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**Department of
Transportation**

**Research and Special Programs
Administration**

**49 CFR Parts 171, 172, 173 and 176
Harmonization with the United Nations
Recommendations and the International
Maritime Dangerous Goods Code; Final
Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs
Administration****49 CFR Parts 171, 172, 173 and 176**

[Docket No. RSPA-2000-7702 (HM-215D)]

RIN 2137-AD41

**Harmonization With the United Nations
Recommendations and the
International Maritime Dangerous
Goods Code****AGENCY:** Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule updates three incorporations by reference in the Hazardous Materials Regulations (HMR) to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code), the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the UN Recommendations Manual of Tests and Criteria. This action is necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and to authorize compliance with the updated UN Recommendations and UN Recommendations Manual of Tests and Criteria when these international standards become effective. Action is being deferred on the proposal to incorporate the 2001-2002 edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) because it will not be authorized for use until July 1, 2001.

DATES: *Effective Date:* July 1, 2001.*Voluntary Compliance Date:*

Compliance with the regulations, as amended herein, is authorized as of January 1, 2001.

Incorporation by Reference Date: The incorporations by reference of the publications listed in these amendments have been approved by the Director of the Federal Register as of July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366-8553, or Bob Richard, Assistant International Standards Coordinator, telephone (202) 366-0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**Background**

On October 23, 2000, RSPA (hereafter, "we" and "our" means "RSPA") published a notice of proposed rulemaking (NPRM) under Docket HM-215D (65 FR 63294) that proposed changes to more fully align the HMR with international regulations. Among the changes, we proposed to amend the HMR by incorporating by reference the most recent editions of the IMDG Code, the UN Recommendations and the UN Recommendations Manual of Tests and Criteria. With respect to these proposed amendments, we received about 25 comments from industry trade associations, an international supplier of industrial gases and chemicals and various other commenters.

Discussion of Comments

Some commenters requested that we extend the December 22, 2000 comment closing date. Several industry commenters requested a one- or two-month extension. One comment co-signed by 13 private organizations requested a six-month extension. Because of our intention to publish a subsequent final rule under Docket HM-215D before July 1, 2001, and in order to facilitate the international transportation of hazardous materials, we are not granting an extension of the comment period. However, as provided in 49 CFR 106.23, we will accept and consider late-filed comments to the extent practicable.

The Hazardous Materials Advisory Council (HMAC) and an international supplier requested publication of a final rule to incorporate Amendment 30 to the IMDG Code by its effective date, January 1, 2001. We also received comments from industry trade associations supporting the proposal to incorporate by reference the International Atomic Energy Agency (IAEA) safety standard, "Regulations for the Safe Transport of Radioactive Material, No. ST-1." The identification number ST-1 was revised to TS-R-1 following minor editorial revisions to the standards and will hereafter be referred to as TS-R-1.

Several other commenters expressed opposition to adopting TS-R-1 into the HMR. Several commenters also opposed adoption of the updated editions of the IMDG Code and the UN Recommendations because both incorporate TS-R-1. The commenters stated that adopting the radioactive standard would lower the level of safety and pose hazards to the public. They did not address the technical basis of TS-R-1 and provided no technical basis for their comments. We maintain that

the risk associated with the transport of radioactive materials remains unchanged. Several of the commenters claimed that the TS-R-1's revised definition of radioactive material, in allowing certain "exempt amounts," lowers the level of safety. We disagree. In TS-R-1, IAEA changed to a more scientific, radiation protection based definition that provides the same, if not a better, level of safety. This revised definition of radioactive material is calculated using an algorithm that ensures the doses received by hazardous materials employees and the general public are lower than allowed by the international radiation protection standards.

Several commenters also stated that the requirements for Type B packagings are "weakened" in the TS-R-1. This is incorrect. The TS-R-1 standards strengthen Type B packaging standards by adding immersion and crush testing to the previously required performance tests. In addition, the standards also place additional limits on the contents of Type B packaging when being transported by aircraft. Commenters also claimed that uranium hexafluoride packaging requirements are "weakened" in TS-R-1. Again, this is incorrect. The criticality requirements for packages containing uranium hexafluoride did not change.

