

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 175, 177, 178 and 180**

[Docket No. RSPA-97-2905 (HM-166Y)]

RIN 2137-AC41

Transportation of Hazardous Materials; Miscellaneous Amendments**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiative. This action is necessary to improve safety and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

DATES: Effective: The effective date of these amendments is October 1, 1998.

Compliance: Compliance with the regulations, as amended herein, is authorized after August 24, 1998.

Incorporation by reference: The incorporation by reference of a publication listed in this final rule is approved by the Director of the Federal Register as of October 1, 1998.

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

SUPPLEMENTARY INFORMATION:**I. Background**

On March 4, 1995, the President directed Federal agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform. This final rule is consistent with the goals of the President's Regulatory Reinvention Initiative. In a continuing effort to review the HMR for necessary revisions, RSPA is eliminating, revising, clarifying and relaxing certain regulatory requirements in this final rule. On September 24, 1997, RSPA issued a notice of proposed rulemaking (NPRM) under Docket RSPA-97-2905 (HM-166Y) (62 FR 50222). The NPRM proposed a number of miscellaneous changes to the HMR, designed primarily to reduce regulatory burdens on industry by incorporating changes into

the HMR based on RSPA's own initiative and petitions for rulemaking, submitted in accordance with 49 CFR 106.31. The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion.

RSPA received about 20 comments in response to the NPRM. These comments were submitted by representatives of trade associations, hazardous materials consulting firms, chemical manufacturers, a testing and manufacturing laboratory and an air carrier. The commenters expressed support for various proposals, but several raised concerns about certain provisions in the proposals that are discussed below. One commenter requested amendments to the HMR other than those proposed as part of this initiative; the commenter's letter was accepted as a petition for rulemaking under 49 CFR 106.31.

II. Summary of Regulatory Changes by Section

The following is a section-by-section summary of changes and, where applicable, a discussion of comments received.

Part 171**Section 171.7**

Based on a petition for rulemaking from the Association of American Railroads (AAR) (P-1315), RSPA proposed to update the incorporation by reference of the AAR manual, "AAR Manual of Standards and Recommended Practices, Section C-Part III, Specifications for Tank Cars, Specification M-1002," from the 1992 edition to the 1996 edition. RSPA and the Federal Railroad Administration (FRA) reviewed the referenced requirements in the 1996 manual and agree that the changes will enhance public safety. Therefore, RSPA is incorporating the 1996 edition by reference.

However, § 173.31(b)(5) provides for tank cars modified with bottom discontinuity protection before July 1, 1996, to conform to the requirements of Appendix Y of the 1992 edition of the AAR manual. Appendix Y of the 1996 edition of the AAR manual is under review by an industry task group, of which FRA is a member, and will be revised when the group's task is complete. Until completion of that review, RSPA also is retaining its incorporation by reference of the 1992 edition with a corresponding reference to § 173.31.

Section 171.8

In the NPRM, RSPA proposed to add a definition for "self-defense spray" to correspond with the proposed new entry, "Self-defense sprays, non-pressurized, containing not more than 2 percent tear gas substances," Class 9, that would be added in the § 172.101 Hazardous Materials Table (HMT). Two commenters suggested that RSPA add descriptive information in the definition. The Air Line Pilots Association (ALPA) suggested adding, as an example, the commonly used term, "pepper spray," as part of the definition. The other commenter, the Association of Defense Spray Manufacturers (ADSM) suggested that RSPA either add the words "containing not more than two percent tear gas or ten percent oleoresin capsicum" in the proposed definition or consider capsaicin (the primary capsaicinoid present in oleoresin capsicum) to be a tear gas substance and disregard the percentage of oleoresin capsicum. ADSM stated that not all pepper sprays list the capsicum content on the label and some sprays are labeled as a higher percentage active ingredient. Although oleoresin capsicum is the active ingredient in pepper sprays, RSPA is concerned that limiting the definition or shipping description to oleoresin capsicum would exclude other active ingredients that may be under development for use in self-defense sprays in the future. Therefore, RSPA is revising the definition to state that for self-defense sprays the two percent by mass limitation applies only to tear gas substances (such as chloroacetophenone), but not to other sprays such as (pepper sprays).

The definition of "Marine pollutant" is revised by adding a reference to § 171.4, which contains certain exceptions for marine pollutants. Adding the reference responds to a petitioner (P-1256) who stated that these exceptions are often overlooked.

Section 171.18

Section 171.18 is amended to remove an obsolete section concerning registrations filed with the Bureau of Explosives (BOE).

