petroleum product in accordance with the provisions of paragraph (d) of this section.

(d) *Additional requirements.* A packaging used under the provisions of paragraphs (a), (b) or (c) of this section must—

(1) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(2) Be operated in conformance with the requirements of the State in which it is authorized;

(3) Be specifically authorized by a State statute or regulation in effect before July 1, 1998, for use as a packaging for the hazardous material being transported;

(4) Be offered for transportation and transported in conformance with all other applicable requirements of this subchapter;

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant; and

(6) On and after July 1, 2000, for a tank authorized under paragraph (b) or (c) of this section, conform to all requirements in part 180 (except for § 180.405(g)) of this subchapter in the same manner as required for a DOT specification MC 306 cargo tank motor vehicle.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

8. The authority citation for part 180 continues to read as follows:

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

9. In § 180.409, the introductory text of paragraph (a) is revised, paragraph (b) is redesignated as paragraph (d), and new paragraphs (b) and (c) are added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) Except as otherwise provided in this section, any person performing or witnessing the inspections and tests specified in § 180.407(c) must—

* * * * *

(b) A person who only performs annual external visual inspections and leakage tests on a cargo tank motor vehicle, owned or operated by that person, with a capacity of less than 13,250 liters (3,500 gallons) used exclusively for flammable liquid petroleum fuels, is not required to meet the educational and years of experience requirements set forth in the definition of ''Registered Inspector'' in § 171.8 of this subchapter. Although not required to meet the educational and years of experience requirements, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter, and must register with the Department as required by subpart F of part 107 of this chapter.

(c) A person who performs only annual external visual inspections and leakage tests on a permanently mounted non-bulk tank, owned or operated by that person, for petroleum products as authorized by § 173.8(c) of this subchapter, is not required to be registered in accordance with subpart F of part 107 of this chapter. In addition the person who signs the inspection report required by § 180.417(b) of this subpart for such non-bulk tanks is not required to be registered. Although not required to register, a person who performs visual inspections or leakage tests or signs the inspection reports must have the knowledge and ability to perform such inspections and tests and must perform them as required by this subchapter.

* * * * *

Issued in Washington, DC on December 30, 1996 under authority delegated in 49 CFR, part 1.

D.K. Sharma,

Administrator.

[FR Doc. 97–188 Filed 1–7–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176 and 177

[Docket No. HM–206; Amdt. Nos. 171–151, 172–151, 173–260, 174–84, 175–85, 176–42, 177–89]

RIN 2137–AB75

Improvements to Hazardous Materials Identification Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to better identify hazardous materials in transportation. Changes include adding a new ''POISON INHALATION HAZARD'' (PIH) label and placard to enhance the ready identification of materials which are poisonous if inhaled, lowering the quantity for specific hazard class placarding from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) of one class or division of material loaded on a transport vehicle, expanding requirements for transport vehicles and freight containers that have been fumigated, and other enhancements to the hazard communication system. Improved identification of, and information about, hazardous materials in transportation assists emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and improves safety to transportation workers and the public.

DATES: *Effective date:* October 1, 1997.

Compliance date: Voluntary compliance is authorized beginning February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Current Hazard Communication System

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) include a wide variety of hazard identification and communication requirements for hazardous material shipments. These requirements are designed, in part, to provide fire and emergency response personnel, the public, and transport workers with information in the event of a transportation incident involving hazardous materials. Hazard communication and emergency response information requirements are set forth in Subparts C through G of Part 172 of the HMR.

During transportation, most non-bulk packages of a hazardous material must be marked with the shipping name and identification number of the material and must have a hazard warning label affixed to the package. Many shipments of hazardous materials must be identified by placards attached to the transport vehicle or bulk package. Most hazardous materials must be described and identified on a shipping paper that accompanies a shipment in transportation. A shipping paper must contain an emergency response telephone number that is monitored at all times the hazardous material is in transportation. This telephone number is used by emergency responders to

obtain more detailed, product specific information on the hazardous material being transported. A carrier is required to have on each vehicle transporting a hazardous material appropriate emergency response information intended to provide guidance for the initial actions to be taken in the event of an incident.

The hazard communication system in the HMR generally is consistent with international standards. In a number of rulemaking actions from 1976 to the present, DOT has revised hazard communication requirements in the HMR, by adoption of shipping descriptions, labels, and placards, for consistency with standards in the United Nations Recommendations on the Transport of Dangerous Goods (U.N. Recommendations).

The changes to hazard communication requirements made by this final rule are intended to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. These changes should result in better response by, and protection for, emergency response personnel, (e.g., local fire or police department personnel), and help ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

B. Rulemaking History

On June 9, 1992, RSPA published an advance notice of proposed rulemaking (ANPRM) in the Federal Register [57 FR 24532]. The ANPRM was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. Law 101–615). The section required the Secretary of Transportation to initiate a rulemaking to determine methods of improving the existing system of placarding vehicles transporting hazardous materials and to determine methods for establishing and operating a central reporting system and computerized telecommunications data center that could provide information to facilitate responses to incidents involving hazardous material. DOT was required to contract with the National Academy of Sciences (NAS) to study the need for establishing the central reporting system and telecommunications center. The NAS and DOT reports are included in this docket.

In the ANPRM, RSPA requested comments on 63 primary questions, many of which had sub-elements, addressing: (1) Methods of improving the current system of placarding vehicles transporting hazardous materials; (2) methods to improve the system of identifying hazardous materials in transportation; (3) the feasibility and necessity of requiring carriers to maintain continually-monitored telephone contacts for emergency response information; and (4) methods for establishing and operating a central reporting system and center that could provide information to facilitate responses to incidents involving the transportation of hazardous materials. More than 230 comments were submitted in response to the ANPRM. Most commenters did not support a comprehensive modification of the existing hazard communication requirements. The commenters were overwhelmingly opposed to establishing a central reporting system and center, on the grounds that it would not be workable and would be too costly.

On August 15, 1994, RSPA issued a notice of proposed rulemaking (NPRM) in the Federal Register proposing certain changes to the hazard communication requirements of the HMR. [59 FR 41848; Corrections to the NPRM were published Aug. 26, 1994 (59 FR 44230) and Aug. 30, 1994 (59 FR 44795)] RSPA agreed with the central recommendation in the NAS report and most of the commenters to the ANPRM not to establish a national, central reporting system and computerized telecommunications data center. Accordingly, RSPA did not propose to establish a central reporting system and computerized telecommunications data center.

More than 80 written comments from chemical companies, transport companies, farmers, trade associations, explosives manufacturers and distributors, police departments and fire associations, State governments, and the National Transportation Safety Board (NTSB) were received in response to the NPRM. In addition, on October 18, 1994, a public hearing was held in Washington, DC. Twenty-four persons attended, and several presented written and oral statements. A transcript of the public hearing is on file in the Docket.

II. Regulatory Issues

A. Summary

A majority of commenters supported RSPA's narrowing of the issues related to improvements to the current hazard identification and communication system and supported most of the proposals.

The following is a discussion of the comments and regulatory changes made in this final rule.

B. Labeling and Placarding Requirements

1. *PIH label and placard.* RSPA is adopting, as proposed, in Subparts E and F of Part 172, respectively, unique labels and placards for both liquids and gases that are poisonous by inhalation (PIH).

Based on their severe inhalation hazards, certain materials are designated as poisonous by inhalation. The term ''material poisonous by inhalation'' is defined in 49 CFR 171.8. Classification criteria are set forth in § 173.115 for gases and § 173.132 for liquids. Specific regulations in Subparts C and D of Part 172 generally require that the words ''Inhalation Hazard'' be entered on each shipping paper and marked on each packaging in association with the proper shipping name for PIH materials. Packages of PIH materials must also be labeled and transport vehicles must be placarded, as appropriate. Currently emergency responders are alerted to the presence of materials poisonous by inhalation in transportation by these special package markings and shipping paper information. Since harmonizing domestic regulations with international standards in the U.N. Recommendations and adopting international labels and placards, hazard warning words on a label or placard are no longer required in the HMR. Because of the lack of hazard warning words or a distinguishing characteristic in the symbol on a POISON vs. POISON GAS label or placard to immediately warn emergency responders of the dangers associated with poisonous liquids or gases, RSPA believes the existing POISON or POISON GAS label and placard are not adequate in communicating the inhalation hazard of these materials.

In the NPRM, RSPA proposed a distinctive label and placard for PIH materials. A majority of commenters supported adoption of a PIH label and placard, and others indicated that they would support a PIH label and placard if adopted by the U.N. Most commenters, both for or against the proposal, linked their positions to concerns for maintaining harmonization with the U.N. Recommendations in hazard communication. Commenters supporting a PIH label and placard stated that the new warnings would improve DOT's hazard communication system by creating an instantly recognizable difference between PIH materials and other poisons, thus further enhancing responder safety. The International Association of Fire Chiefs stated that changing the labeling/placarding from ''Poison'' to ''Poison

Inhalation Hazard'' is very appropriate and will be extremely beneficial to emergency responders. The Chemical Manufacturers Association (CMA) supported creation of a new placard for liquids and gases deemed poisonous by inhalation because of the additional guidance that would be provided to emergency responders; however, CMA urged RSPA to work with the U.N. to develop and gain acceptance of a new label and placard before modifying the HMR. The American Trucking Associations (ATA) supported adoption of a PIH label and placard in its comments to the ANPRM and continued that support in its comments to the NPRM. ATA indicated that the present system for identifying PIH materials is inadequate and confusing. ATA also suggested revisions to §§ 171.11, 171.12, and 171.12a, to allow continued use of the existing POISON and POISON GAS labels and placards for international shipments. The Chemical Waste Transportation Institute (CWTI) suggested that the ''Inhalation Hazard'' marking prescribed in the current § 172.313 be eliminated if PIH labels and placards are displayed in domestic transportation.

Several supporters believe that, if RSPA adopts a PIH label and placard, the INHALATION HAZARD text ''must'' be displayed on the label and placard at all times. Many commenters supporting the proposed PIH label and placard asked RSPA to provide a transition period of at least one year for implementation.