Several commenters complained that sufficient time was not provided for the public to review the IAEA standards. The commenters also asserted that we provided no public access to the proposed rulemaking (HM-215D) or the materials proposed to be incorporated by reference and insisted that we supply them with the documents. We disagree. The new edition of the IAEA standards was published in December 1996, and copies were available by mid-1997. Furthermore, on December 28, 1999, we published an advance notice of proposed rulemaking (ANPRM) under Docket HM-230 (64 FR 72633) that solicited comments on the changes contained in TS-R-1. Readers were informed that copies of the standard could be obtained from the United States distributor, Bernan Associates, 4611-F Assembly Drive, Lanham, MD 20706-4391, telephone (301) 459-7666. Also, readers were informed that the standard was available for review in the RSPA Record Center located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001 between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Public dockets and written comments submitted to the docket may be reviewed at the Dockets Management

System (DMS) located on the Plaza level of the Nassif Building or on-line at the DMS web site at <http://dms.dot.gov/>. To aid persons in reviewing the changes in TS-R-1, we obtained permission from IAEA to publish certain portions of the standard and we made the information available for review at our DOT HazMat website at <http://hazmat.dot.gov>. Moreover, on March 1, 2000, we published in the **Federal Register** an ANPRM under Docket HM-230 (65 FR 11028) to extend the period for filing comments from March 29, 2000 to June 29, 2000.

All rulemakings are published and accessible through the **Federal Register** in Washington, DC and our HazMat website. All materials proposed to be incorporated by reference are available for public inspection at the RSPA Records Center at the above address and times.

Based on the above discussion, we maintain that adopting the IMDG Code and the UN Recommendations will not lower the safety standards for transporting radioactive materials in international commerce. Therefore, we are adopting the latest editions of the IMDG Code and the UN Recommendations as proposed.

Discussion of Amendments

Due to an unanticipated delay in the publication of the NPRM and the 60-day comment period, which ended December 22, 2000, the issuance of a comprehensive final rule was not possible by January 1, 2001. Therefore, to avoid disruption for persons transporting hazardous materials in international commerce, we are issuing this final rule to amend the HMR by incorporating Amendment 30 to the IMDG Code, the eleventh revised edition of the UN Recommendations and the third revised edition of the UN Recommendations Manual of Tests and Criteria. Also, we are allowing voluntary compliance with these international standards from January 1, 2001.

Because of the significant revisions contained in Amendment 30 to the IMDG Code, the International Maritime Organization authorizes, as an alternative, continued use of Amendment 29 to the IMDG Code until January 1, 2002. Thus this final rule adopts a similar provision. In addition, as proposed in the NPRM, we are revising § 171.12(b)(3) to require that viscous flammable liquids, which are excepted from the IMDG Code when in packagings of less than 450 liters (118.9 gallons) capacity, must meet the requirements in the HMR. We are taking this action in this final rule because it

coincides with the adoption of the IMDG Code.

With respect to the ICAO Technical Instructions, ICAO approved an implementation date of July 1, 2001 for the 2001–2002 edition. The current 1999–2000 edition of the ICAO Technical Instructions remains in effect through June 30, 2001. The proposed incorporation by reference of the 2001–2002 edition of the ICAO Technical Instructions and all other changes proposed in the NPRM will be addressed in a subsequent final rule under Docket HM-215D.

We are also making minor editorial amendments by adding a reference to “see § 171.7” in sections containing the updated IBR references incorporated in this final rule based on a request from the Office of the **Federal Register**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final 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 final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule would preempt State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

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

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the “substantively the same” standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) 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. The 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. The effective date of Federal preemption will be 180 days from publication of a final rule in the **Federal Register**.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

This final rule updates three incorporations by reference, the eleventh revised edition of the UN Recommendations, the 2001–2002 ICAO Technical Instructions, and Amendment 30 to the IMDG Code. The changes in this rule apply to offerors and carriers of hazardous materials and will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. This final rule is necessary to incorporate changes in international standards that become effective on January 1, 2001. If the changes in this final rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, will be at an economic disadvantage. The changes are intended to avoid this result. The costs associated with this final rule are considered to be so minimal as to not

warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This final rule contains no new information collection burdens.

F. 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.

G. 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

Education, Hazardous materials transportation, Hazardous waste, Labeling, 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 176

Hazardous materials transportation, Maritime 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.

2. In § 171.7, in the paragraph (a)(3) table:

- a. Under the entry “International Maritime Organization (IMO)”, a new entry is added in alphabetical order; and
b. Under the entry “United Nations”, the existing entries are removed and new entries are added in alphabetical order.

