

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 176, 177, and 178****[Docket HM-222B; Notice No. 96-3]****RIN 2137-AC76****Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to revise the Hazardous Materials Regulations (HMR) based on its review of the HMR and on written and oral comments received from the public concerning regulatory reform. The intended effect of this rulemaking is to reduce unnecessary regulatory burdens on industry and make the regulations shorter and easier to use without compromising public safety. In particular, RSPA is proposing reductions in requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers. This action is in response to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations and directing front line regulators to "get out of Washington" and create grassroots partnerships with the regulated community.

DATES: Comments must be received on or before April 19, 1996.

ADDRESSES: Please address written comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments may also be faxed to (202) 366-3753. Comments should identify the docket (Docket No. HM-222B). The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: John A. Gale or Jennifer Antonielli, (202) 366-8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), and associated procedural rules (49 CFR Parts 106 and 107).

The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. On April 4, 1995, RSPA published in the Federal Register (60 FR 17049) a notice announcing seven public meetings and requesting comments on its hazardous materials safety program. RSPA requested comments on ways to improve the HMR and the kind and quality of services its customers want. RSPA received over 50 written comments in response to the notice. On July 28, 1995, RSPA published a second notice (60 FR 38888) announcing five more public meetings to be held from September to January 1996. On October 13, 1995, (60 FR 53321) RSPA issued an NPRM under Docket HM-222A that proposed to remove those sections of the regulations that have been identified in RSPA's regulatory review, in comments, and in the public meetings held to date as being unnecessary, duplicative, or outdated.

In this NPRM, RSPA proposes to amend various sections of the HMR based on agency initiative and on written and oral comments received from the public on regulatory reform. This rulemaking is one of several rulemakings that RSPA will initiate in response to its regulatory review, public meetings, and comments.

II. Proposed Changes**Part 171**

Section 171.16. Several commenters requested modification of the incident reporting requirements in Part 171. One commenter requested that exceptions from the incident reporting requirements in § 171.16 be provided for limited quantities. RSPA concurs that continued reporting of certain incidents involving limited quantities would be of minimal value when weighed against the burden on the carriers required to prepare incident reports. Therefore, except for materials transported by aircraft, RSPA proposes certain

exceptions from the incident reporting requirements in § 171.16 for limited quantities of Packing Group II and III materials.

Part 172

Section 172.101. Based on a commenter's request, RSPA proposes to amend the § 172.101 Table for the entries "Cartridges for weapons, blank, or Cartridges, small arms, blank, UN 0014"; "Cartridges for weapons, inert projectile, or Cartridges, small arms, UN0012"; "Cartridges, power device, UN0323"; and "Cartridges, small arms", in Column (7), by removing the reference "112". Also for these entries, in Column (8A) of the § 172.101 Table, the word "None" or "230", as appropriate, would be removed and replaced with "63". The provisions to reclass an explosive as an ORM-D material, currently contained in Special Provision 112 and in § 173.230(b), would be relocated to § 173.63(b) to minimize confusion. See also preamble discussion on proposed amendments to § 173.230.

One commenter requested that RSPA amend Column (7) of the § 172.101 Table for the entry "Ethanol or Ethyl alcohol or Ethanol solutions or Ethyl alcohol solutions" by adding Special Provision "24" to allow ethanol the same packing group criteria as alcoholic beverages. Special Provision 24 recently was adopted in the HMR for the shipping name "Alcoholic beverages" to provide alternative packing group criteria to that of § 173.121. The special provision specifies that alcoholic beverages with more than 70 percent alcohol by volume are assigned Packing Group II and alcoholic beverages containing more than 24 percent but not more than 70 percent alcohol are assigned Packing Group III. The commenter requested that the special provision also be assigned to ethanol because Packing Group II or III distilled spirits can be and are shipped under either "Alcoholic beverages" or "Ethanol or Ethyl alcohol or Ethanol solutions or Ethyl alcohol solutions." RSPA agrees with the commenter and proposes to add Special Provision "24" in Column (7) of the § 172.101 Table for the entry "Ethanol or Ethyl alcohol or Ethanol solutions or Ethyl alcohol solutions."

Section 172.102. In paragraph (c)(1), RSPA proposes to remove Special Provision 112 because its provisions would be relocated to § 173.63(b). See also preamble discussion on proposed changes to §§ 172.101 and 173.230.

Section 172.201. For clarity, RSPA proposes to amend § 172.201(d) by adding a cross-reference to § 172.604(c)

for exceptions from the requirement to maintain an emergency response telephone number.