Commenters opposed to a U.S.-only PIH label and placard said such a provision would depart from the hazard communication system established in Docket HM–181 to achieve international uniformity. Other commenters opposing a PIH label and placard asserted that existing POISON and POISON GAS labels and placards clearly convey an adequate warning and are generally well understood.

RSPA believes that a new PIH label and placard provide a distinctive warning to emergency responders of the unique hazards (extreme toxicity, high volatility) of PIH gases and vapors. RSPA intends to propose classification, hazard communication and packaging requirements for PIH materials for adoption in international transportation regulations during the 1997–98 biennium of the U.N. Committee of Experts on the Transport of Dangerous Goods. Requiring a specific PIH label and placard is an additional step in RSPA's effort, begun in 1985, to enhance safety in the transportation of PIH materials by establishing a complete system of transportation controls: Classification; hazard communication; and packaging. Adding a PIH label and placard to the hazard communication requirements also responds to a petition (P–1132) for rule change from the Compliance and Investigation Committee of the Cooperative Hazardous Materials Enforcement Development (COHMED) program. The COHMED program, made up of participants from Federal, State and local government agencies, and industry, is an outreach activity of RSPA that promotes coordination, cooperation, education and communication for the safe transportation of hazardous materials.

In response to concerns expressed by commenters, if the new PIH label or placard is displayed, the ''Inhalation Hazard'' marking specified in § 172.313 is not required on a package. However, packages being transported under the provisions in §§ 171.11, 171.12, or 171.12a, which are not labeled as required in this final rule, must display the ''Inhalation Hazard'' marking. RSPA is not adopting a requirement requested by commenters that display of text be required on labels and placards. RSPA believes that the distinct design and dark color of the symbol depicted on the new PIH label and placard adequately convey the appropriate information to alert responders to the dangers involving materials poisonous by inhalation. Also as requested by commenters, for highway and rail shipments of a material poisonous by inhalation, RSPA is including transitional provisions for continued use of the old POISON or POISON GAS placards until October 1, 2001, which is consistent with the current transitional provisions in § 171.14 for placarding highway shipments of hazardous materials (i.e., October 1, 2001).

2. *Lowering the placarding exception for use of the DANGEROUS placards from 2,268 kg (5,000 pounds) to 1,000 kilograms (2,205 pounds).* As proposed, RSPA is adopting, in the placarding provisions in Part 172, a requirement that limits use of the DANGEROUS placard for mixed loads of hazardous materials. RSPA is lowering from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) the quantity of one class or division of a hazardous material loaded at one facility for which a specific placard (e.g., CORROSIVE or FLAMMABLE) is required.

A number of commenters opposed this proposal, citing the potential for confusion, additional training, placard proliferation, decreased hazard warning effectiveness, additional drivers needing a Commercial Driver's License (CDL), and cost to industry. The Conference on Safe Transportation of Hazardous Articles, Inc., urged RSPA not to implement the proposed change, stating that it would increase costs and cause a regulatory ''ripple effect'' associated with the reduction of the current placarding threshold.

Farmland Industries, Inc. (Farmland), opposed lowering the quantity for which specific hazard class placarding is required and believed that modification of the use of the DANGEROUS placard would require greater investment in additional placards and training to obtain compliance with the regulations. Farmland stated that each of these investments adds costs to its products, which will ultimately be borne by the consumer. The International Sanitary Supply Association (ISSA) opposed limiting use of the DANGEROUS placard. ISSA stated that, at a time when industry is still coming to terms with the massive changes brought about by HM–181, it is imperative to provide some consistency in the regulations to facilitate overall compliance and transportation safety.

A number of commenters supported the proposal stating that safety would be improved by requiring more shipments to display specific hazard class and division warnings. The IAFC expressed support for the proposal because use of the DANGEROUS placard increases the risk to response personnel arriving at the scene of an emergency because the nature or characteristics of the hazardous material are not specifically identified, resulting in delaying decisions on how to mitigate the incident. Another commenter stated the DANGEROUS placard does not provide enough significant information to emergency responders trying to identify hazardous materials in a transport vehicle. The Compressed Gas Association supported the proposal to better identify the hazards. Shell Oil stated the presence of a DANGEROUS placard may, in some instances, delay effective action. Monsanto stated that the DANGEROUS placard should be eliminated altogether because its elimination will serve to further increase compliance and safety.

RSPA believes that further limiting the use of the DANGEROUS placard by lowering the quantity from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) for which a specific placard is required will improve communication relative to the hazardous materials being transported on a vehicle. RSPA does not agree with the comments asserting that additional drivers will be requiring a CDL. Since these motor vehicles are already

placarded with a DANGEROUS placard, display of a specific placard will not affect or increase the number of drivers needing a CDL.

3. *Lowering the placarding exception threshold from 454 kg (1,001 pounds) to 400 kg (882 pounds) aggregate gross weight of Table 2 hazardous materials.* In this final rule, RSPA is not lowering the placarding exception threshold in § 172.504(c). RSPA proposed lowering the placarding exception threshold for hazardous materials in Table 2 from 454 kilograms (1,001 pounds) to 400 kilograms (882 pounds). The exception allows for the transportation of up to 454 kilograms (1,001 pounds) aggregate gross weight of ''Table 2'' hazardous materials in non-bulk packagings on a transport vehicle without placarding.

More than 50 comments were received in opposition to the proposal. In support of their opposition to this proposal, commenters cited the potential for increased confusion, increased costs to industry, an increase in the number of drivers requiring a CDL, increased burden on small shippers, more placard-related prohibitions (i.e., tunnels, some expressway restrictions), training, placard ''proliferation,'' and reduced effectiveness of the placarding requirements.

Some commenters in support of the lowering of the placarding exception, indicated that even small amounts of hazardous materials can cause injury or damage to the public, property, and the environment, and that without placards communication of this important information would be lacking. Monsanto said that the exception to the placarding requirement is inconsistent with other parts of the hazardous materials regulations requiring labeling and marking for smaller quantities of hazardous materials found in other sections of the regulations. Monsanto indicated that reduction of the weight limitation would lead to better communication for hazardous materials shipments, enhanced safety and better emergency response.

RSPA views the proposed lowering of the placarding exception threshold as an incremental enhancement to safety. RSPA agrees with commenters that the number of drivers needing a CDL would increase because more vehicles would be placarded and that such a change would substantially increase compliance costs. Upon further consideration, RSPA has determined that the benefits of this safety enhancement do not outweigh the potential costs and is not adopting this proposal.

4. *Table 1 placard assignment—Organic peroxide, Type B, liquid or solid, temperature controlled.* In § 172.504, RSPA is adopting the proposal to require placarding of any quantity of ''Organic peroxides, Type B, temperature controlled'' material. In the NPRM, a proposal was made to include ''Organic peroxide, Type B, liquid *or* solid, temperature controlled'' in Table 1 of § 172.504(e), which would require placarding in any quantity. Only two comments were received on this issue. PPG Industries, Inc., supported the change. J. B. Hunt Transport, Inc., recommended changing the classification of Organic peroxide, Type B, temperature controlled materials to a Class [Division] 1.3 Explosive, but did not provide any information to substantiate its proposal.

RSPA believes that organic peroxides that require refrigeration for stabilization purposes during transport pose a substantial hazard in any incident that results in a loss of temperature control. These organic peroxides can decompose with such rapidity within a package that the resultant heat and gas will violently burst the package, creating a dangerous situation during which emergency measures and possible evacuation of the areas would need to be initiated. In order to make emergency responders aware of organic peroxides requiring temperature control, it is necessary to communicate the fact without regard to quantity. Therefore, RSPA is adding ''Organic peroxide, Type B, temperature controlled'' in placarding Table 1 of § 172.504(e). The placarding requirements applicable to other organic peroxides remain in Table 2.

5. *Prohibited and permissive placarding: Extraneous information on placards and in placard holders.* RSPA is revising § 172.502 to prohibit extraneous information (e.g., ''DRIVE SAFELY'') on placards, in placard holders and on placard-type displays, as proposed. RSPA received 18 comments supporting the proposal to prohibit the display of extraneous information, such as the ''DRIVE SAFELY'' slogan, on a placard, placard-type display, and in a placard holder. Most of the commenters believed the prohibition will reduce confusion among emergency responders and increase placard effectiveness. ATA urged RSPA to allow a 7 year phase-out period. Dow Chemical Company supported this change, and requested that a reasonable phase-out period be allowed. Yellow Freight System, Inc. supported removal of extraneous information on placards, placard-type displays, and in placard holders and stated that other venues exist on tractors and trailers for carriers to more appropriately place messages unrelated to the safe transportation of hazardous materials. The State of Michigan, Department of State Police stated that elimination of the ''DRIVE SAFELY'' sign is an excellent change and should be adopted. The National Tank Truck Carriers, Inc. (NTTC) had no opposition to this proposal, but questioned whether ''DRIVE SAFELY'' slogans on placard-type displays could be confused with ''alert words'' used on placards.

Five commenters, including the National Private Truck Council, opposed the proposed prohibition, asserting that there is no evidence the ''DRIVE SAFELY'' display on placards and in placard holders confuses responders. The National Industrial Transportation League (NITL) stated that it could better support a rule which would simply forbid the marking of signs or slogans on vehicles, bulk packaging and containers in the ''future,'' but not require the removal of signs and slogans which currently exist. A commenter opposed to this change stated the current requirement in § 172.502(a)(2), as it is currently written, is sufficient to prevent displays of conflicting slogans or markings on transport vehicles carrying hazardous materials.

RSPA believes that extraneous information displayed on placards, placard-type displays, and in placard holders, such as ''DRIVE SAFELY'' and other slogans, detracts from the basic function of placards, and reduces the ability of emergency responders to readily recognize vital hazard alerting information. Placards must be strictly reserved for hazard communication with all other confusing or conflicting displays prohibited. Accordingly, RSPA is prohibiting the display of extraneous information on placards, placard-type displays, and in placard holders.

RSPA agrees with those commenters requesting an extended compliance date consistent with the transitional provisions for placarding highway shipments (October 1, 2001) of hazardous materials for phasing out extraneous information. In the NPRM, RSPA proposed a compliance date of October 1, 1997, for mandatory removal of these slogans. Upon further consideration, RSPA believes a transition period consistent with the current provisions in § 171.14(b) is appropriate and is providing a phase-out period until October 1, 2001, for industry to remove, cover, or obliterate extraneous slogans from placard displays.