Section 171.19

RSPA is revising § 171.19 by terminating all remaining BOE approvals, other than those made under approval provisions in Part 179. The majority of BOE approvals have been converted to approvals issued by the Associate Administrator for Hazardous Materials Safety (AAHMS). RSPA believes that any remaining BOE

approvals, other than those applying to Part 179 requirements, are obsolete. Any person holding a BOE approval who is affected by this termination may apply for a new approval by the AAHMS.

Part 172

Section 172.101

RSPA is adding three new entries and revising eight existing entries to the HMT.

The three new entries are "*Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized,*" "*Self-defense spray, see Aerosols, etc.*" and "*Self-defense spray, non-pressurized.*" Because "not more than two percent by mass of a tear gas substance" is specified in the definition of "self-defense spray," the phrase is not needed as part of the proper shipping names and RSPA is removing it from the proper shipping names in this final rule. These entries clarify that both the aerosol and non-aerosol self-defense sprays are subject to the regulations. Related changes are made to § 171.8 by adding a definition of "self-defense spray," to § 172.102 by adding a new special provision A37 for the entry, "Self-defense spray, non-pressurized," and to § 175.10.

The entries, "Corrosive solids, water-reactive, n.o.s." (UN3096) and "Water-reactive solid, corrosive, n.o.s." (UN3131) are corrected by removing Special Provision 128 for Packing Groups II and III. For the entry, "Aluminum smelting by-products or Aluminum remelting by-products" (UN3170), Special Provision 128, containing a hazard communication requirement, is added for Packing Groups II and III.

The entry, "Detonators, non-electric for blasting," UN0455 in Column (8A), is corrected by removing the erroneous reference "none" in the packaging exceptions column to read "63(f), 63(g)."

RSPA proposed to amend the entry "Trifluoroacetyl chloride" by adding Special Provision "B7" to Column (7), in response to a petition for rulemaking (P-1254). Special Provision B7 states that safety relief devices are not authorized on multi-unit tank car tanks. The openings for the safety relief devices must be plugged or blank flanged. After publication of the NPRM, another petitioner (P-1329) requested that RSPA add Special Provision B7 for the entries, "Dimethylhydrazine, unsymmetrical," "Hydrazine, anhydrous or Hydrazine aqueous solutions with more than 64 percent hydrazine, by mass." and "Methylhydrazine." The petitioner

stated that it is the sole producer of these materials and pointed out that safe shipping experience has been established through DOT exemptions, DOT-E 11200 and DOT-E 11490, which authorize the shipment of hydrazine materials in multi-unit tank car tanks without relief devices. The petitioner also sponsored a risk analysis that focused on the transportation of propellants that are toxic and the risks associated with those materials when transported in multi-unit tank car tanks equipped with or without safety relief devices. The results of the analysis determined that there is an increased likelihood of the release of toxic materials when a relief device is present. The petitioner submitted similar comments in response to the NPRM. RSPA has studied the risk analysis prepared by the University of Central Florida and finds it to be credible. RSPA also has determined that the three additional materials described on the petition are similar in nature to "Trifluoroacetyl chloride." Because of the safe shipping history of the hydrazine products in multi-unit tank car tanks without relief devices under the exemptions, their similarity to "Trifluoroacetyl chloride," and the analysis's conclusions that these materials can be safely shipped in multi-unit tank car tanks without relief devices, RSPA agrees with the petitioner that these materials warrant the same provision as for "Trifluoroacetyl chloride." Therefore, the four entries, "Trifluoroacetyl chloride," "Dimethylhydrazine, unsymmetrical," "Hydrazine, anhydrous" and "Methylhydrazine" are amended by adding Special Provision "B7."

Section 172.102

Special Provision 128 is corrected to provide that aluminum smelting by-products and aluminum remelting by-products meeting the definition of Class 8, Packing Groups II and III may also be classified in Division 4.3 and transported under "Aluminum smelting by-products or Aluminum remelting by-products." An editorial revision is also made to the special provision to clarify that, when classified as Division 4.3, the Class 8 must be communicated as a subsidiary risk hazard.

Section 173.32c

RSPA is revising paragraph (j) to allow monolithic (non-flowable) solid materials to be loaded into IM portable tanks to a filling density of less than 80 percent by volume. Paragraph (j) currently specifies that an IM portable tank, or compartment thereof, having a volume greater than 7,500 liters may not

be loaded to a filling density less than 80 percent by volume. The former requirement was intended to cover liquid and flowable solid hazardous materials in order to minimize the risk of accidents resulting from the sloshing and shifting of the center of gravity. A monolithic solid material which conforms to the tank geometry, such that the shifting of the center of gravity is not possible, can be safely transported in an IM portable tank at a filling density of less than 80 percent by volume.