Section 172.203. RSPA proposes to revise the requirements for identifying hazardous substances on shipping papers and package markings. Currently under the HMR, all constituents in a mixture or solution that meet the definition of "hazardous substance" in § 171.8 must be identified on shipping papers and package markings. RSPA proposes, consistent with the technical name requirements in § 172.203(k), to require for hazardous materials that contain two or more hazardous substances that at least two hazardous substances be identified on shipping papers and package markings.

In addition, RSPA proposes to amend paragraph (e)(2) and remove paragraph (e)(3) to eliminate the requirement to enter on shipping papers "RESIDUE: Last Contained * * *" for packages containing only the residue of a hazardous substance. This proposal is intended to reduce regulatory burdens on industry.

Section 172.316. One commenter requested that RSPA allow consumer commodities that are prepared in accordance with the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) to be transported by motor vehicle. RSPA concurs and proposes to modify § 172.316 to allow the CLASS 9 label in lieu of the ORM-D marking on packages of consumer commodities.

Section 172.324. Consistent with proposed amendments to § 172.203(c), RSPA proposes to amend § 172.324(a) to ease the burden of identifying each hazardous substance on package markings. RSPA would require for packages that contain a mixture or solution comprising two or more hazardous substances, that at least two hazardous substances be marked on the package in association with the proper shipping name.

Section 172.402. One commenter requested an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. Generally, the commenter seeks parity with a labeling exception in § 173.4 for small quantities of hazardous materials. These Class 7 materials conform to all requirements in § 173.4, except for their specific activity level, which exceeds permissible limits for a limited quantity radioactive material. Because the non-radioactive hazards of these materials pose a

minimal risk in transportation, the commenter suggests that § 172.402(d) be revised to except them from the requirement to label for the subsidiary hazard. Based upon successful experience under exemption DOT-E 10660, which currently authorizes transportation of certain packages, and consistent with the commenter's request, RSPA proposes to revise paragraph (d) by adding an exception from the subsidiary hazard labeling requirement for packages of Class 7 materials that otherwise conform to § 173.4.

Section 172.500. RSPA proposes to redesignate paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6) and add a new paragraph (b)(4) to clarify that small quantities of Division 4.3 materials prepared in accordance with § 173.13 are excepted from the placarding requirements of Subpart F of Part 172.

Section 172.600. In accordance with § 172.600(d), a material that is classed as ORM-D, except when offered or intended for transportation by air, is excepted from the emergency response information and telephone number requirements of Subpart G of Part 172. The Conference on Safe Transportation of Hazardous Articles (COSTHA) petitioned (P-1094) RSPA to except all ORM-D materials, including those transported by air, from emergency response information requirements because of the small quantities involved and minimal hazards associated with ORM-D materials. COSTHA further stated that because an ORM-D material is not assigned an identification number, no specific emergency instructions are provided. Therefore, it contends that documented emergency response information and the 24-hour response telephone number are unnecessary. COSTHA also reported that many consumer commodities are allowed to be carried as checked and carry-on baggage without application of the emergency response communication standards. Thus, it argues that the aggregate quantity of consumer commodities that are carried by passengers may be considerably larger than that carried as cargo to which the emergency response information is required. RSPA agrees with the petitioner that the requirements to provide emergency response information and maintain a 24-hour telephone number are unduly burdensome for shippers of ORM-D air materials and, thus, proposes an exception in § 172.600(d) for these materials.

Section 172.604. Based on its own initiative and petitions for rulemaking,

and because the costs to implement these requirements outweigh the benefits, RSPA proposes to except the following materials from emergency response telephone number requirements: (1) liquid petroleum distillate fuels (e.g., gasoline, propane, and diesel fuel); (2) limited quantities of hazardous materials; and (3) materials described under the shipping names "Engines, internal combustion"; "Battery powered equipment"; "Battery powered vehicle"; "Wheelchair, electric"; "Carbon dioxide, solid"; "Dry ice"; "Fish meal, stabilized"; "Fish scrap, stabilized"; "Castor bean"; "Castor meal"; "Castor flake"; "Castor pomace"; "Mercury contained in manufactured articles"; and "Refrigerating machine".

Since emergency responders routinely handle incidents involving liquid petroleum distillate fuels, it is questionable that the 24-hour emergency response telephone number could provide emergency responders with any additional information of value beyond that which is required to be carried in the vehicle. Therefore, RSPA proposes to except liquid petroleum distillate fuels from the emergency response telephone number requirements in § 172.604.

RSPA believes that the costs outweigh the benefits associated with maintaining the 24-hour emergency response telephone number requirements for shipments of limited quantities and the materials described under the shipping names listed above, e.g., Engines, internal combustion, etc. Therefore, RSPA proposes to except those materials from the emergency response telephone number requirements of § 172.604.