C. Marking Requirements

1. *Identification number marking for packaged Poison Inhalation Hazard (PIH) materials.* RSPA is revising § 172.313 and adopting the proposal, with modification, to require that identification number markings be displayed on transport vehicles and freight containers to improve identification of a hazardous material poisonous by inhalation (PIH) offered in amounts of more than 1,000 kilograms (2,205 pounds) aggregate gross weight. RSPA proposed to require identification number markings on a transport vehicle or freight container containing non-bulk packages having more than 400 kilograms (882 pounds) aggregate gross weight of a PIH material.

Commenters, such as the Association of American Railroads (AAR), opposed this identification number marking on the basis that it would be redundant and burdensome to industry given RSPA's proposal to add a new PIH label and placard to more specifically communicate the inhalation hazard to emergency response personnel. Several commenters said it would not provide any safety benefit. Others warned the existing, well understood hazard communication system for poisonous materials could be weakened by introducing a plethora of confusing, redundant markings. Air Products and Chemicals, Inc. said that this change would cause it to modify existing customer delivery patterns to reduce the likelihood of multiple mixed loads of PIH materials.

Other commenters, such as CWTI, supported the change, stating that this proposed change would more ''efficiently convey essential information'' from available sources and provide essential information not previously available because the shipment was not subject to the display of identification number markings on transport vehicles and freight containers. CMA expressed general support for the proposal, and believed that while this change would be relatively minor in nature, the change should help improve the hazard communication system and increase the safety of emergency responders. The 3M company recommended a 1,001 pound threshold for consistency with the existing placarding exception in § 172.504.

RSPA believes that requiring certain quantities of a packaged PIH material to be identified by an identification number marking display on a transport vehicle or freight container will increase the effectiveness of DOT's communication system for high hazard poisonous liquids and gases. This requirement will further enhance the effectiveness of the new PIH labels and placards by providing immediate information to emergency responders assisting them in addressing the hazards of PIH materials.

In response to the concerns expressed by several commenters in regard to shipping mixed loads, (e.g., different kinds of poisonous gases in cylinders, assigned different identification numbers, which may weigh as much as 150 pounds gross weight), RSPA is raising the quantity threshold for identification number marking of a packaged PIH material from the proposed 400 kilograms (882 pounds) to 1,000 kilograms (2,205 pounds) aggregate gross weight on a transport vehicle or freight container.

2. *Identification number marking on vehicles transporting non-bulk packages in large quantities.* Section 172.301 is revised, and the proposal is adopted with modification, to require an identification number marking display on transport vehicles and freight containers containing large quantities of non-bulk packagings of hazardous materials having a single identification number, and includes a threshold of 4,000 kilograms (8,820 pounds) for those quantities. RSPA proposed to require display of identification numbers on vehicles transporting, in truckload or carload quantities, non-bulk packages of hazardous materials that are identified by a single identification number.

Nineteen commenters supported this proposal. Nine commenters opposed it; however, six of these commenters said they would support it if RSPA clarified what constitutes a ''truckload'' or ''carload'' quantity.

Several commenters urged RSPA to define ''truckload'' as ''fully loaded'' when a substantial capacity of the vehicle is ''occupied'' by packaged hazardous materials, or restrict application to common freight container size dimensions, such as 8′× 8′× 20′ or 8′× 8′× 40′. Several commenters were unclear whether RSPA intended the marking requirements to be based on package weight or number; or whether the terms ''truckload'' or ''carload'' would include vans and other similar vehicles.

Commenters opposed to the proposal asserted that the marking requirement might force businesses to change delivery patterns or customer service or to avoid mixing certain hazardous and non-hazardous loads.

RSPA believes that a requirement for the display of identification number marking on transport vehicles and freight containers containing large quantities of hazardous materials in non-bulk packagings having a single identification number will assist emergency responders in accessing hazard mitigation information. In response to commenters concerns regarding the phrase ''truckload'' or ''carload'' quantity, RSPA has decided to avoid use of terms that could be confused with economic terminology. In this final rule, large quantities of hazardous materials in non-bulk packagings having a single identification number and having an aggregate gross weight of not less than 4,000 kilograms (8,820 pounds) on a transport vehicle or freight container would be subject to the requirement. Accordingly, the identification number specified for the hazardous material in the § 172.101 Table must be displayed on a placard, orange panel or plain white square-on-point configuration as prescribed in §§ 172.332 or 172.336, as appropriate.

A new § 172.323 was proposed for the new identification number requirement. After further consideration, RSPA believes it is more appropriate to consolidate this requirement under the general requirements for marking non-bulk packagings, in § 172.301.

3. *Identification number marking visibility on closed transport vehicles or freight containers carrying cargo tanks and other bulk packagings.* In Subpart D of Part 172, RSPA is adopting as proposed a requirement to specify that identification number markings are required on the outside of closed transport vehicles and freight containers carrying cargo tanks and other bulk packagings (e.g., intermediate bulk containers (IBCs)), when the identification number marking on the bulk package is not visible during transportation.

NTTC and three other commenters supported the clarification to assure that markings will be visible on the exterior of a closed transport vehicle or freight container containing a hazardous material in a bulk packaging. The Rigid Intermediate Bulk Container Association (RIBCA) opposed the proposal, saying it is not unusual for one vehicle to contain four or more IBCs bearing four or more different identification numbers. RIBCA said the proposed clarification would require display of many identification numbers on vehicles that would confuse responders. RIBCA suggested use of primary class placards or identification number displays for IBCs bearing ''a single identification number.''

RSPA believes that the display of identification numbers on the outside of

transport vehicles that contain bulk packages of hazardous materials is consistent with the requirement that identification numbers on the bulk package be visible in transportation. RSPA does not agree that identification number marking displays on closed transport vehicles containing other bulk packagings (e.g., IBCs) should only apply if the IBCs in the transport vehicle or freight container bear the same identification number. Accordingly, RSPA is requiring the display of identification numbers on the outside of closed transport vehicles and freight containers when they contain any bulk packaging.

4. *FUMIGANT marking on transport vehicles or freight containers which contain fumigated lading.* In § 173.9, RSPA is adopting its proposal, with modification, to revise and expand the requirements for display of a FUMIGANT marking that is consistent with international requirements. RSPA is: (1) extending the requirements to display the fumigant marking to every material used to fumigate the contents of a transport vehicle or freight container; (2) expanding the requirements to cover all modes of transportation; (3) specifying that a fumigated transport vehicle or freight container is a ''package'' for application of the fumigation requirements; (4) adopting the international fumigant marking; and (5) consistent with the U.N. Recommendations, specifying that a shipping paper accompanying an international shipment must contain hazard warning information concerning the fumigant.

Most commenters supported application of the FUMIGANT marking to all modes of transportation and revision of the marking for consistency with the U.N. Recommendations. The IAFC stated that even though there are not many documented incidents where the lack of a FUMIGANT marking has caused an accident, the potential for such accidents exists throughout the country. The Arizona Department of Public Safety supported the change, stating:

> Your proposed revision would have undoubtedly prevented the injury of one of our Arizona Highway Patrol Commercial Vehicle Safety Specialists last year, when he entered a trailer on a state highway to inspect its contents. He was unaware that it had recently been fumigated with methyl bromide, and was quickly injured by the fumigant. He was treated at a hospital and by his personal physician, and lost time off work from the incident.
>
> This officer was one of our hazardous materials emergency responders, and had been trained to the OSHA 1910–120 [sic] Hazardous Materials Technician level, with over 200 hours of training. However, since he was unaware of the toxic fumigated nature of the trailer, he did not utilize the personal protective clothing and self-contained-breathing-apparatus he was equipped with.

One commenter supported the proposal and stated that the fumigation issue is of particular interest in Washington and Oregon because both States have ports and receive grain from other States via highway and rail.

Only one commenter, a large motor carrier, opposed the proposal, pointing out that the fumigant marking was designed for large enclosed places with little or no opportunity for escape of toxins upon opening (such as a cargo aircraft or vessel). The commenter stated that it would not be beneficial to small ground transportation vehicles that are rarely, if ever, opened in confined spaces.

The Air Transport Association of America inquired whether this provision would require ''small shippers of agricultural products to provide a fumigant warning (if product has been treated) on shipper provided packaging.'' The requirement to display a FUMIGANT warning is applicable to freight containers which contain fumigated lading, and not to aircraft compartments containing crates, boxes or other packages containing agricultural produce or perishable products.

In response to another commenter, the wording ''should indicate'' in proposed § 173.9(f) is changed to read ''must indicate,'' relative to fumigation information on international transport documents.

After further consideration, RSPA is not adopting as proposed, the training and testing requirement prescribed in Subpart H of Part 172, as it applies to persons who offer and accept a material for transportation which has been fumigated. However, if other hazardous materials are being transported, the training requirements of the HMR apply. RSPA believes that persons offering or transporting fumigated loads must have knowledge relative to the fumigated load. Accordingly, § 173.9 is revised to specify that such persons must be informed of the requirements of this section which are applicable solely because the lading has been fumigated and, for the purpose of this section, is a package containing a hazardous material.

For the purposes of compliance with this section of the HMR, RSPA has made the determination that a fumigated load is a ''package.'' This should resolve concerns relative to the potential for increased financial responsibility levels, as required by the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR part 387.

Based on the forgoing, RSPA believes that a FUMIGANT marking for all modes of transportation is necessary and that display of the proposed FUMIGANT marking will minimize the risk of exposure and prevent injury from poisonous or noxious materials. It should be noted that requirements in § 176.76(i) [issued under the final rule in HM–215A; 59 FR 67390] for fumigants transported by vessel became effective October 1, 1996. On April 29, 1996, a final rule [HM–222A; FR 61 18926] was published in the Federal Register which redesignated § 176.76(i) as § 176.76(h).

D. Emergency Response Information

1. *Emergency response information readily available to authorities.* RSPA proposed to clarify certain provisions of the emergency response information requirements in Subpart G of Part 172, and corresponding §§ 175.33, 176.30, and 177.817. Upon further consideration, based on comments received in opposition to this proposal, RSPA is not adopting the changes proposed in § 172.602 and the corresponding sections. RSPA believes that the basic elements of the proposed change are already adequately covered by the requirements in § 172.600(c).