In addition, a new sentence is added to paragraph (m) which contains the reference to § 177.834(h) for unloading of an IM portable tank.

Section 173.40

Paragraph (d)(1) is revised to clarify that a strong outside box, used to provide protection for a thin-walled cylinder or a cylinder equipped with a valve, does not need to be made to a specific UN standard. This change is consistent with similar provisions in § 173.301(g)(2) and (k) that permit a non-specification box to be used for protection of the cylinder or valve.

Section 173.56

In the NPRM, RSPA proposed to broaden the provisions in § 173.56(b)(1) for persons who receive approval to examine and assign recommended shipping names, divisions and compatibility groups for new explosives. The proposal stated that the person applying for the approval must meet the following criteria: (1) Is not be controlled by, or financially dependent upon, any entity that manufactures or markets explosives; (2) Does not perform any type of work in the explosives industry other than testing for determination of hazard class or performance; (3) Either has, or employs a person who has, at least ten years' experience in the examination, testing and evaluation of explosives; and (4) Is a resident of the United States.

One commenter contended that the proposed criterion to exclude explosives manufacturers was overly restrictive and stated that provisions should be similar to those in § 173.56(j), which allows manufacturers of Class 1.4 fireworks to classify their own items. However, another commenter stated that the proposed criterion should be more restrictive, stating that the criterion would permit the approval of too many persons and, thereby, render the activity economically infeasible.

RSPA disagrees with both commenters. First, under § 173.56(j), fireworks manufacturers are permitted to classify their own items provided the

items' chemical compositions conform to the parameters prescribed in the American Pyrotechnics Association's (APA) Standard for Construction of Fireworks. These chemical compositions identified in the APA standard have been used for over 50 years and their safety and stability are well known. They also have a proven transportation safety record. A similar situation does not apply to other types of explosives. Second, the proposed criterion provides for the approval of persons who have the prescribed experience in the examination, testing and evaluation of explosives. RSPA does not believe a limitation on the number of qualified persons who are approved to perform this function should be imposed by RSPA. Therefore, RSPA is adopting the provisions as proposed.

Also, as proposed in the NPRM, RSPA is revising paragraph (i) to provide for RSPA to classify a material or device without a prior examination when adequate data is available.

Section 173.156

RSPA is revising paragraph (b)(1) to clarify that the package markings specified in subpart D of part 172 do not apply to cages, carts, boxes or similar overpacks containing ORM-D materials that are offered for transportation or transported according to § 173.156(b)(1).

Section 173.308.

RSPA is revising paragraph (b) to clarify that when transporting up to 1,500 cigarette lighters on one motor vehicle by highway, the only part 172 provisions that do not apply are the hazard communication requirements in subparts C through G (i.e., shipping papers, marking, labeling, placarding, emergency response information) and the training requirements in subpart H. Special Provision N10 applies. RSPA also is revising paragraph (b) to require that the outer packaging be marked to identify the total number of devices contained in the package.

Section 173.469

In paragraph (a)(4)(i), the value of 1.3×10^{-24} is amended to read 1.3×10^{-4} in order to correct a printing error.

Part 175

Section 175.10

RSPA proposed to permit one self-defense device, not exceeding 118 ml (4 fluid ounces), per passenger, in checked baggage, provided the device incorporates a positive means to prevent accidental discharge. The Air Line Pilots Association (ALPA) supported the proposal to regulate self-defense spray

devices but stated: "We also re-affirm our opposition to hazardous material items that are considered weapons of self-defense to be carried by passengers on their person, placed in carry-on baggage, or placed in checked baggage. We maintain this position, in part, because these items could potentially be used in a threatening manner and subsequent release that would be debilitating to the passengers and crew. Additionally, our concern includes that there is no way to inspect or determine, prior to a release or incident, if the positive means (safety device) referenced in new [proposed] paragraph § 175.10(a)(4)(ii) is operable and in place to prevent accidental discharge and release of the contents, specifically with reference to the aerosols."

In a few cases, self-defense sprays have been discovered in passengers' carry-on luggage after the devices were accidentally initiated. These situations were effectively mitigated by flight crews and investigated by Federal Aviation Administration (FAA) personnel. FAA is unaware of any reported cases of self-defense sprays, packed in checked baggage, initiating in flight and causing discomfort to passengers or crew. Therefore, RSPA is revising paragraph (a)(4) to clarify that all types of self-defense sprays are prohibited from being transported by air in a passenger compartment, either on one's person or in carry-on baggage. However, RSPA is permitting one self-defense device to be carried in checked baggage.