The additions read as follows:

§ 171.7 Reference material.

(a) Matter incorporated by reference

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

Table with 2 columns: Source and name of material, 49 CFR reference. Rows include International Maritime Organization (IMO) and United Nations.

3. In § 171.12, the paragraph (b) heading is revised and in paragraph (b)(3), a sentence is added at the end of the paragraph to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) IMDG Code (see § 171.7 of this subchapter). * * *

* * * * *

(3) * * * For example, internal combustion engines, and viscous flammable liquids having a flash point of 23 °C (73.4 °F) or greater and less than or equal to 60.5 °C (140.9 °F) as

provided in 2.3.2.5 of the IMDG Code may not be transported under the provisions of this section and are subject to the requirements of this subchapter.

* * * * *

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

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

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

5. In § 172.102, in paragraph (c)(1), the following changes are made:

a. In Special Provisions 23, 39, 44, 57, 125 and 129, the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria”.

b. In Special Provision 43, the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria, Part I, Test series 1(a)”.

c. In Special Provision 132, the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria, Part III, sub-section 38.2”.

d. In Special Provision 133, the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria, Part 1”.

6. In § 172.401, paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 172.401 Prohibited labeling.

* * * * *

(c) * * *

(1) Any applicable requirement, including the class number (see § 172.407), in the document entitled “UN Recommendations on the Transport of Dangerous Goods” (see § 171.7 of this subchapter);

(2) The International Maritime Organization (IMO) requirements, including the class number (§ 172.407), in the document entitled “International Maritime Dangerous Goods Code” (see § 171.7 of this subchapter);

* * * * *

7. In § 172.407, paragraph (f) is revised to read as follows:

§ 172.407 Label specifications.

* * * * *

(f) *Exceptions.* A label conforming to specifications in the UN

Recommendations (see § 171.7 of this subchapter) may be used in place of a corresponding label which conforms to the requirements of this subpart.

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8. In § 172.502, paragraph (b) (1) is revised to read as follows:

§ 172.502 Prohibited and permissive placarding.

* * * * *

(b) *Exceptions.* (1) The restrictions in paragraph (a) of this section do not apply to a bulk packaging, freight container, unit load device, transport vehicle or rail car which is placarded in conformance with the ICAO Technical Instructions, the IMDG Code or the UN Recommendations (see § 171.7 of this subchapter).

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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. 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.

10. In § 173.21, the following changes are made:

a. In paragraph (f) introductory text, in the second sentence, the words “(see § 171.7 of this subchapter)” are added following the words “UN Manual of Tests and Criteria”.

b. In paragraph (f)(3)(ii), the words “(see § 171.7 of this subchapter)” are added following the words “(IMDG Code)”.

11. In § 173.24, in paragraph (d)(2) introductory text, the words “(see § 171.7 of this subchapter)” are added following the words “UN Recommendations on the Transport of Dangerous Goods”.

12. In § 173.124, in paragraph (a)(2)(iii)(C), the words “(see § 171.7 of

this subchapter)” are added following the words “Tests and Criteria”.

13. In § 173.128, in paragraph (e), the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria”.

14. In § 173.166, in paragraph (b)(2), the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria”.

15. In § 173.185, in paragraph (c)(3), the words “(see § 171.7 of this subchapter)” are added following the words “Tests and Criteria”.

PART 176—CARRIAGE BY VESSEL

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

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

17. In § 176.2, for the definition “*Explosive article*”, the words “(see § 171.7 of this subchapter)” are added following the words “IMDG Code”.

18. In § 176.5, in paragraph (b)(8), the words “(see § 171.7 of this subchapter)” are added following the words “IMDG Code”.

19. In § 176.11, in paragraph (a) introductory text, in the first sentence, the words “(see § 171.7 of this subchapter)” are added following the words “IMDG Code”.

20. In § 176.27, in paragraph (b), in the first sentence, the words “(see § 171.7 of this subchapter)” are added following the words “IMDG Code”.

21. In § 176.30, in paragraph (a) introductory text, in the second sentence, the words “(see § 171.7 of this subchapter)” are added following the words “IMDG Code”.

Issued in Washington, D.C. on January 17, 2001, under authority delegated in 49 CFR part 1.

John P. Murray,
Acting Administrator.

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