2. *Carrier notification and information contact.* RSPA is adding § 172.606 to the HMR and adopting, as proposed, a requirement that each carrier who transports a hazardous material, for which a shipping paper is required, to instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier in the event of an incident involving the hazardous material.

Generally, most commenters supported improvements to emergency response information requirements. Most of these commenters did not specifically address their comments to the proposal for carrier information contact and notification. Of the ten comments which specifically addressed this proposal, approximately five commenters supported it. The American Trucking Associations had no comment on this proposal.

Many of the commenters confused the proposal for carrier information contact with the proposal for marking an emergency response telephone number on a motor vehicle when disconnected from its motive power and stored at other than a carrier's, consignee's, or consignor's facility. One commenter said that the proposal was unnecessary because carriers should already be instructing their operators to contact

them in the event of an incident involving hazardous materials, as part of the driver training requirements under Subpart H of Part 172.

RSPA believes that required information available at the scene of a hazardous materials incident meets most of the immediate information needs of responders. However, in some instances the operator of a motor vehicle may not be able to initiate appropriate mitigation procedures without the carriers involvement. RSPA believes better coordination of emergency response and spill mitigation actions will result from specific requirements for carrier instruction to operators regarding incident notification; therefore, RSPA agrees with NAS's recommendation that requiring a carrier information contact will respond in part to concerns addressing improvements to the hazardous materials identification system. In this final rule, RSPA is requiring that a carrier who transports or accepts a hazardous material for transportation instruct the operator of a transport vehicle to contact the carrier following an incident.

3. *Mark carrier telephone number on transport vehicle, or have shipping papers and emergency response information located on transport vehicle when a transport vehicle is separated from its motive power.* RSPA is adopting, as proposed in new § 172.606, a requirement that a motor carrier mark its telephone number on a highway transport vehicle, trailer or semi-trailer, or have shipping papers and emergency response information located on the transport vehicle, when separated from its motive power away from a consignee's, consignor's, or carrier's facility. Most comments on this proposal supported the concept, but differed on how to implement it. Several motor carriers noted that many carriers already mark their names on transport vehicles and asked RSPA to exempt companies already displaying this information. Other commenters cited confusion over marking trailers used by more than one carrier; they said such trailers should bear the lessee's name and phone number. Illinois DOT supported the proposal and stated that a consistent location should be specified, such as a holder on the right front corner, to ensure copies of shipping papers and emergency response information are on a transport vehicle when disconnected from its motive power. NITL generally supported RSPA's proposal in § 172.606(b), but requested exceptions for those carriers who already prominently display their names and principal place of business from having to mark their vehicles with the telephone number of the motor carrier.

RSPA believes that an unattended motor vehicle (e.g., a trailer or semi-trailer disconnected from its motive power) carrying hazardous materials must be sufficiently identified to communicate information regarding hazardous materials in the transport vehicle or to provide a telephone number where the information would be available. In some instances, a semi-trailer may be in an interchange operation in which the motor carrier using the semi-trailer is not the motor carrier whose name is displayed on the vehicle, or a leasing company name may be prominently displayed on a semi-trailer. In either of these instances, the company's name appearing on the semi-trailer would not lead directly to information regarding the hazardous material being transported. RSPA acknowledges that many transport vehicles identified and operated by the same company are marked with the company's name and address. RSPA does not believe such operations should be excepted from complying with any method prescribed in § 172.606(b) (1), (2), or (3).

E. Editorial Correction and Clarification

1. *Notice to train crews of placarded cars.* In § 174.26, RSPA is adopting, as proposed, a requirement that a train consist be updated to reflect the current position in the train of each rail car containing hazardous materials. NTSB supported clarification of a provision in § 174.26, which requires that a train crew must have a document that reflects the current position in the train of each rail car containing a hazardous material, stating:

> The Board supports the proposed change to 49 CFR Section 174.26(b) that would require a traincrew [sic] to have a current record or updated consist to reflect the position in the train of each rail car containing a hazardous material. The proposed revision would satisfy action requested in Safety Recommendation R–9–38, which was issued by the Board to the Federal Railroad Administration following a train derailment in Akron, Ohio, on February 26, 1989.

RSPA proposed that an updated train consist be permitted to meet this requirement. The existing requirement in the HMR specifies that the train crew must have a document indicating the position in the train of each loaded placarded car containing hazardous materials, except when the position is changed or the placarded car is placed in the train by a member of the train crew. Although the provision specifies that a train consist may be used, it does not state that the train consist must be ''updated'' to meet this requirement. AAR and several rail carriers expressed concern that the proposed language as written does not clearly state that train crews can attach a document, which reflects current train placement, to the train consist to indicate changes in the placement of hazardous materials cars in trains. AAR stated that train crews should be specifically authorized to modify consists by inserting a ''reference'' in the consist to additional documents in the train crew's possession.

Along with NTSB, FRA and RSPA believe this section should be clarified to specify that an updated train consist must be used to meet this requirement. In response to AAR's and several rail carriers' concerns for further clarification of the term ''updated'' as it applies to modifying train consists to reflect the train placement requirement, RSPA is revising this section to allow the use of appended or attached documents that reflect current train placement. This addresses situations in which modifying a train consist is accomplished by inserting attachments (e.g., track lists and work orders, etc.) that reflect the current position in the train of cars containing hazardous materials. In this final rule, a train consist must be updated (i.e., modified, changed, or appended) and used by the train crews to accurately reflect changes in the placement of hazardous materials cars in trains.

III. Related Rulemakings

On June 5, 1996, RSPA issued a final rule [HM–216; 61 FR 28666], which contained a number of changes to the rail requirements in the HMR. RSPA revised §§ 172.510 and 172.526 to delete reference to the use of the RESIDUE placard and removed the RESIDUE placard as shown in the placarding examples, respectively. RSPA also removed the special documentation requirements of § 174.25 requiring placard notations or endorsements on shipping papers (e.g., waybills, switching ticket, or switching order). In addition, RSPA deleted paragraph (a) of § 174.26, regarding notices showing the location in each train of each rail car placarded EXPLOSIVES 1.1 or 1.2, POISON GAS, Division 2.3 Hazard Zone A, and Division 6.1, PG I, Hazard Zone A materials, and revised and redesignated paragraph (b) as paragraph (a).

Since the provisions applying to the specifications and use of the RESIDUE placard have been removed in HM–216, the change proposed in § 172.510 (HM–206), regarding reference to the POISON-RESIDUE and POISON

INHALATION HAZARD-RESIDUE placards, is no longer necessary. The action taken in HM–216 in § 174.25 to remove the requirements for placard endorsement and notation on rail billings, makes the proposed change in this section referencing the POISON INHALATION-HAZARD placard unnecessary. In this final rule, for ease of understanding, the text of § 174.26 contained in Docket HM–216 is republished.

On May 30, 1996, RSPA issued a final rule [Docket HM–222B; 61 FR 27166], which revised the requirement in § 177.841 to allow foodstuffs which are loaded in a closed unit load device to be transported in the same motor vehicle with poisons that are loaded in a separate closed unit load device. In this final rule, RSPA is revising § 177.841 to include reference to the new POISON INHALATION HAZARD label.

IV. Section-by-section highlights

This section-by-section summary addresses highlights of the changes to the hazard communications requirements. In addition, the following table is provided as an aid to readers and provides a summary of changes made in this final rule and their respective compliance dates.

Section	Action	Discussion	Compliance date
§ 172.301	ID No. marking on vehicle for large quantities (≥4,000 kg) in non-bulk packages.	New requirement	Oct. 1, 1997.
§ 172.313	ID No. marking on vehicle for a PIH material with ≥ 1,000 kg in non-bulk packages.	New requirement	Oct. 1, 1997.
§ 172.328	ID No. marking display on closed vehicle containing cargo tanks.	New requirement	Oct. 1, 1997
§ 172.331	ID No. marking display on closed vehicle containing other bulk packages (e.g., IBCs).	Expansion of current requirement applicable to portable tanks.	Oct. 1, 1997
§§ 172.416 & 172.429	PIH labels for both liquids and gases that are poisonous if inhaled.	Replaces POISON label and POISON GAS label design.	Oct. 1, 1997.
§ 172.504(b)	Specific placard required when ≥ 1,000 kg of one class on a vehicle.	Reduction of quantity from 2,268 kg for use of DANGEROUS placard for mixed loads.	Oct. 1, 1997.
§ 172.606(a)	Carrier must instruct operator of motor vehicle to contact the company in the event of a hazmat incident.	New requirement	Oct. 1, 1997.
§ 172.606(b)	Requiring information with parked (dropped) motor vehicle.	New requirement	Oct. 1, 1997.
§§ 172.302 & 173.9	FUMIGANT marking, applying to all modes	Expansion of existing requirements and adoption of international design.	Oct. 1, 2001.
§ 172.502	Prohibited display of extraneous information on placard and in placard holder.	Expansion of existing requirements.	Oct. 1, 2001.
§§ 172.540 & 172.555	PIH placards for both liquids and gases that are poisonous if inhaled.	Replaces POISON and POISON GAS placard design.	Oct. 1, 2001.

Section 171.8. Although not proposed, in order to assist persons in locating the requirements for transporting lading which has been fumigated, the entry ''‘Fumigated lading’ (See §§ 172.302(g) and 173.9)'' is being added to the definitions in § 171.8.

Section 171.11, 171.12 and 171.12a. In §§ 171.11(d)(9)(iii), 171.12(b)(8)(iii) and 171.12a(b)(5)(iii), the words ''POISON INHALATION HAZARD'' replace the word ''POISON'' in reference to labeling poison inhalation hazard materials other than gases.

Section 171.14. On September 26, 1996, a final rule was published in the Federal Register [Docket HM–181H; 61 FR 50616] which removed obsolete transition dates in § 171.14. New paragraphs (a), (b), and (c) contain all remaining transitional provisions implementing changes adopted under Docket HM–181. In this final rule (HM–206), paragraph (b) is revised to allow continued use of the old placards for PIH materials, in accordance with the Placard Substitution Table provided in this section. Accordingly, for highway and rail shipments, mandatory use of the new PIH placards [for Division 2.3 and Division 6.1, PG I materials] begins on October 1, 2001, which is consistent with other transitional placarding provisions for highway shipments of hazardous materials.