An air carrier expressed its support for the proposal but stated that it had a general concern that RSPA's statement in the preamble discussion to the § 172.101 HMT in the NPRM, characterizing mace and pepper sprays as a "deadly or dangerous weapon," could be misconstrued. The air carrier requested that RSPA clarify that the responsibility of the air carrier is to post warning signs, such as required by proposed § 175.25, or otherwise notify the passenger of the regulations, and not to conduct questioning of passengers or searching of baggage for these items. RSPA did not intend in the preamble of the NPRM to imply that air carriers or airport personnel would be required to implement additional controls to screen each passenger or each passenger's baggage.

In addition, this section is revised to clarify that the quantity limits in paragraphs (a)(4)(i) and (a)(4)(ii) apply to both medicinal and toilet articles and to Division 2.2 aerosols for sporting or home use. This section also is editorially revised to make it easier to read and use.

Section 175.25

Paragraph (a) requires that aircraft operators display notices warning passengers against carrying undeclared hazardous materials aboard aircraft, in either their luggage or on their persons. As proposed in the NPRM, RSPA is revising the language used in the notice to reflect changes in the statutory citation and penalties. A new paragraph (a) is added to allow aircraft operators to display existing notices containing the obsolete language until January 1, 2002.

In addition, based on RSPA and FAA initiative, RSPA is making four other non-substantive changes that provide greater carrier flexibility. First, the introductory language to paragraph (a)(1) is revised to read: "At a minimum, each notice must communicate the following information:". Second, the wording in current paragraph (a)(3) is revised to permit additional information, examples, or illustration, if not inconsistent with the required wording. These changes are consistent with the introductory language in § 175.26(a) and permit the specified information to be conveyed to the public while leaving the format for presenting the information, such as the use of graphics, to air carriers' discretion. Third, paragraph (a)(2)(i) is revised to permit posters displayed by U.S. air carriers to have information printed in other languages, in addition to the required English. This wording facilitates communication of the required information to non-English speaking passengers and is consistent with § 175.26(b)(1). Fourth, paragraph (a)(2)(ii) is revised to require that the lettering for only the first paragraph of the notice be at least 0.4 inch in height and the lettering for all other paragraphs be at least 0.2 inch in height. The reduction of the lettering size will allow more space for other information, such as graphics.

Finally, as proposed, the quantity limit reference also is corrected for medicinal and toilet articles carried in a passenger's luggage to read 70 ounces for consistency with the exception provided in § 175.10(a)(4)(i).

Section 175.26

This section requires each person who engages in the acceptance or transport of cargo for transportation by aircraft to display a notice, to persons offering such cargo, of the applicable requirements for hazardous materials aboard aircraft. RSPA is amending the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of \$250,000

or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) is added to allow each person who accepts or transports cargo for transportation by aircraft to display existing notices containing the obsolete language until January 1, 2002.

Part 177

Section 177.834

RSPA proposed to relax a provision in paragraph (h) to permit an IM portable tank to be unloaded while remaining on a transport vehicle with the power unit attached, provided the tank meets the outlet requirements in § 178.345-11 and is attended during the unloading, as currently required for cargo tank motor vehicles under § 177.834(i). Section 178.345-11(b)(1)(iii) provides that the remote means of closure for the stop valve on a cargo tank must be capable of thermal activation when required by Part 173 for materials which are flammable, pyrophoric, oxidizing, or poisonous liquids. Three commenters stated that many IM portable tanks are not fitted with outlet valves meeting this requirement. They stated that RSPA should allow sufficient time for valve manufacturers to develop a valve system that works with a fusible link for installation on new IM portable tanks and that all existing IM portable tanks should be excepted from the valve requirement. One of the commenters, the Chemical Manufacturers Association, stated that the redesign of a proven cargo handling system and the retrofit of existing portable tanks to provide for thermal activation capability would be both expensive and disruptive of commerce because tanks would have to be removed from service.

RSPA disagrees with the commenters. The tank outlets are required to be equipped with this feature to ensure that the valve closes in a fire situation. Cargo tanks have been required to have this feature for many years. RSPA believes that when an IM portable tank is used in the same manner as a cargo tank it should have the same level of safety in the event the operator cannot manually operate the closure. RSPA received no comments on the proposal from valve manufacturers.