In addition, based on its own initiative, RSPA proposes to clarify that more than one emergency response telephone number with different hours of operation may be used to satisfy the requirements of § 172.604 if the following conditions are met: (1) the hours of operation of each number are clearly identified in association with the respective telephone number; (2) each respective telephone number is monitored during the time indicated while the hazardous material is in transportation; and (3) the requirements of § 172.604 (a)(2), (a)(3), and (b) are met. This proposed amendment is intended to codify RSPA's current position on this matter.

Section 172.704. RSPA stated in the notice of public meetings under Docket HM-222 (60 FR 17049) that it would consider extending the requirement for recurrent training from every two years to every three or four years. RSPA

received several written and oral comments in support of decreasing the frequency specified to train hazmat employees in accordance with Subpart H of Part 172. Many commenters claimed that the current requirement to train every two years is costly, difficult to administer, and inconsistent with other training programs required under other Federal, State and local regulations. Specifically, commenters from the marine cargo handling industry requested that RSPA increase the training interval to every four years for certain longshoremen who only handle sealed containers of hazardous materials and are not responsible for handling incidents involving the hazardous materials. Other commenters stated that the recurrent training requirement should be aligned to coincide with the Commercial Driver's License renewal requirement which is generally every four years. One commenter suggested that the interval for hazmat training coincide with the Federal Railroad Administration requirement in 49 CFR 240.217(c)(1) to certify engineers every three years. Some commenters requested that RSPA require hazmat training every five years. In this NPRM, RSPA proposes to decrease the frequency of all required hazmat training from two years to three years. This frequency is consistent with other training programs such as the training required under the Transportation of Dangerous Goods Regulations issued by the Government of Canada. Except as provided in § 172.704(c), hazmat employees must be trained whenever their hazmat functions change or the requirements are revised, regardless of the minimally required training frequency (see § 172.702). For example, if a requirement for information on a shipping paper changes as a result of a final rule, a hazmat employee is required to be trained in the revised requirement as soon as the new requirement becomes effective.

RSPA also received comments from the marine cargo handling industry concerning the applicability of the training requirements to "casuals" who are longshoremen who are hired for short periods, sometimes one day at a time. In accordance with § 172.704(c), hazmat employees must be trained within 90 days after employment. During this 90-day period, employees may perform hazmat functions only under the direct supervision of a properly trained and knowledgeable hazmat employee. This provision applies to a "casual" employed for less than 90 consecutive days by the same employer. In addition to removing

obsolete effective dates, RSPA is proposing to revise § 172.704(c) to clarify its position concerning the "direct" supervision of a hazmat employee who has not received initial training. RSPA's position is that the person who is providing direct supervision must be able to instruct the employee on how to properly perform the hazmat function, must observe performance of the hazmat function, and must be able to take immediate corrective actions for any function not properly performed. Therefore, RSPA is proposing to add the word "direct" preceding the word "supervision" in § 172.704(c)(1) and, in § 172.702(b), RSPA is adding a reference to the exceptions for initial training found in § 172.704(c)(1).

Part 173

Section 173.4. Currently, the HMR do not permit Class 2, Divisions 4.2 and 4.3 materials and hazardous materials identified in paragraph (a)(11) to be shipped under the small quantity provisions, although some of these materials are eligible for similar exceptions under the ICAO Technical Instructions or an approval issued by the Associate Administrator for Hazardous Materials Safety. For example, UN2031 (Nitric acid) is specifically listed in paragraph (a)(11) and may not be shipped in accordance with the small quantity provisions. However, small quantities of nitric acid are authorized under a number of approvals to be shipped in this manner and no safety problems have been encountered. In this notice, RSPA proposes to revise the small quantity provisions by amending the introductory text in paragraph (a) to authorize Divisions 4.2 and 4.3, Packing Groups II and III, materials to be shipped in accordance with these provisions. This notice proposes to remove paragraph (a)(11) and add a new paragraph (c) to allow small quantities of certain categories of hazardous materials that are not authorized under this exception to be shipped in accordance with this section if specifically approved by the Associate Administrator for Hazardous Materials Safety. RSPA also proposes to revise the marking required to be displayed on packages of small quantities of hazardous materials in paragraph (a)(10) by shortening the length of the required statement. The proposed changes to § 173.4 are intended to ease burdens on industry and facilitate international transportation of hazardous materials in small quantities.

Section 173.13. RSPA proposes to add a new section § 173.13 that would

incorporate, for highway and rail transport only, the provisions of DOT exemptions E-7891 and E-9168 into the HMR. These exemptions, and others commonly referred to as the "poison pack exemptions," allow small quantities of hazardous materials to be transported without their primary or subsidiary labels. In addition, Division 4.3 materials which meet the requirements of § 173.13 would be excepted from the placarding requirements of the HMR and Division 6.1 materials packaged in the specified manner would be allowed to be transported with foodstuffs.