Section 172.101. On April 29,1996, a final rule was published in the Federal Register [Docket HM–222A; 61; FR 18926]. In this final rule, the § 172.101 Hazardous Materials Table (§ 172.101 HMT) was reformatted to reduce the volume of the regulations and make them easier to use. A numerical identifier is now shown in the § 172.101 HMT in place of the label name. A ''Label Substitution Table,'' was added preceding the HMT to identify which label corresponds to a label code (i.e., numerical identifier) in Column (6). In this final rule (HM–206), the ''Label Substitution Table,'' in § 172.101(g), is amended to include the new label name ''Poison Inhalation Hazard'' and label code ''6.1 (I, Zone A and B, inhalation hazard),'' in its appropriate sequence.

Section 172.301. A new paragraph (a)(3) is added in this section requiring an identification number marking on transport vehicles and freight containers containing large quantities (i.e., not less than 4,000 kilograms (8,820 pounds)) of hazardous materials in non-bulk packagings having a single identification number. Paragraph (a)(1) is also revised to more appropriately include the exception from identification number marking for ORM–D and limited quantity materials, currently provided in paragraph (f)(1). Accordingly, paragraph (f)(1) is removed, and paragraph (f)(2), which is obsolete, is removed.

Section 172.302. A new paragraph (g) is added to reference the fumigation marking requirements in § 173.9.

Section 172.313. Paragraph (a) is revised to include an exception from the

''Inhalation Hazard'' marking requirement, provided packages are already labeled or placarded with the new PIH label or placard. Paragraph (c) is added to require that transport vehicles or freight containers containing more than 1,000 kilograms (2,205 pounds) aggregate gross weight of non-bulk packages containing a material poisonous by inhalation must be marked with the identification number of that material. This is an increase in the quantity threshold (i.e., 2,205 pounds) for the identification number marking display for a PIH shipment in non-bulk packagings from the proposed 400 kilograms (882 pounds).

Section 172.328. Paragraph (a)(3) is added to clarify that an identification number marking must be displayed on a transport vehicle or freight container containing a hazardous material in a cargo tank, if the identification number marking on the cargo tank is not visible during transportation.

Section 172.331. Paragraph (c) is added to clarify that an identification number marking must be displayed on a transport vehicle or freight container containing a hazardous material in a bulk packaging (e.g., an IBC) other than a cargo tank, portable tank, tank car and multi-unit tank car tank, if the identification number marking on the bulk packaging is not visible during transportation.

Section 172.332. Paragraph (a) is revised to reference new marking requirements in §§ 172.301 and 172.313.

Section 172.400. The table of label designations in paragraph (b) of this section is revised by adding reference to the new POISON INHALATION HAZARD label (§ 172.429) for Division 6.1, PG I, Zone A and B materials. The entry for the POISON label applying to 6.1, PG I and II materials is revised to read ''other than inhalation hazard.''

Section 172.416. This section is revised to prescribe the new POISON GAS label.

Section 172.429. This section is added to prescribe the new POISON INHALATION HAZARD label.

Section 172.502. Paragraph (a)(2) is revised to specifically prohibit display of extraneous information, signs, or slogans (e.g., DRIVE SAFELY) on placards, placard-type displays, and in placard holders that by their color, shape, design or content could be mistaken for a hazard warning placard. A mandatory compliance date of October 1, 2001 is provided for removal of extraneous information from placards, placard-type displays, and in placard holders.

Section 172.504. Paragraph (b) is revised by lowering from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) aggregate gross weight, the amount of one category of material contained on a transport vehicle, freight container or rail car for which specific placarding is required, limiting use of the DANGEROUS placard. In paragraph (e), Table 1 placard assignments are revised to add the new POISON INHALATION HAZARD placard (§ 172.555) for Division 6.1, PG I, Zone A and B materials and to include the entry ''5.2 (Organic peroxide, Type B, liquid or solid, temperature controlled)'' in the first column, the placard name ''ORGANIC PEROXIDE'' in the second column, and ''§ 172.552'' in the third column. In Table 2, the entry ''5.2'' is replaced by the entry ''5.2 (Other than Organic peroxides, Type B, liquid or solid, temperature controlled)'' in the first column. In paragraph (f), an exception is provided from displaying a POISON placard in those instances when a POISON INHALATION HAZARD placard or POISON GAS placard is required.

Section 172.505. Paragraph (a) is revised to replace the word ''POISON'' with the words ''POISON INHALATION HAZARD'' to correctly reference the new placard in the new § 172.555 for Division 6.1, PG I, Zone A and B materials.

Section 172.510. Since the provisions applying to the specifications and use of the RESIDUE placard have been removed (HM–216), the change proposed in § 172.510 (HM–206), regarding reference to the POISON-RESIDUE and POISON INHALATION HAZARD- RESIDUE placards, is no longer necessary. In this final rule, paragraph (b) is removed, as requirements for fumigated transport vehicles are relocated to §§ 172.302(g) and 173.9, and paragraph (c) is redesignated as paragraph (b), and the words ''POISON GAS or POISON'' are replaced with the words ''POISON GAS or POISON INHALATION HAZARD.''

Section 172.540. This section is revised to prescribe the new POISON GAS placard.

Section 172.555. Section 172.555 is added to prescribe the new POISON INHALATION HAZARD placard.

Section 172.602. RSPA proposed to revise paragraph (c) of this section to clarify that emergency response information must be ''readily available to authorities''; however RSPA is not adopting the proposed language in paragraph (c) because the basic elements of the proposed change are adequately covered by the requirements in § 172.600(c). Paragraph (c)(1) of this section is revised to include reference to the new § 172.606, relative to carrier information contact.

Section 172.606. This section is added to require each carrier who transports a hazardous material to instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier in the event of an incident involving a hazardous material in transportation. This section prescribes information requirements for a motor vehicle (e.g. trailer or semi-trailer) separated from its motive power and parked at other than a consignee's, consignor's or carrier's facility.

Section 173.9. The FUMIGANT marking requirements are revised and expanded by (1) making them applicable to every material used to fumigate the contents of a transport vehicle or freight container; (2) expanding their application to all modes of transportation; (3) specifying that a fumigated transport vehicle or freight container is a ''package'' for application of the fumigation requirements; (4) adopting the international fumigant marking format; and (5) specifying that a shipping paper accompanying an international shipment must contain hazard warning information concerning the fumigant. In this final rule, the proposed paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to specify that persons subject to the requirements of this section must be informed of the requirements of this section.

Section 173.29. For clarity, the introductory text of paragraph (b)(1) is revised to add the phrase ''any other markings indicating the material is hazardous (e.g., RQ, INHALATION HAZARD).''

Section 174.26. Paragraph (a) is revised to specify that a train consist must be ''updated'' to reflect the current position in the train of each rail car containing a hazardous material. The text is modified to allow the use of appended or attached documents to reflect train placement. For ease of understanding, the complete text in this section is republished as contained in the final rule in Docket HM–216.

Section 174.680. An editorial correction is made in this section to add a reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same rail car with foodstuffs.

Section 175.630. This section is revised to add reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same compartment of an aircraft with foodstuffs, and to delete obsolete references to ''etiologic'' substances.

Section 176.600. An editorial correction is made in this section to add a reference to the new POISON INHALATION HAZARD label to prohibit carrying poisonous materials in the same vessel stowage area with foodstuffs.

Section 177.841. This section is revised for consistency with the changes in the final rule under Docket HM–222B [61 FR 27166; May 30, 1996], which revised requirements to prohibit carrying poisonous materials in the same motor vehicle with foodstuffs, and an editorial correction is made to add a reference to the new POISON INHALATION HAZARD label.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking proceeding was originally considered significant because it was required by Sec. 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), and included consideration of methods for establishing and operating a central reporting system and computerized telecommunications data center covering all shipments of hazardous materials by any mode of transportation, as well as improving the system for placarding vehicles transporting hazardous materials. However, this final rule makes relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation. RSPA ended its consideration of the central reporting system and computerized data center, based on the adverse recommendation of the National Academy of Sciences (NAS) study (also required by Sec. 25), the lack of support from the regulated community, and the estimated high costs of establishing such a system.

The original regulatory evaluation was reexamined and modified. The economic impact of this rule will result in only minimal costs to certain persons subject to the HMR. A significantly revised regulatory evaluation reflecting the reduced economic impact of this final rule is available for review in the docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) 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.

This final rule preempts 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 law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, 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. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Although this final rule applies to all shippers and carriers of hazardous materials, some of whom are small entities, the requirements contained herein would not result in significant economic impacts.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137–0035. The requirements in § 173.9 that a shipping paper contain hazard warning information concerning the fumigant for an international shipment insignificantly increases the amount of burden imposed by this collection. This information is a current requirement for international shipments by vessel. RSPA believes that this change in burden is not sufficient to warrant revision of the currently approved information collection. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. 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, Incorporation by reference, 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 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

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

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.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

§ 171.8 [Amended]

2. In § 171.8, the definition for ''Fumigated lading'' is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Fumigated lading. See §§ 172.302(g) and 173.9.

* * * * *

§ 171.11 [Amended]

3. In § 171.11, in paragraph (d)(9)(iii), the words ''with 'POISON' '' are replaced with the words ''with 'POISON INHALATION HAZARD' ''.

§ 171.12 [Amended]

4. In § 171.12, in paragraph (b)(8)(iii), the words ''with 'POISON' '' are replaced with the words ''with 'POISON INHALATION HAZARD' ''.

§ 171.12a [Amended]

5. In § 171.12a, in paragraph (b)(5)(iii), the words ''with 'POISON' '' are replaced with the words ''with 'POISON INHALATION HAZARD' ''.