A fourth commenter, the National Tank Truck Carriers, Inc. (NTTC), stated that the proposed amendment will increase the use of IM portable tanks for transporting hazardous materials, nationwide. Therefore, IM portable tanks, when operating as cargo tanks, should be subject to all safety requirements paralleling those of traditional cargo tank motor vehicles, including emergency shut-down equipment, fusible and/or frangible

device, etc., and, in addition, the requalification requirements contained in Part 180.

NTTC also stated that RSPA should specify the types of motor vehicle chassis, or securement devices, to use for IM portable tanks. NTTC stated that, with the types of trailers ranging from special "container only" chassis to equipment, such as, so-called "goose-neck" trailers, drop frame trailers and the conventional "flat bed" units, container securement is not adequately addressed in the Federal Motor Carrier Safety Regulations (49 CFR 393.100 *et seq.*).

RSPA disagrees with NTTC that these IM portable tanks should meet the cargo tank requalification requirements in subpart E of Part 180 and that additional securements should apply to them. RSPA received no specific data indicating that the current requirements are inadequate. RSPA will continue to monitor the transportation experience of these tanks to determine if there may be a need to revise the securement requirements in a future rulemaking action.

Several commenters stated that the proposal to permit on-vehicle unloading of IM portable tanks should also apply to loading and pointed out RSPA's comment in the preamble that "portable tanks are not intended to be filled or emptied while attached to a transport vehicle or a ship during transportation." The statement in the NPRM was in error. RSPA intended to say that portable tanks may not be emptied while remaining on a transport vehicle with the motive power attached during transportation. The restriction contained in the next-to-last sentence of current paragraph (h) does not apply to loading. Therefore, the comments are beyond the scope of this rulemaking.

Another commenter stated that the cargo tank attendance rule in paragraph (i)(3) is "onerous and perhaps outmoded" and should be revised to provide exceptions for cargo tanks loaded or unloaded inside plant facilities without public access. The need, if any, for changes to attendance requirements are beyond the scope of this rulemaking.

Finally, a commenter requested that the proposal be broadened to include all bulk packagings and that the definition of a cargo tank, in § 171.8, be amended to include an intermediate bulk container (IBC). RSPA may address other bulk packagings in a future rulemaking action. A proposal to amend the definition of a cargo tank is being considered under Docket HM-213.

In conclusion, as proposed in the NPRM, RSPA is permitting IM portable

tanks to be unloaded without being removed from the motor vehicle if the outlet requirements in § 178.345-11 and the § 178.337-11 and attendance requirements are met.

Section 177.848

In paragraph (f), the Compatibility Table for Class 1 (Explosive) Materials is revised to clarify that Groups B and D are not compatible. However, a domestic exception (4) is allowed for Detonators when they are transported in accordance with the restrictions in § 177.835(g). To avoid the possibility of incompatible explosives being transported together, RSPA is clarifying the restriction by replacing the entry "4" with the entry "X₍₄₎".

Part 178

Section 178.65

Paragraph (i)(2)(viii)(A) is revised to update the citation "49 U.S.C. 1809" to read "49 U.S.C. 5124."

Sections 178.352 through 178.364

Several specification packaging requirements for radioactive materials contain obsolete section references. RSPA is updating these section references in this final rule.

Part 180

Section 180.405

RSPA is revising paragraph (c)(1) to recognize that the date marked on certain older cargo tanks was the date initial construction began rather than the date construction was completed. This action more precisely grandfathers cargo tanks in a manner consistent with former § 173.33(b)(1) (in effect prior to December 31, 1990), which read: "A cargo tank of the specification listed in Column 1 may be used when authorized in this part, provided the tank construction began before the date in Column 2." This provision applied to MC 300, 301, 302, 303, 304, 305, 310, 311 and 330 cargo tank motor vehicles.

Finally, paragraph (f) is revised to allow the continued use of a cargo tank equipped with a self-closing system before September 1, 1993, but remarked and certified after that date.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of

the Department of Transportation (44 FR 11034).

The costs and benefits associated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). 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 the Federal requirements. 49 U.S.C. 5125(b)(1).

These subjects are:

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

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

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

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

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects.

This final rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

C. Regulatory Flexibility Act

This final rule would amend miscellaneous provisions in the HMR,

generally to clarify those provisions and to relax requirements that are overly burdensome. The proposed changes in this rule are generally intended to provide relief to shippers, carriers, and packaging manufacturers, some of whom are small entities (for example, small businesses, governmental jurisdictions and not-for-profit organizations). The costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Small incremental cost increases are associated with updating the hazardous materials information shown on airport signs in §§ 175.25 and 175.26. A delayed compliance date of January 1, 2002, is provided for displaying the notices to allow for a sufficient transition period. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

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. This final rule does not propose any new information collection burdens. Information collection requirements addressing the approval of explosives in § 173.56 are currently approved under OMB approval number 2137-0557. This approval expires July 31, 1999.

