, including closure instructions (see §178.2(c) of this subchapter) unless permanently embossed or printed on the packaging. When applicable, a person must maintain a copy of any supporting documentation for an equivalent level of performance under the selective testing variation in §178.601(g)(1) of this subchapter. A copy of the notification, unless permanently embossed or printed on the packaging, and supporting documentation, when applicable, must be made available for inspection by a representative of the Department upon request for the time period of the packaging's periodic retest date, *i.e.*, every 12 months for single or composite pack-

agings and every 24 months for combination packagings.

(b) No person may offer a motor carrier any hazardous material specified in 49 CFR 385.403 unless that motor carrier holds a safety permit issued by the Federal Motor Carrier Safety Administration.

(c) Prior to each shipment of fissile radioactive materials, and Type B or highway route controlled quantity packages of radioactive materials (see §173.403), the shipper shall notify the consignee of the dates of shipment and expected arrival. The shipper shall also notify each consignee of any special loading/unloading instructions prior to his first shipment. For any shipment of irradiated reactor fuel, the shipper shall provide physical protection in compliance with a plan established under:

(1) Requirements prescribed by the U.S. Nuclear Regulatory Commission, or

(2) Equivalent requirements approved by the Associate Administrator.

[Amdt. 173-100, 42 FR 2689, Jan. 13, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §173.22, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 173.22a Use of packagings authorized under special permits.

(a) Except as provided in paragraph (b) of this section, no person may offer a hazardous material for transportation in a packaging the use of which is dependent upon an exemption or special permit issued under subpart B of part 107 of this title, unless that person is the holder of or a party to the exemption or special permit.

(b) If an exemption or special permit authorizes the use of a packaging for the transportation of a hazardous material by any person or class of persons other than or in addition to the holder of the exemption or special permit, that person or a member of that class of persons may use the packaging for the purposes authorized in the exemption or special permit subject to the terms specified therein. Copies of exemptions and special permits may be obtained by accessing the Hazardous Materials Safety Web site at <http://>