6. In § 171.14, paragraph (b) is revised to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) *Transitional placarding provisions.* (1) Until October 1, 2001, placards which conform to specifications for placards in effect on September 30, 1991 or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PLACARD SUBSTITUTION TABLE

Hazard class or division No.	Current placard name	Old (Sept. 30, 1991) placard name
Division 1.1	Explosives 1.1	Explosives A.
Division 1.2	Explosives 1.2	Explosives A.
Division 1.3	Explosives 1.3	Explosives B.
Division 1.4	Explosives 1.4	Dangerous.
Division 1.5	Explosives 1.5	Blasting agents.
Division 1.6	Explosives 1.6	Dangerous.
Division 2.1	Flammable gas	Flammable gas.
Division 2.2	Nonflammable gas	Nonflammable gas.
Division 2.3	Poison gas	Poison gas.
Class 3	Flammable	Flammable.
Combustible liquid	Combustible	Combustible.
Division 4.1	Flammable solid	Flammable solid.
Division 4.2	Spontaneously combustible	Flammable solid.
Division 4.3	Dangerous when wet	Flammable solid W.
Division 5.1	Oxidizer	Oxidizer.
Division 5.2	Organic peroxide	Organiic peroxide.
Division 6.1, PG I (Zone A and B, inhalation hazard)	Poison inhalation hazard	Poison.
Division 6.1, PG I and II (other than Zone A and B)	Poison	Poison
Division 6.1, PG III	Keep away from food	(not applicable).
Class 7	Radioactive	Radioactive.
Class 8	Corrosive	Corrosive.
Class 9	Class 9	(none required).

(2) For materials poisonous by inhalation, for highway and rail transportation only, placards specified in the January 8, 1997, final rule may be used, in accordance with the Placard Substitution Table in paragraph (b)(1) of this section.

* * * * *

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

7. The authority citation for Part 172 continues to read as follows:

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

8. In § 172.101, in the Table in paragraph (g), the entries for label code 6.1 (I)[2] and 6.1 (II)[2] are removed and the following entries are added in their place:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) * * *

LABEL SUBSTITUTION TABLE

Label code	Label name
* * *	* *
6.1 (I, Zone A and B inhalation hazard)[2].	Poison Inhalation Hazard.
6.1 (I, other than Zone A and B)[2].	Poison.

LABEL SUBSTITUTION TABLE—Continued

Label code	Label name
6.1 (II, other than Zone A and B)[2].	Poison.
* * *	* *

* * * * *

9. In § 172.301, paragraph (a)(1) is revised, paragraphs (f)(1) and (f)(2) are removed, and a new paragraph (a)(3) is added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(1) Except as otherwise provided by this subchapter, each person who offers for transportation a hazardous material

in a non-bulk packaging shall mark the package with the proper shipping name and identification number (preceded by ''UN'' or ''NA'', as appropriate) for the material as shown in the § 172.101 Table. Identification numbers are not required on packages which contain only limited quantities, as defined in § 171.8 of this subchapter, or ORM-D materials.

* * * * *

(3) *Large quantities of hazardous materials in non-bulk packages.* A transport vehicle or freight container containing 4,000 kg (8,820 pounds) or more aggregate gross weight of a hazardous material having a single identification number must be marked with the identification number designated for the hazardous material in § 172.101 as specified in § 172.332 or § 172.336. This provision does not apply to ORM-D materials or limited quantities of hazardous materials.

* * * * *

10. In § 172.302, paragraph (g) is added to read as follows:

§ 172.302 General marking requirements for bulk packagings.

* * * * *

(g) A rail car, freight container, truck body or trailer in which the lading has been fumigated with any hazardous material, or is undergoing fumigation, must be marked as specified in § 173.9 of this subchapter.

11. In § 172.313, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 172.313 Poisonous hazardous materials.

(a) For materials poisonous by inhalation (see § 171.8 of this subchapter), the package shall be marked ''Inhalation Hazard'' in association with the required labels or placards, as appropriate, or shipping name when required. The ''Inhalation Hazard'' marking is not required provided the package is already labeled as prescribed in § 172.429, or placarded as prescribed in § 172.555. (See § 172.302(b) of this subpart for size of markings on bulk packages.) Bulk packages must be marked on two opposing sides.

* * * * *

(c) A transport vehicle or freight container loaded with more than 1,000 kg (2,205 pounds) aggregate gross weight of packages containing a material poisonous by inhalation shall be marked as required by § 172.332 with the identification number specified for the material, in the § 172.101 Table, on each side and each end of the transport vehicle or freight container.

12. In § 172.328, paragraph (a)(3) is added to read as follows:

§ 172.328 Cargo tanks.

(a) * * *

(3) For a cargo tank transported on or in a transport vehicle or freight container, if the identification number marking on the cargo tank required by § 172.302(a) is not visible, the transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table.

* * * * *

13. In § 172.331, paragraph (c) is added to read as follows:

§ 172.331 Bulk packagings other than portable tanks, cargo tanks, tank cars and multi-unit tank car tanks.

* * * * *

(c) For a bulk packaging contained in or on a transport vehicle or freight container, if the identification number marking on the bulk packaging (e.g., an IBC) required by § 172.302(a) is not visible, the transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table.

14. In § 172.332, paragraph (a) is revised to read as follows:

§ 172.332 Identification number markings.

(a) *General.* When required by §§ 172.301, 172.302, 172.313, 172.326, 172.328, 172.330, or 172.331 of this subpart, identification numbers must be displayed on orange panels or placards as specified in this section or, when appropriate, on plain white square-on-point configurations as prescribed in § 172.336(b).

* * * * *

15. In § 172.400, the table of label designations in paragraph (b) is revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
1.1	EXPLOSIVES 1.1	172.411
1.2	EXPLOSIVES 1.2	172.411
1.3	EXPLOSIVES 1.3	172.411
1.4	EXPLOSIVES 1.4	172.411
1.5	EXPLOSIVES 1.5	172.411
1.6	EXPLOSIVES 1.6	172.411
2.1	FLAMMABLE GAS	172.417
2.2	NONFLAMMABLE GAS	172.415
2.3	POISON GAS	172.416
3 (flammable liquid) Combustible liquid	FLAMMABLE LIQUID (none)	172.419
4.1	FLAMMABLE SOLID	172.420
4.2	SPONTANEOUSLY COMBUSTIBLE	172.422
4.3	DANGEROUS WHEN WET	172.423
5.1	OXIDIZER	172.426
5.2	ORGANIC PEROXIDE	172.427
6.1 (Packing Group I, Zone A and B)	POISON INHALATION HAZARD	172.429
6.1 (Packing Groups I and II, other than inhalation hazard)	POISON	172.430
6.1 (Packing Group III)	KEEP AWAY FROM FOOD	172.431
6.2	INFECTIOUS SUBSTANCE [1]	172.432
7 (see § 172.403)	RADIOACTIVE WHITE-I	172.436
7	RADIOACTIVE YELLOW–II	172.438
7	RADIOACTIVE YELLOW–III	172.440
7 (empty packages, see § 173.427)	EMPTY	172.450
8	CORROSIVE	172.442

Hazard class or division	Label name	Label design or section reference
9	CLASS 9	172.446

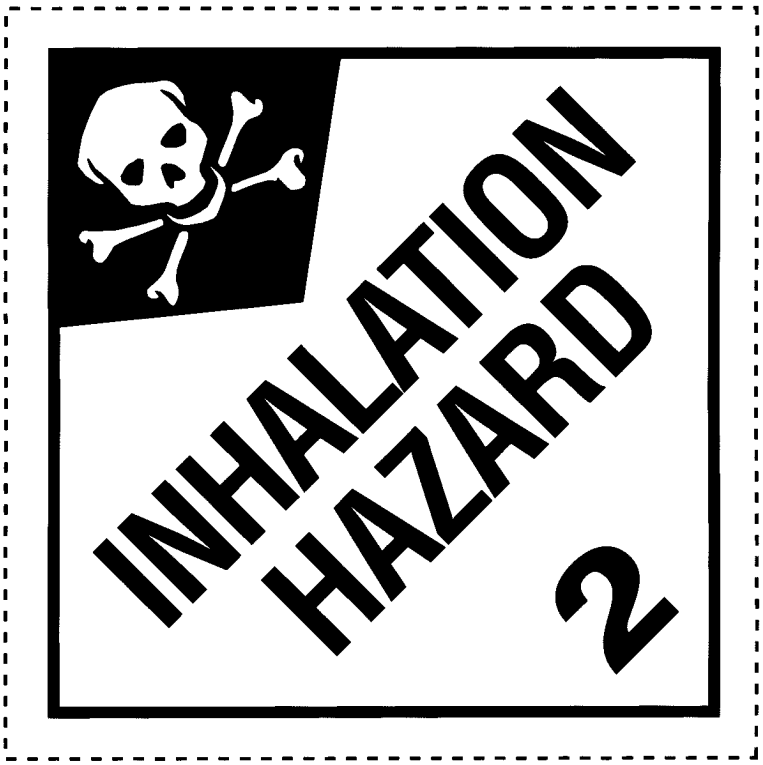
[1] The ETIOLOGIC AGENT label specified in regulations of the Department of Health and Human Services at 42 CFR 72.3 may apply to packages of infectious substances.

16. Section 172.416 is revised to read as follows:

§ 172.416 POISON GAS label.