Section 173.21. RSPA proposes to incorporate into § 173.21 the provisions of a competent authority approval for temperature-controlled shipments. This would eliminate the requirement that all shipments requiring temperature control must be approved by the Associate Administrator for Hazardous Materials Safety.

Section 173.32a. RSPA proposes to remove a requirement for an approval agency to submit an approval certificate to the Associate Administrator for Hazardous Materials Safety. This proposed amendment would provide relief from paperwork reporting burdens.

Section 173.155. RSPA proposes to amend § 173.155 by increasing the quantity of Class 9 liquid materials permitted in an inner packaging from 4.0 L (1 gallon) to 5.0 L (1.3 gallons). This proposal is consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and is intended to provide relief and facilitate transportation of these materials in international commerce. RSPA may consider revising other limited quantities or providing additional limited quantity exceptions for other hazardous materials, (e.g., Division 4.3 materials), consistent with the UN Recommendations, in a future rulemaking action.

Section 173.171. Currently, §§ 173.171 and 177.838(g) prescribe requirements for smokeless powder for small arms. However, § 177.838(g) provides additional relief by permitting inside packages of smokeless powder to be overpacked in UN 4G boxes, provided the net weight of smokeless powder in any one box does not exceed 7.26 kg (16 pounds). This provision is not contained in § 173.171. Section 177.838(g) should be limited to provisions that apply specifically to motor carriers and should not contain packaging exceptions generally available to all shippers. Therefore, RSPA proposes to remove the

§ 177.838(g) provisions pertaining to classification and packaging and revise § 173.171 by adding the provision concerning smokeless powder in overpacks.

In addition, one commenter requested that RSPA allow smokeless powder that has been reclassified as a Division 4.1 material to be transported by vessel and cargo aircraft. The commenter also requested that smokeless powder be allowed to be reclassified as ORM-D. RSPA agrees that the exception to reclass smokeless powder to Division 4.1 should be extended to transportation by vessel and cargo aircraft. However, an ORM-D exception for smokeless powder may not provide an adequate level of safety because shipping papers would not be required for transportation by highway, rail or vessel and there would be no restriction on the amount of material that is permitted in air cargo compartments. RSPA believes that the hazards posed by smokeless powder, a Packing Group I hazardous material, necessitate hazard communication requirements (e.g., shipping papers, labels, and placards). Therefore, RSPA proposes to allow smokeless powder that has been reclassified as a Division 4.1 material to be transported by vessel and cargo aircraft, but is not adopting the commenter's proposal to allow smokeless powder to be reclassified as an ORM-D material.

Section 173.220. RSPA received a petition for rulemaking (P-1204) requesting an amendment to the HMR to except self-propelled vehicles transported by vessel from the emergency response telephone number requirements. The petitioner urged RSPA to provide this exception because self-propelled vehicles do not pose an unreasonable risk to the environment or the safety of personnel handling these items. RSPA recognizes that the emergency response information required under § 172.602 provides emergency responders with the necessary information to handle an incident involving a self-propelled vehicle. It is questionable whether a shipper could provide emergency responders with any additional information of value. Therefore, RSPA proposes to amend paragraph (g)(2) in § 173.220 to except shipments of self-propelled vehicles and mechanized equipment containing internal combustion engines, or wet batteries transported by vessel or aircraft, from the emergency response telephone number requirements of § 172.604.

Section 173.230. Based on a commenter's request, RSPA proposes to clarify provisions that permit the reclassification of certain Division 1.4S

materials as ORM-D materials by removing Special Provision 112 in § 172.102(c)(1), relocating the provisions in § 173.230(b) to § 173.63, and removing § 173.230. See also preamble discussion on proposed amendments to §§ 172.101 and 172.102.

Part 176

Section 176.104. RSPA received a petition (P-1183), from the Department of Defense (DOD), requesting removal of a requirement to use a landing mat when depositing palletized packages of Division 1.1 and 1.2 (explosives) materials on deck. The petitioner states that landing mats are cumbersome because they impede the operation of mechanized equipment used to load and unload palletized materials. In addition, the petitioner added that the landing mat serves no real purpose because the pallet bottom serves as the shock absorber. RSPA agrees with the petitioner and proposes to revise § 176.104(i) to provide relief for palletized loads of Division 1.1 and 1.2 materials.

Part 177

Section 177.801. Based on its own initiative, RSPA proposes to revise this paragraph to include references to forbidden materials that were previously in § 177.821(c).

Section 177.818. RSPA proposes to remove this section because its provisions are covered under the emergency response and training provisions of the HMR.

Section 177.821. RSPA proposes to remove this section because it duplicates other HMR provisions.