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.

F. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

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, Labels, Markings, 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 175

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

49 CFR Part 177

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

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, 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.

2. In the § 171.7(a)(3) Table, under the entry "Association of American Railroads", a new entry is added in appropriate alphabetical order to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference.*

* * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * *	* * * * *
Association of American Railroads,	
* * * * *	* * * * *
AAR Manual of Standards and Recommended Practices, Section C— Part III, Specifications for Tank Cars, Specification M-1002, September 1996.	174.63; 179.6; 179.7; 179.12; 179.15; 179.16; 179.20; 179.22; 179.100; 179.101; 179.102; 179.103; 179.200; 179.201; 179.220; 179.300; 179.400; 180.509; 180.513; 180.515; 180.517.
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§ 171.7 [Amended]

3. In addition, in the § 171.7(a)(3) Table, under the entry “Association of American Railroads”, for the entry “AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M-1002, September 1992”, in the second column, the existing section references are removed and a new reference “173.31” is added in their place.

4. In § 171.8, the following definition is added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Self-defense spray means an aerosol or non-pressurized device that:

(1) Is intended to have an irritating or incapacitating effect on a person or animal; and

(2) Meets no hazard criteria other than for Class 9 (for example, a pepper spray;

see § 173.140(a) of this subchapter) and, for an aerosol, Division 2.1 or 2.2 (see § 173.115 of this subchapter), except that it may contain not more than two percent by mass of a tear gas substance (e.g., chloroacetophenone (CN) or 0-chlorobenzylmalonitrile (CS); see § 173.132(a)(2) of this subchapter.)

* * * * *

§ 171.8 [Amended]

5. In addition, in § 171.8, for the definition “Marine pollutant”, in the first sentence, the wording “this subchapter and,” is removed and “this subchapter (also see § 171.4) and,” is added in its place.

§ 171.18 [Removed and Reserved]

6. Section 171.18 is removed and reserved.

7. Section 171.19 is revised to read as follows:

§ 171.19 Approvals or authorizations issued by the Bureau of Explosives.

Effective December 31, 1998, approvals or authorizations issued by

the Bureau of Explosives (BOE), other than those issued under part 179 of this subchapter, are no longer valid.

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

8. The authority citation for part 172 continues to read as follows:

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

9. In § 172.101, the Hazardous Materials Table is amended by adding the following entries, in appropriate alphabetical order, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger air-craft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* [ADD:] Pepper spray, see Aerosols, etc. or Self-defense spray, non-pressurized.	*	*	*	*	*		*		*			
	* Self-defense spray, aerosol, see Aerosols, etc	*	*	*	*	*		*		*			
+AD	Self-defense spray, non-pressurized	9	NA3334	III	9	A37	155	203	None	No limit	No limit	A	
	*	*	*	*	*	*		*		*			

§ 172.101 [Amended]

10. In addition, in § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry, "Aluminum smelting by-products or Aluminum remelting by-products" (UN3170), for Packing Groups II and III, in Column (7), the special provision "128," is added immediately before "B106", each place it appears.

b. For the entry, "Corrosive solids, water-reactive, n.o.s." (UN3096), for Packing Group II, in Column (7), the special provision "128," is removed.

c. For the entry, "Detonators, non-electric for blasting", UN0455, in Column (8A), the reference "None" is revised to read "63(f), 63(g)".

d. For the entry, "Dimethylhydrazine, unsymmetrical", in Column (7), the special provision "B7," is added immediately following "2,".

e. For the entry, "Hydrazine, anhydrous or Hydrazine aqueous solutions with more than 64 percent hydrazine, by mass.", in Column (7), the special provision "B7," is added immediately following "A10,".

f. For the entry, "Methylhydrazine", in Column (7), the special provision "B7," is added immediately following "1,".

g. For the entry, "Trifluoroacetyl chloride", in Column (7), the special provision "B7," is added immediately following "2,".

h. For the entry, "Water-reactive solid, corrosive, n.o.s." (UN3131), for Packing Groups II and III, in Column (7), the special provision "128," is removed each place it appears.

10a. In § 172.102, paragraph (c)(1) is amended by revising Special Provision 128 and paragraph (c)(2) is amended by adding Special Provision A37 to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

128. Regardless of the provisions of § 172.101(c)(12), aluminum smelting by-products and aluminum remelting by-products described under this entry, meeting the definition of Class 8, Packing Group II and III may be classed as a Division 4.3 material and transported under this entry. The presence of a Class 8 hazard must be communicated as required by this Part for subsidiary hazards.