(a) Except for size and color, the POISON GAS label must be as follows:

BILLING CODE 4910–60–P

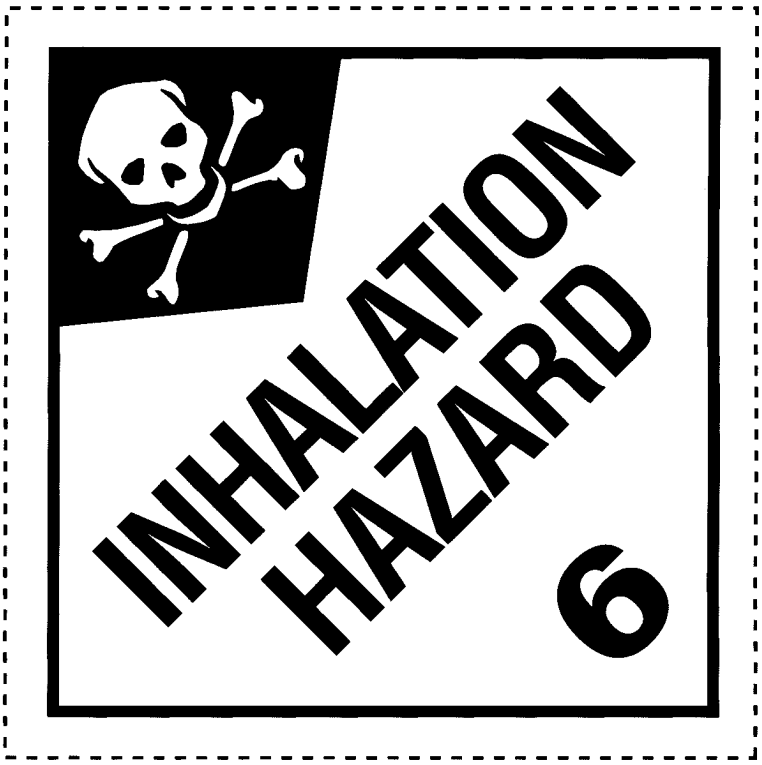


(b) In addition to complying with § 172.407, the background on the POISON GAS label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

17. Section 172.429 is added to read as follows:

§ 172.429 POISON INHALATION HAZARD label.

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:



BILLING CODE 4910–60–C

(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 14 mm (0.54 inches) above the horizontal center line.

18. In § 172.502, paragraph (a)(2) is revised and paragraph (b)(3) is added to read as follows:

§ 172.502 Prohibited and permissive placarding.

(a) * * *

(2) Any sign, advertisement, slogan (such as ''Drive Safely''), or device that, by its color, design, shape or content, could be confused with any placard prescribed in this subpart.

(b) * * *

(3) The restrictions in paragraph (a)(2) of this section do not apply until October 1, 2001 to a safety sign or safety slogan (e.g., ''Drive Safely'' or ''Drive Carefully''), which was permanently marked, on or before October 1, 1996, on a transport vehicle, bulk packaging, or freight container.

* * * * *

19. In § 172.504, paragraph (f)(11) is added, and paragraphs (b) and (e) are revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(b) *DANGEROUS placard.* A freight container, unit load device, transport vehicle, or rail car which contains non-bulk packages with two or more categories of hazardous materials that require different placards specified in Table 2 of paragraph (e) of this section may be placarded with a DANGEROUS placard instead of the separate placarding specified for each of the materials in Table 2 of paragraph (e) of this section. However, when 1,000 kg (2,205 pounds) aggregate gross weight or more of one category of material is loaded therein at one loading facility on a freight container, unit load device, transport vehicle, or rail car, the placard specified in Table 2 of paragraph (e) of this section for that category must be applied.

* * * * *

(e) *Placarding tables.* Placards are specified for hazardous materials in accordance with the following tables:

TABLE 1

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
1.1	EXPLOSIVES 1.1	172.522
1.2	EXPLOSIVES 1.2	172.522
1.3	EXPLOSIVES 1.3	172.522
2.3	POISON GAS	172.540
4.3	DANGEROUS WHEN WET	172.548
5.2 (Organic peroxide, Type B, liquid *or* solid, temperature controlled).	ORGANIC PEROXIDE	172.552
6.1 (PG I, inhalation hazard, Zone A and B)	POISON INHALATION HAZARD	172.555

TABLE 1—Continued

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
7 (Radioactive Yellow III label only)	RADIOACTIVE [1]	172.556

[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material in accordance with § 173.425 (b) or (c) of this subchapter.

TABLE 2

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
1.4	EXPLOSIVES 1.4	172.523
1.5	EXPLOSIVES 1.5	172.524
1.6	EXPLOSIVES 1.6	172.525
2.1	FLAMMABLE GAS	172.532
2.2	NON-FLAMMABLE GAS	172.528
3	FLAMMABLE	172.542
Combustible liquid	COMBUSTIBLE	172.544
4.1	FLAMMABLE SOLID	172.546
4.2	SPONTANEOUSLY COMBUSTIBLE	172.547
5.1	OXIDIZER	172.550
5.2 (Other than organic peroxide, Type B, liquid or solid, temperature controlled).	ORGANIC PEROXIDE	172.552
6.1 (PG I or II, other than PG I inhalation hazard)	POISON	172.554
6.1 (PG III)	KEEP AWAY FROM FOOD	172.553
6.2	(None)	
8	CORROSIVE	172.558
9	CLASS 9	172.560
ORM-D	(None)	

(f) * * *

(11) For domestic transportation, a POISON placard is not required on a transport vehicle or freight container required to display a POISON INHALATION HAZARD or POISON GAS placard.

* * * * *

20. In § 172.505, paragraph (a) is revised to read as follows:

§ 172.505 Placarding for subsidiary hazards.

(a) Each transport vehicle, freight container, portable tank, unit load device, or rail car that contains a poisonous material subject to the ''Poison Inhalation Hazard'' shipping description of § 172.203(m)(3) must be placarded with a POISON INHALATION HAZARD or POISON GAS placard, as appropriate, on each side and each end, in addition to any other placard required for that material in § 172.504. Duplication of the POISON INHALATION HAZARD or POISON GAS placard is not required.

* * * * *

§ 172.510 [Amended]

21. In § 172.510, the following changes are made:

a. Paragraph (b) is removed.

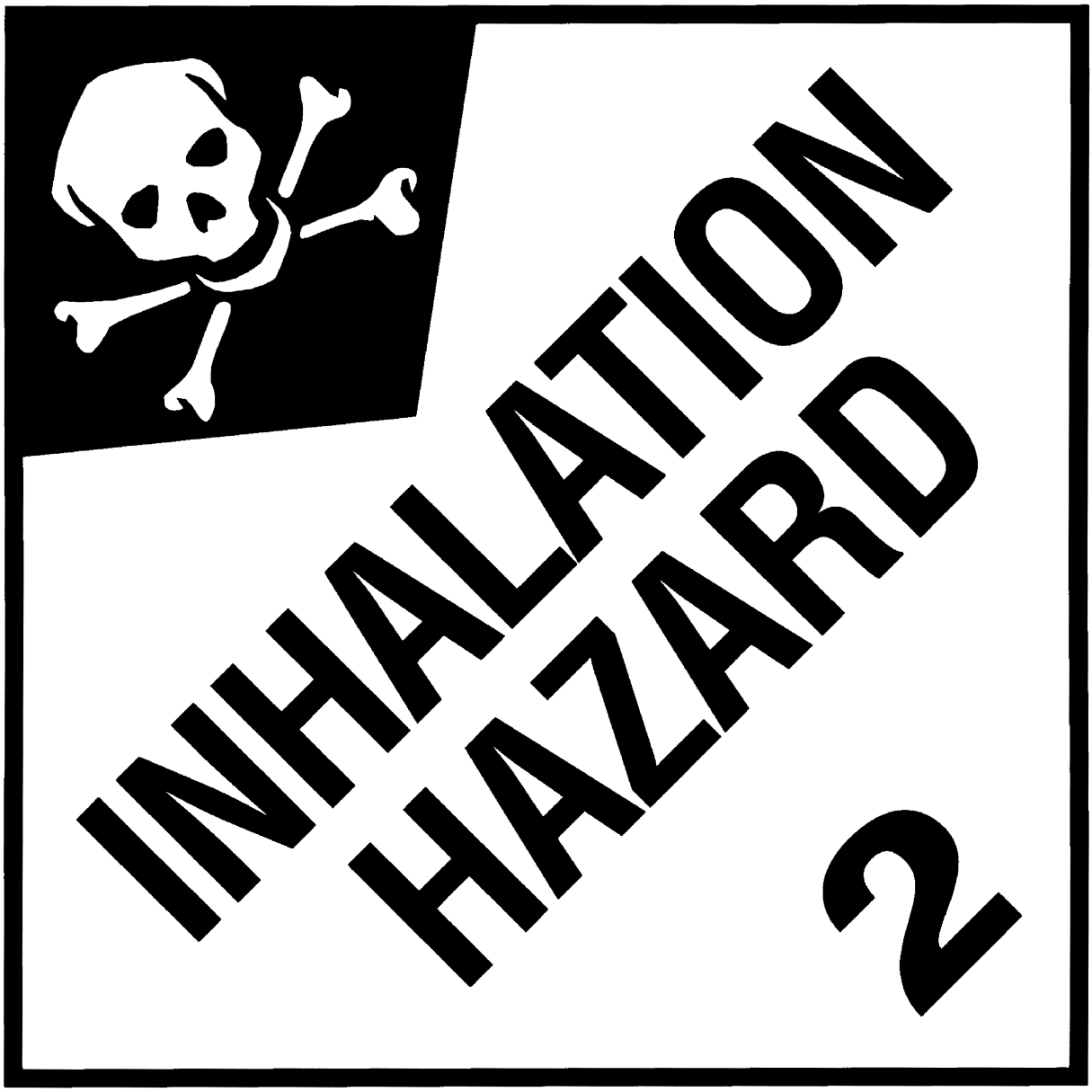
b. Paragraph (c) is redesignated as paragraph (b), and the phrase ''POISON GAS or POISON'' is replaced with the phrase ''POISON GAS or POISON INHALATION HAZARD.''

22. Section 172.540 is revised to read as follows:

§ 172.540 POISON GAS placard.