Section 177.822. RSPA proposes to remove this section because paragraph (a) is duplicative of other provisions for explosives and paragraph (b), including a reference to Specification MC200, is unnecessary. Also, in § 178.315, RSPA proposes to remove Specification MC200 from the HMR. See preamble discussion of § 178.315 of this proposed rule.

Sections 177.824 and 177.834. RSPA proposes to remove §§ 177.824 and 177.834(b) and (j) because they duplicate other HMR provisions. In addition, in § 177.834, a new paragraph (j) would be added to consolidate provisions in §§ 177.837(d), 177.839(d), and 177.841(d) that require manholes and valves on cargo tanks to be closed prior to transportation.

Section 177.835. RSPA proposes to remove paragraphs (k), (l), and (m) because parts 172 and 173 limit the concentration of liquid nitroglycerin and diethylene glycol dinitrate that may be offered or accepted for

transportation. Therefore, these paragraphs are unnecessary.

Section 177.838. The HMR prescribe specific packaging requirements and exceptions for smokeless powder for small arms in § 173.171. In this NPRM, RSPA proposes to amend paragraph (g) by removing procedures for reclassifying Division 1.4S materials because they are redundant with § 173.171.

Section 177.839. RSPA proposes to revise paragraph (a) by limiting the applicability of this paragraph to nitric acid in concentrations of 50 percent or greater. In addition, in paragraph (a), the restriction on stacking containers of nitric acid higher than two tiers and paragraph (b) would be removed because they are outdated and unnecessary.

Section 177.841. One commenter requested that RSPA amend § 177.841 to be consistent with provisions of § 175.630. The commenter stated that the HMR currently authorize the transport of foodstuffs and poisons in the same aircraft, provided the materials are loaded into separate unit load devices that are not adjacent to each other, or into closed unit load devices. The commenter asserted that if this practice is authorized in air transportation, it should be authorized in highway transportation. RSPA agrees with the commenter that foodstuffs which are loaded in a closed unit load device should be allowed to be transported in the same motor vehicle with poisons that are loaded in a separate closed unit load device. However, pending further review of the impact on safety, RSPA is not proposing to allow foodstuffs and poisons to be in the same motor vehicle when they are loaded into separate open unit load devices. In addition, RSPA proposes to remove the provision allowing use of the container identified as package "4000" in the National Motor Freight Classification 100-1, for the transport of foodstuffs and poisons on the same motor vehicle. RSPA believes that this container has not been used for some time and, therefore, reference to it is unnecessary.

Section 177.848. RSPA proposes to amend paragraph (e)(5) by revising the definition of footnote "A" to the segregation and separation table to clarify that ammonium nitrate, Division 5.1, UN1942, may be loaded in the same transport vehicle with Divisions 1.1 and 1.5 materials.

Part 178

Section 178.315. RSPA proposes to remove Specification MC200 requirements from the HMR because

RSPA believes that this container is no longer utilized in hazardous materials service. RSPA invites comments on whether the MC200 containers still exist.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101-5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) the designation, description, and classification of hazardous material;
- (ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;
- (iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That 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 proposed rule would clarify and provide relief from certain regulations governing the transportation of hazardous materials. RSPA solicits comments on whether the proposed rule would have any effect on State, local or Indian tribe requirements and, if so, the

most appropriate effective date of Federal preemption. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This proposed rule does not propose any new information collection requirements.

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

49 CFR Part 171

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

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, 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 176

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

49 CFR Part 177

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

49 CFR Part 178

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

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 176, 177, and 178 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

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

2. In § 171.16, paragraph (c) would be revised, paragraph (d)(2) would be amended by removing the word "nor" at the end of the paragraph, paragraph (d)(3) would be redesignated as paragraph (d)(4), and a new paragraph (d)(3) would be added to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

- (i) Consumer commodity.
- (ii) Battery, *electric storage*, wet, filled with acid or alkali.
- (iii) Paint and paint related material when shipped in packagings of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) * * *

(3) Except for consumer commodities, materials in Packing Group I; or

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATION, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

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

§ 172.101 [Amended]

4. In the § 172.101 Hazardous Materials Table, the following changes would be made:

a. For the entries "Cartridges for weapons, blank, or Cartridges, small arms, blank, UN 0014"; "Cartridges for weapons, inert projectile, or Cartridges, small arms, UN0012"; "Cartridges, power device, UN0323"; and "Cartridges, small arms", in Column (7), special provision "112" would be removed.

b. For the entries "Cartridges for weapons, blank, ord Cartridges, small arms, blank, UN 0014"; "Cartridges for

weapons, inert projectile, or Cartridges, small arms, UN0012"; and "Cartridges, power device, UN0323", in Column (8A), the wording "None" would be revised to read "63".

c. For the entry "Cartridges, small arms", in Column (8A), the wording "230" would be revised to read "63".

d. For the entry "Ethanol or Ethyl alcohol or Ethanol solutions or Ethyl alcohol solutions", in Column (7), the wording "24," would be added immediately preceding "T1", in Packing Group II, and the wording "24," would be added immediately preceding "B1" in Packing Group III.

e. For the entry "Smokeless powder for small arms (100 pounds or less), NA3178", in Column (9B), the wording "Forbidden" would be revised to read "7.3 kg".