(2) * * *

Code/Special Provisions

* * * * *

A37. This entry applies only to a material meeting the definition in § 171.8 of this subchapter for self-defense spray.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

12. § 173.32c, in paragraph (m), a second sentence is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(m) * * * In addition, for unloading an IM portable tank, see § 177.834(h) of this subchapter.

* * * * *

§ 173.32c [Amended]

13. In addition, § 173.32c, in paragraph (j), the first word "An" is removed and "Except for a non-flowable solid, an" is added in its place.

§ 173.40 [Amended]

14. In § 173.40, in paragraph (d)(1), in the first sentence, the wording "4C1, 4D, 4F, 4G, 4H1 or 4H2" is removed.

15. In § 173.56, paragraph (b)(1) is revised to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(b) * * *

(1) Except for an explosive made by or under the direction or supervision of the Department of Defense (DOD) or the Department of Energy (DOE), a new explosive must be examined and assigned a recommended shipping description, division and compatibility group, based on the tests and criteria prescribed in §§ 173.52, 173.57 and 173.58. The person requesting approval of the new explosive must submit to the Associate Administrator for Hazardous Materials Safety a report of the examination and assignment of a recommended shipping description, division, and compatibility group. If the Associate Administrator finds the approval request meets the regulatory criteria, the new explosive will be approved in writing and assigned an EX number. The examination must be performed by a person who is approved by the Associate Administrator under the provisions of subpart H of part 107 of this chapter and who—

(i) Has (directly, or through an employee involved in the examination) at least ten years of experience in the

examination, testing and evaluation of explosives;

(ii) Does not manufacture or market explosives, and is not controlled by or financially dependent on any entity that manufactures or markets explosives, and whose work with respect to explosives is limited to examination, testing and evaluation; and

(iii) Is a resident of the United States.

* * * * *

§ 173.56 [Amended]

16. In addition, in § 173.56, in paragraph (i), the wording " , following examination in accordance with paragraph (b) of this section, revise its" is removed and the wording "specify a" is added in its place.

17. In § 173.156, paragraph (b)(1) introductory text is revised to read as follows:

§ 173.156 Exceptions for ORM materials.

* * * * *

(b) * * *

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for materials classed as ORM–D when—

* * * * *

18. In § 173.308, paragraph (b) is revised to read as follows:

§ 173.308 Cigarette lighter or other similar device charged with fuel.

* * * * *

(b) When no more than 1,500 devices covered by this section are transported in one motor vehicle by highway, the requirements of subparts C through H of part 172 of this subchapter, and part 177 of this subchapter do not apply.

However, no person may offer for transportation or transport the devices or prepare the devices for shipment unless that person has been specifically informed of the requirements of this section. The outer packaging, as specified in Special Provision N10 of § 172.102(c)(5) of this subchapter, must be plainly and durably marked with the required proper shipping name specified in § 172.101 of this subchapter, or the words "CIGARETTE LIGHTERS" and the number of devices contained in the package.

* * * * *

§ 173.469 [Amended]

19. In § 173.469(a)(4)(i), in the second sentence, the mathematical expression "(1.3 × 10⁻²⁴" is removed and "(1.3 ± 10⁻⁴" is added in its place.

PART 175—CARRIAGE BY AIRCRAFT

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

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

21. In § 175.10, paragraph (a)(4) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) The following hazardous materials when carried by a passenger or crew member for personal use in conformance with the following conditions:

(i) Non-radioactive medicinal and toilet articles (including aerosols) may be carried in checked or carry-on baggage;

(ii) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 ml (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only;

(iii) Other aerosols in Division 2.2 with no subsidiary risk may be carried in checked baggage only; and

(iv) The aggregate quantity of hazardous materials carried by the person may not exceed 2 kg (70 ounces) by mass or 2 liters (68 fluid ounces) by volume and the capacity of each container may not exceed 0.5 kg (18 ounces) by mass or 470 ml (16 fluid ounces) by volume.

* * * * *

22. In § 175.25, the introductory text to paragraph (a)(1), the second and fifth full paragraphs of the notice in paragraph (a)(1), and paragraphs (a)(2)(i), (a)(2)(ii) and (a)(3) are revised; and a new paragraph (a)(4) is added, to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

(a) * * *

(1) At a minimum, each notice must communicate the following information:

* * * * *

A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124).