(a) Except for size and color, the POISON GAS placard must be as follows:

BILLING CODE 4910–60–P

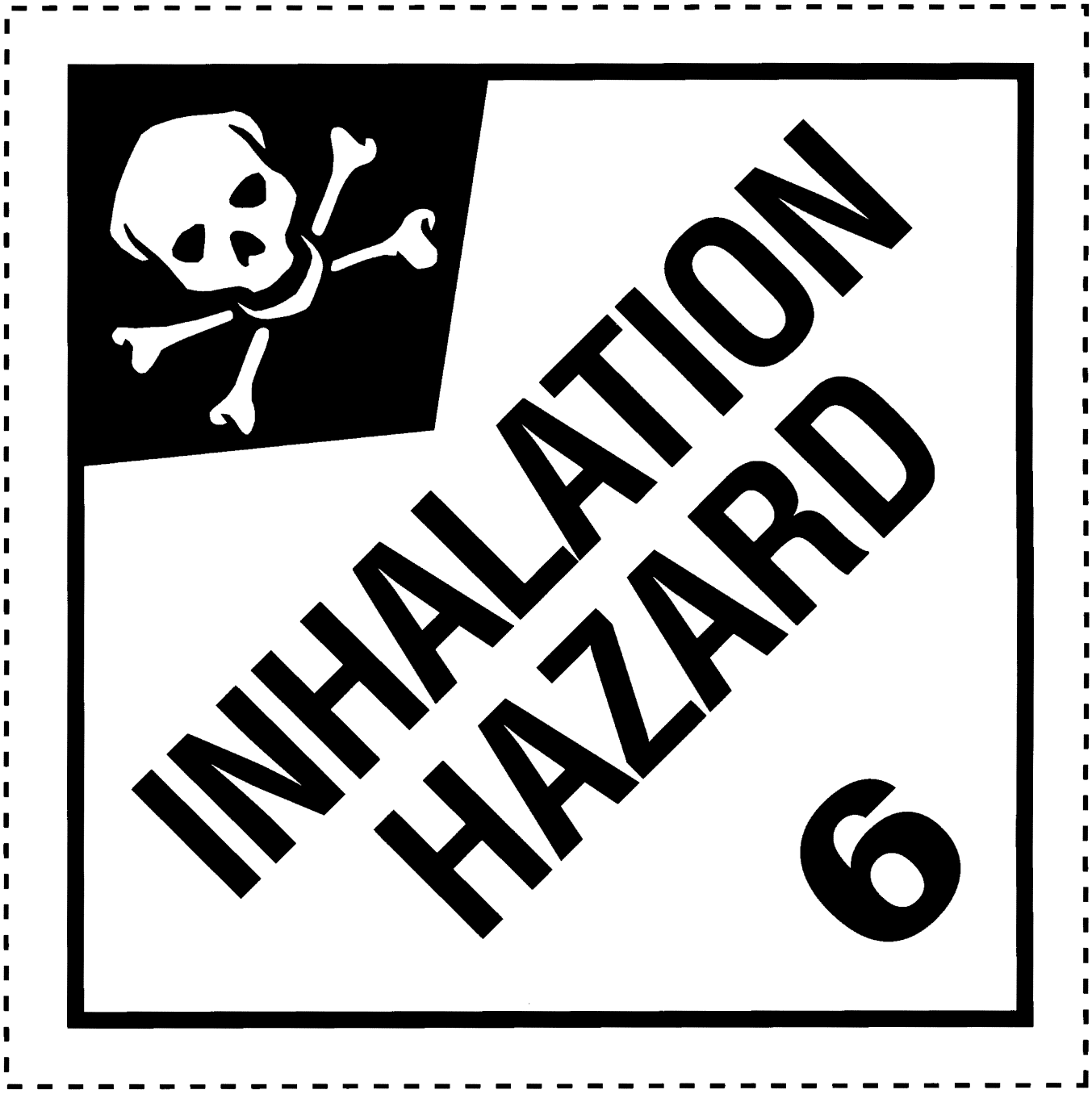

INHALATION
HAZARD
2

(b) In addition to complying with § 172.519, the background on the POISON GAS placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 38 mm (1½ inches) above the horizontal center line. The text, class number, and inner border must be black.

23. Section 172.555 is added to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

(a) Except for size and color, the POISON INHALATION HAZARD placard must be as follows:



BILLING CODE 4910–60–C

(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and the lower point of the upper diamond must be 38 mm (1½ inches) above the horizontal center line. The text, class number, and inner border must be black.

24. In § 172.602, paragraph (c)(1) is revised to read as follows:

§ 172.602 Emergency response information.

* * * * *

(c) * * *

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section and § 172.606 of this part in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification of pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

* * * * *

25. Section 172.606 is added to read as follows:

§ 172.606 Carrier information contact.

Each carrier who transports or accepts for transportation a hazardous material for which a shipping paper is required—

(a) Shall instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier (e.g., by telephone or mobile radio) in the event of an incident involving the hazardous material.

(b) For transportation by highway, if a transport vehicle, (e.g., a semi-trailer or freight container-on-chassis) contains hazardous material for which a shipping paper is required and the vehicle is separated from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility, the carrier shall—

(1) Comply with the emergency response information requirements for facility operators specified in § 172.602(c)(2);

(2) Mark the transport vehicle with the telephone number of the motor carrier on the front of the transport vehicle near the brake hose and electrical connections; or

(3) Have the shipping paper and emergency response information readily available on the transport vehicle.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

26. The authority citation for part 173 continues to read as follows:

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

27. Section 173.9 is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

(a) For the purpose of this section, not including 49 CFR part 387, a rail car, freight container, truck body, or trailer in which the lading has been fumigated with any material, or is undergoing fumigation, is a package containing a hazardous material, unless the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety.

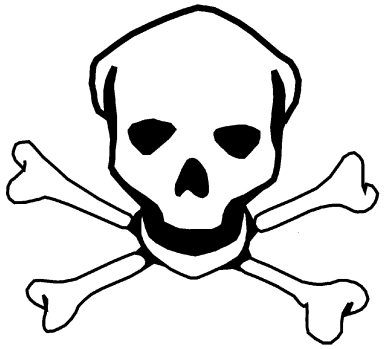
(b) No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the FUMIGANT marking specified in paragraph (c) of this section is prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container. For domestic transportation, a hazard warning label authorized by EPA under 40 CFR part 156 may be used as an alternative to the FUMIGANT marking.

(c) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of red letters on a white background that is at least 30 cm (11.8 inches) wide and at least 25 cm (9.8 inches) high. Except for size and color, the FUMIGANT marking must be as follows:

BILLING CODE 4910–60–P

BILLING CODE 4910–60–C

DANGER



THIS UNIT IS UNDER FUMIGATION

WITH *_____ APPLIED ON

Date_____

Time_____

DO NOT ENTER

(2) The ''*'' shall be replaced with the technical name of the fumigant.

(d) No person may affix or display on a rail car, freight container, truck body, or trailer (a package) the FUMIGANT marking specified in paragraph (c) of this section, unless the lading has been fumigated or is undergoing fumigation.

(e) The FUMIGANT marking required by paragraph (b) of this section must remain on the rail car, freight container, truck body, or trailer until:

(1) The fumigated lading is unloaded; and

(2) The transport vehicle or freight container has undergone sufficient aeration to assure that it does not pose an unreasonable risk to health and safety.

(f) For international shipments, transport documents must indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.

(g) Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precautions necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.

(h) Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any other requirements of this subchapter.

28. In § 173.29, paragraph (b)(1) is revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(b) * * *

(1) Any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (*e.g.*, RQ, INHALATION HAZARD) are removed, obliterated, or securely covered in transportation. This provision does not apply to transportation in a transport vehicle or a freight container if the packaging is not visible in transportation and the packaging is loaded by the shipper and unloaded by the shipper or consignee;

* * * * *

PART 174—CARRIAGE BY RAIL

29. The authority citation for part 174 continues to read as follows:

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

30. Section 174.26 is revised to read as follows:

§ 174.26 Notice to train crews of placarded cars.

(a) The train crew must have a document that reflects the current position in the train of each rail car containing a hazardous material. The train crew must update the document to indicate changes in the placement of a rail car within the train. For example, the train crew may update the document by handwriting on it or by appending or attaching another document to it.

(b) A member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subchapter.

31. In § 174.680, paragraph (a) is revised to read as follows:

§ 174.680 Division 6.1 (poisonous) materials with foodstuffs.

(a) A carrier may not transport any package bearing a POISON or POISON INHALATION HAZARD label in the same car with any material marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

32. The authority citation for part 175 continues to read as follows:

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

33. Section 175.630 is revised to read as follows:

§ 175.630 Special requirements for Division 6.1 (poisonous) material and Division 6.2 (infectious substance) material.

(a) A hazardous material bearing a POISON, POISON INHALATION HAZARD, KEEP AWAY FROM FOOD, or INFECTIOUS SUBSTANCE label may not be carried in the same compartment of an aircraft with material which is marked as or known to be a foodstuff, feed, or any other edible material intended for consumption by humans or animals unless either the Division 6.1 (poisonous) material or material in Division 6.2 (infectious substance) and the foodstuff, feed, or other edible material are loaded in separate unit load devices which, when stowed on the aircraft, are not adjacent to each other, or the Division 6.1 (poisonous) material or material in Division 6.2 (infectious substance) are loaded in one closed unit load device and the foodstuff, feed or other material is loaded in another closed unit load device.

(b) No person may operate an aircraft that has been used to transport any package bearing a POISON or POISON INHALATION HAZARD label unless, upon removal of such package, the area in the aircraft in which it was carried is visually inspected for evidence of leakage, spillage, or other contamination. All contamination discovered must be either isolated or removed from the aircraft. The operation of an aircraft contaminated with such Division 6.1 (poisonous) materials is considered to be the carriage of poisonous materials under paragraph (a) of this section.

PART 176—CARRIAGE BY VESSEL

34. The authority citation for part 176 continues to read as follows:

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

35. In § 176.600, paragraph (a) is revised to read as follows:

§ 176.600 General stowage requirement.

(a) Each package required to have a POISON GAS, POISON INHALATION HAZARD, or POISON label thereon being transported on a vessel must be stowed clear of living quarters and any ventilation ducts serving living quarters and separate from foodstuffs.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

36. The authority citation for part 177 continues to read as follows:

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

37. In § 177.841, paragraph (e) introductory text is republished and paragraphs (e)(1) and (e)(2) are revised to read as follows:

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

* * * * *

(e) A motor carrier may not transport a package:

(1) Bearing or required to bear a POISON or POISON INHALATION HAZARD label in the same motor vehicle with material that is marked as or known to be a foodstuffs, feed or edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

(i) Overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) Loaded into a closed unit load device and the foodstuffs, feed, or other

edible material are loaded into another closed unit load device;

(2) Bearing or required to bear a POISON, POISON GAS or POISON INHALATION HAZARD label in the driver's compartment (including a sleeper berth) of a motor vehicle; or

* * * * *

Issued in Washington, DC on December 30, 1996, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

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