§ 172.102 [Amended]

5. In § 172.102, in paragraph (c)(1), special provision "112" would be removed.

6. In § 172.201, paragraph (d) would be revised to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number, as prescribed in subpart G of this part.

7. In § 172.203, paragraph (c)(1) would be revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) *Hazardous substances.* (1) Except for Class 7 (radioactive) materials described in accordance with paragraph (d) of this section, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance shall be entered in parentheses in association with the basic description. If the material contains two or more hazardous substances, at least two hazardous substances must be identified. For a hazardous waste, the waste code, if appropriate, may be used to identify the hazardous substance.

* * * * *

§ 172.203 [Amended]

8. In addition, in § 172.203, the following changes would be made:

a. In paragraph (e)(2), the phrase "and paragraph (e)(3) of this section" would be removed.

b. Paragraph (e)(3) would be removed.

9. In § 172.316, the first sentence of paragraph (a) would be revised to read as follows:

§ 172.316 Packagings containing materials classed as ORM-D.

(a) Each non-bulk packaging containing a material classed as ORM-D must be marked on at least one side or end with the ORM-D designation, immediately following or below the proper shipping name of the material or labeled with the CLASS 9 label (see § 172.446). * * *

* * * * *

§ 172.316 [Amended]

10. In addition, in § 172.316, in paragraph (c), the wording "marking ORM-D" would be removed and replaced with "marking ORM-D or labeling with the CLASS 9 label".

11. In § 172.324, paragraph (a) would be revised to read as follows:

§ 172.324 Hazardous substances in non-bulk packagings.

* * * * *

(a) Except for packages of radioactive material labeled in accordance with § 172.403, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name. If the material contains two or more hazardous substances, at least two hazardous substances must be identified. For a hazardous waste, the waste code, if appropriate, may be used to identify the hazardous substance.

* * * * *

12. In § 172.402, paragraph (d) would be revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(d) *Class 7 (Radioactive) Materials.* Except as otherwise provided in this paragraph, each package containing a Class 7 material that also meets the definition of one or more additional hazard classes must be labeled as a Class 7 material as required by § 172.403 of this subpart and for each additional hazard. A subsidiary hazard label is not required on a package containing a Class 7 material that conforms to criteria specified in § 173.4 of this subchapter, except § 173.4(a)(1)(iv) of this subchapter.

* * * * *

13. In § 172.500, paragraphs (b)(4) and (b)(5) would be redesignated as paragraphs (b)(5) and (b)(6),

respectively, and a new paragraph (b)(4) would be added to read as follows:

§ 172.500 Applicability of placarding requirements.

* * * * *

(b) * * *

(4) Small quantities of Division 4.3 materials prepared in accordance with § 173.13 of this subchapter;

* * * * *

14. In § 172.600, paragraph (d) would be revised to read as follows:

§ 172.600 Applicability and general requirements.

* * * * *

(d) *Exceptions.* The requirements of this subpart do not apply to hazardous material which is excepted from the shipping paper requirements of this subchapter or a material properly classified as an ORM-D.

15. In § 172.604, new paragraphs (c) and (d) would be added to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(c) A person may list more than one emergency response telephone number with different hours of operation provided that—

(1) The hours of operation of each number are clearly identified in association with the respective telephone number;

(2) Each respective telephone number is monitored during the time indicated while the hazardous material is in transportation; and

(3) The requirements in paragraphs (a)(2), (a)(3), and (b) of this section are met.

(d) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities;

(2) Liquid petroleum distillate fuels; and

(3) Materials properly described under the shipping names "Engines, internal combustion", "Battery powered equipment", "Battery powered vehicle", "Wheelchair, electric", "Carbon dioxide, solid", "Dry ice", "Fish meal, stabilized", "Fish scrap, stabilized", "Castor bean", "Castor meal", "Castor flake", "Castor pomace", "Mercury contained in manufactured articles", "Refrigerating machine".

§ 172.702 [Amended]

16. In § 172.702(b), the phrase "A hazmat employee" is removed and replaced with the phrase, "Except as

provided in § 172.704(c)(1), a hazmat employee”.