* * * * *

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

* * * * *

(2) * * *

(i) In legible English and may, in addition to English, be displayed in other languages; and

(ii) In lettering of at least 1 cm (0.4 inch) in height for the first paragraph

and 6.0 mm (0.2 inch) in height for the other paragraphs; and

* * * * *

(3) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with the required information, may be included.

(4) Notwithstanding the requirements of paragraph (a)(1) of this section, a notice with the wording "A violation can result in penalties of up to \$25,000 and five years' imprisonment. (49 U.S.C. 1809)" may be used through December 31, 2001.

* * * * *

23. In § 175.26, paragraph (a)(2) is revised and a new paragraph (a)(4) is added to read as follows:

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) * * *

(2) A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124).

* * * * *

(4) Notwithstanding the requirements of paragraph (a)(2) of this section, a notice with the wording "A violation can result in penalties of up to \$25,000 and five years' imprisonment (49 U.S.C. 1809)" may be used through December 31, 2001.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

§ 177.834 [Amended]

25. In § 177.834, in paragraph (h), in the next to the last sentence, the wording "cargo tank" is removed and the wording "cargo tank or IM portable tank" is added in its place, and a new paragraph (o) is added to read as follows:

§ 177.834 General requirements.

* * * * *

(o) *Unloading of IM portable tanks.* An IM portable tank may be unloaded while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345–11 of this subchapter and the tank is attended by a qualified person during the unloading in accordance with the requirements in paragraph (i) of this section.

§ 177.848 [Amended]

26. In § 177.848, in (f), in the Compatibility Table for Class 1

(Explosive) Materials, for compatibility group B, under the column headed "D" and for compatibility group D, under the column headed "B", the entry "4" is removed and "X₍₄₎" is added in both places.

PART 178—SPECIFICATIONS FOR PACKAGINGS

27. The authority citation for part 178 continues to read as follows:

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

§ 178.352–4 [Amended]

28. In § 178.352–4, at the end of the section, the section reference "§ 178.103(3)(c)(1)" is revised to read "§ 178.352–3(c)(1)".

§ 178.354–2 [Amended]

29. In § 178.354–2, in the first sentence of paragraph (a), the section reference "§ 178.104–5" is revised to read "§ 178.354–5".

§ 178.354–3 [Amended]

30. In § 178.354–3, in paragraph (c) introductory text, the section reference "§ 178.104–3(a)(1)" is revised to read "paragraph (a)(1) of this section".

§ 178.354–5 [Amended]

31. In § 178.354–5, in paragraph (a), the wording "§ 173.24 of this chapter" is revised to read "§ 178.3".

§ 178.356–4 [Amended]

32. In § 178.356–4, in paragraph (a), the wording "§ 173.24 of this subchapter" is revised to read "§ 178.3".

§ 178.358–3 [Amended]

33. In § 178.358–3, the following changes are made:
a. In paragraph (b)(6), the section reference "§ 178.121–5(c)" is revised to read "§ 178.358–5(c)".
b. In paragraph (c), the section reference "§ 178.121–5(b)" is revised to read "§ 178.358–5".

§ 178.358–5 [Amended]

34. In § 178.358–5, in paragraph (a), the wording "§ 173.24 of this subchapter" is revised to read "§ 178.3".

§ 178.360–2 [Amended]

35. In § 178.360–2, the section reference "§ 178.34–4" is revised to read "§ 178.360–4".

§ 178.362–3 [Amended]

36. In § 178.362–3, in paragraph (b), the section reference "§ 178.104–4" is revised to read "§ 178.354–4".

§ 178.364–5 [Amended]

37. In § 178.364–5, in paragraph (a), the wording "§ 173.24 of this subchapter" is revised to read "§ 178.3".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

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

39. In § 180.405, paragraph (c)(1) is revised, paragraph (f)(7) is redesignated as paragraph (f)(8) and new paragraph (f)(7) is added to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(c) * * * (1) A cargo tank made to a specification listed in Column 1 of Table 1 or Table 2 of this paragraph (c)(1) may be used when authorized in this part, provided—

(i) The cargo tank initial construction began on or before the date listed in Table 1, Column 2, as follows:

TABLE 1

Column 1	Column 2
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.

(ii) The cargo tank was marked or certified before the date listed in Table 2, Column 2, as follows:

TABLE 2

Column 1	Column 2
MC 306, MC 307, MC 312	Sept. 1, 1995.

* * * * *

(f) * * *
 (7) A cargo tank remarked and certified in conformance with this paragraph (f) is excepted from the provisions of § 180.405(c).

* * * * *

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Kelley S. Coyner,
Deputy Administrator, Research and Special Programs Administration.

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