16a. In § 172.704, paragraphs (c)(1) and (c)(2) would be revised to read as follows:

§ 172.704 Training requirements.

* * * * *

(c) * * * (1) Initial training. A new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided—

(i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

(ii) The training is completed within 90 days after employment or a change in job function.

(2) Recurrent training. A hazmat employee shall receive the training required by this subpart at least once every three years.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

17. The authority citation for part 173 would continue to read as follows:

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

18. In § 173.4, the section heading would be revised, paragraph (a)(11) would be removed, paragraph (a) introductory text, paragraphs (a)(9) and (a)(10) would be revised, and a new paragraph (c) would be added to read as follows:

§ 173.4 Small quantity exceptions.

(a) Small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials that also meet the definition of one or more of these hazard classes, are not subject to any other requirements of this subchapter when—

* * * * *

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement:

This package conforms to 49 CFR 173.4.

* * * * *

(c) Packages which contain Class 2, Division 4.2 (PG I), Division 4.3 (PG I) conforming to paragraphs (a)(1) through (a)(10) of this section may be shipped if specifically approved by the Associate Administrator for Hazardous Materials Safety.

19. Section 173.13 would be added to subpart A to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Class 8 and 9 materials.

(a) A Class 3, 8 or 9, or Division 4.1, 4.2, 4.3, 5.1, or 6.1 material is excepted from the labeling requirements of this subchapter if prepared for transportation in accordance with the requirements of this section. In addition, materials in Division 4.3 are excepted from the placarding requirements of this subchapter when prepared in accordance with the requirements of this section. A material that meets the definition of a material poisonous by inhalation may not be offered for transportation or transported under provisions of this section.

(b) A hazardous material conforming to requirements of this section may be transported by motor vehicle or rail car only.

(c) A hazardous material permitted by paragraph (a) of this section must be packaged as follows:

(1) For liquids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging with a maximum capacity not exceeding 1.2 liters. Sufficient outage must be provided such that the inner packaging will not become liquid full at 55° C (130° F). The net quantity (measured at 20° C (68° F)) of liquid in any inner packaging may not exceed one liter.

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging, and placed in a snugly fitting, rigid can.

(iii) The rigid can must be securely closed. For liquids that are in Division 4.2 or 4.3, the rigid can must be hermetically sealed.

(iv) The rigid can must then be placed inside a securely closed, outer packaging conforming to § 173.201.

(v) Not more than four cans are permitted in an outer packaging.

(2) For solids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging. The net quantity of material in any inner packaging may not exceed 2.85 kg (6.25 pounds).

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iii) The barrier bag and its contents must be placed inside an outer packaging conforming to § 173.201.

(iv) Not more than four bags are permitted in an outer packaging.

20. In § 173.21, paragraph (f)(3) would be revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) Refrigeration may be used as a means of stabilization only when approved by the Associate Administrator for Hazardous Materials Safety. For status of approvals previously issued by the Bureau of Explosives, see § 171.19 of this subchapter. Methods of stabilization approved by the Associate Administrator for Hazardous Materials Safety are as follows:

(i) For highway transportation:

(A) A material meeting the criteria of paragraph (f) of this section may be transported only in a transport vehicle, freight container, or motor vehicle equipped with a mechanical refrigeration unit, or loaded with a consumable refrigerant, capable of maintaining the inside temperature of the transport vehicle, freight container, or motor vehicle at or below the control temperature required for the material during transportation.

(B) Each package containing a material meeting the criteria of paragraph (f) of this section must be loaded and maintained at or below the control temperature required for the material. The temperature of the material shall be measured and entered on a written record at the time the packaging is filled.

(C) The vehicle operator shall monitor the inside temperature of the transport vehicle, freight container, or motor vehicle and enter that temperature on a written record at the time the package is loaded and thereafter at intervals not exceeding two hours. Alternatively, a transport vehicle, freight container, or motor vehicle may be equipped with a visible or audible warning device that activates when the inside temperature of the transport vehicle, freight container, or motor vehicle exceeds the control temperature required for the material. The warning device must be readily visible or audible, as appropriate, from the vehicle operator’s seat in the vehicle.

(D) The carrier must advise the vehicle operator of the emergency temperature for the material, and provide the vehicle operator with written procedures that must be followed to assure maintenance of the control temperature inside the transport vehicle, freight container, or motor vehicle. The written procedures must

include instructions for the vehicle operator on actions to take if the inside temperature exceeds the control temperature and approaches or reaches the emergency temperature for the material. In addition, the written temperature-control procedures must identify enroute 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 of Section 21 of the General Introduction of the International Maritime Dangerous Goods Code (IMDG Code).

* * * * *

21. In § 173.32a, paragraph (c) would be revised to read as follows:

§ 173.32a Approval of Specification IM portable tanks.

* * * * *

(c) *Disposition of approval certificates.* A copy of each approval certificate must be retained by the approval agency and by the owner of each IM portable tank.

* * * * *

§ 173.155 [Amended]

22. In § 173.155, in paragraph (b)(1), the wording "4.0 L (1 gallon)" would be revised to read "5.0 L (1.3 gallons)".

23. In § 173.171, the introductory text and paragraph (b) would be revised and a new paragraph (d) would be added to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3

may be reclassified in Division 4.1, for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

* * * * *

(b) The total quantity of smokeless powder must not exceed 45.4 kg (100 pounds) net mass in:

(1) One rail car, motor vehicle, or cargo-only aircraft; or

(2) One freight container on a vessel, not to exceed four freight containers per vessel.

* * * * *

(d) Inside packages that have been examined and approved by the Associate Administrator for Hazardous Materials Safety may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

24. In § 173.220, paragraph (g)(2) would be revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

* * * * *

(g) * * *

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling, and placarding, respectively) of part 172 or § 172.604 (emergency response telephone number) of this subchapter for transportation by vessel or aircraft.

§ 173.63 [Amended]

§ 173.230 [Removed]

25. Paragraph (b) of § 173.230 would be redesignated as paragraph (b) of § 173.63 and § 173.230 would be removed.

PART 176—CARRIAGE BY VESSEL

26. The authority citation for part 176 would continue to read as follows:

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

27. In § 176.104, the first sentence of paragraph (i) would be revised to read as follows:

§ 176.104 Loading and unloading Class 1 (explosive) materials.

* * * * *

(i) A landing mat must be used when a draft of nonpalletized Division 1.1 or 1.2 (Class A and B explosive materials) is deposited on deck. * * *

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

28. The authority citation for part 177 would continue to read as follows:

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

§§ 177.818, 177.821, 177.822, and 177.824 [Removed]

29. Sections 177.818, 177.821, 177.822, and 177.824 would be removed.

30. Section 177.801 would be revised to read as follows:

§ 177.801 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of this subchapter.

31. In § 177.834, paragraph (b) would be removed and reserved, and paragraph (j) would be revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) *Manholes and valves closed.* A person may not drive a cargo tank and a motor carrier may not permit a person to drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

(1) All manhole closures are closed and secured; and

(2) All valves and other closures in liquid discharge systems are closed and free of leaks.

* * * * *

§ 177.835 [Amended]

32. In § 177.835, paragraphs (k), (l), and (m) would be removed.

§ 177.837 [Amended]

33. In § 177.837, paragraph (d) would be removed.

34. In § 177.838, paragraph (g) would be revised to read as follows:

§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyroforic liquid) materials.

* * * * *

(g) A motor vehicle may only contain 45.4 kg (100 pounds) or less net mass of material described as "Smokeless powder for small arms, Division 4.1".

* * * * *

35. Section 177.839 would be revised to read as follows:

§ 177.839 Class 8 (corrosive) materials.

(See also § 177.834 (a) through (j).)

(a) *Nitric acid.* No packaging of nitric acid of 50 percent or greater concentration may not be loaded above

any packaging containing any other kind of material.

(b) *Storage batteries.* All storage batteries containing any electrolyte must be so loaded, if loaded with other lading, that all such batteries will be protected against other lading falling onto or against them; and adequate means must be provided in all cases for the protection and insulation of battery terminals against short circuits.

36. In § 177.841, paragraph (d) would be removed and reserved and paragraph (e)(1) would be revised to read as follows.

§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

* * * * *

(e) * * *

(1) Bearing a POISON label in the same motor vehicle with material that is marked as or known to be foodstuffs,

feed or any edible material intended for consumption by humans or animals unless:

(i) The poisonous material is packaged in accordance with this subchapter and is overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) The poisonous material is packaged in accordance with this subchapter and loaded into a closed unit load device and the foodstuffs, feed, or other edible material are loaded into another closed unit load device;

* * * * *

§ 177.848 [Amended]

37-38. In § 177.848, paragraph (e)(5), would be amended by removing the phrase "ammonium nitrate fertilizer" and replace it with the phrase "ammonium nitrate (UN 1942) and ammonium nitrate fertilizer".

PART 178—SPECIFICATIONS FOR PACKAGINGS

39. The authority citation for part 178 would continue to read as follows:

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

§§ 178.315, 178.315-1, 178.315-2, 178.315-3, 178.315-4, 178.315-5 [Removed]

40. Sections 178.315, 178.315-1, 178.315-2, 178.315-3, 178.315-4, and 178.315-5 would be removed.

Issued in Washington, DC on February 12, 1996, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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