

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

[RSPA-99-6195 (Docket No. HM-206D)]

RIN 2137-AD37

Hazardous Materials: Exceptions From Labeling and Placarding Materials Poisonous by Inhalation (PIH)**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: In an interim final rule published on September 16, 1999, and amended on September 24, 1999, RSPA provided a limited exception, until October 1, 2001, from requirements to place new POISON INHALATION HAZARD or POISON GAS labels on packages of PIH materials to facilitate international transportation. This final rule responds to two comments received on the interim final rule, extends the provisions of the interim final rule, and provides additional exceptions from requirements to place new POISON INHALATION HAZARD or POISON GAS labels and placards on certain packages and transport vehicles in international transportation.

DATES: This final rule is effective on October 1, 2001. However, compliance with the regulations is authorized immediately.

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SUPPLEMENTARY INFORMATION:**I. Background**

On January 8, 1997, the Research and Special Programs Administration (RSPA, we) published a final rule in the **Federal Register** (62 FR 1217) under Docket HM-206 amending the hazard communication requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to enhance the identification of hazardous materials transported in commerce. Provisions of the final rule included two new placards and two new labels for materials poisonous (toxic) by inhalation (PIH), one label and placard for Division 2.3 gases, and one label and placard for Division 6.1 liquids. We issued the final rule in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of

1990 (Public Law 101-615), which required the Secretary of Transportation to initiate a rulemaking to determine methods to improve hazard communication, including the existing system of placarding vehicles transporting hazardous materials. We amended the final rule on July 22, 1997 (62 FR 39398) and on April 1, 1998 (63 FR 16070), to make editorial corrections and technical amendments and to respond to petitions for reconsideration and an appeal under 49 CFR 106.38. The rule became effective October 1, 1998 and specified the following mandatory compliance dates: October 1, 1999 for use of the new PIH labels and October 1, 2001 for use of the new PIH placards.

The United Nations Committee of Experts on the Transport of Dangerous Goods has not yet endorsed adoption of the PIH labels and placards. Further, neither the International Maritime Dangerous Goods Code (IMDG Code) nor the Canadian Transport of Dangerous Goods Regulations (TDGR) incorporate the PIH labels and placards. Therefore, to facilitate international transportation of PIH materials, we published an interim final rule (IFR) on September 16, 1999 (64 FR 50260) to provide a limited exception until October 1, 2001, from the requirement to display PIH labels on packages. The exception permits non-bulk packages of PIH materials in a closed transport vehicle or freight container to be labeled in accordance with the IMDG Code or with the TDGR provided the transport vehicle or freight container is placarded and marked with the identification number for the PIH material in accordance with requirements in the HMR. This exception was intended to facilitate international transportation of PIH materials when transported by vessel under the provisions of the IMDG Code or by motor vehicle or rail car to or from Canada. We issued the IFR to minimize delays and frustrated shipments based on concern that shipments of PIH materials could encounter some difficulty, particularly in certain foreign ports.

On September 24, 1999 (64 FR 51719), the IFR was amended to correct an inadvertent error in § 171.12a regarding Canadian shipments of PIH materials. The September 24, 1999 corrections provided for the transportation of packages containing PIH materials between the United States and Canada in conformance with the labeling requirements in the TDGR.

Because the new PIH labels would otherwise have been required on October 1, 1999, it was not feasible for us to publish an NPRM proposing the

limited exception and receive comments before issuing the IFR, or to provide at least 30 days before the effective date of the IFR. Delay in issuing the IFR would have potentially frustrated the shipment of these high hazard materials by vessel, or by motor vehicle or rail car to or from Canada. However, we encouraged interested parties to participate in this rulemaking by submitting comments on the IFR. We received two comments—from the Hazardous Materials Advisory Council (HMAC) and Elf Atochem North America, Inc. (Elf Atochem).

In response to the two comments and to facilitate international transportation of PIH materials, in this final rule we are providing the following provisions and exceptions for international shipments: (1) An exception from PIH labeling requirements for certain non-bulk and bulk packagings in closed transport vehicles or freight containers transported by vessel or by motor vehicle or rail car to or from Canada; (2) an exception from PIH labeling requirements for certain non-bulk and bulk packagings in closed transport vehicles or freight containers transported by vessel or by motor vehicle or rail car to or from Mexico; and (3) an exception from PIH placarding requirements on a transport vehicle or freight container carrying PIH materials within a single port area. PIH placards are required on a packaging, transport vehicle, or freight container carrying PIH materials in the United States.

II. Provisions in This Final Rule*A. Extension of Exceptions From PIH Labeling and Placarding Requirements*

We adopted the new PIH labeling and placarding requirements because of the extreme risks associated with transportation of PIH materials and our belief that the old POISON and POISON GAS labels and placards are not adequate to communicate the inhalation hazard of these materials. We are continuing to work for international recognition of the PIH labels and placards. However, the United Nations Committee of Experts on the Transport of Dangerous Goods has not yet adopted the PIH labels and placards nor are they permitted under the IMDG Code and the TDGR. We continue to believe that the PIH labels and placards facilitate rapid and accurate identification of these extremely toxic materials by emergency responders and transportation workers and, thus, enhance the safe transportation of these materials.

However, in the absence of similar labeling and placarding provisions in the UN Recommendations and other

international standards based on those recommendations, the potential for delayed or frustrated international shipments, due to confusion over labeling and placarding differences or the need to remove and replace labels, will exist on October 1, 2001. On September 30, 1999, the limited exception from PIH labeling of international shipments provided by the September 16, 1999 IFR expires, and mandatory compliance for use of the PIH placard takes effect.

We are issuing this final rule to provide additional labeling and placarding exceptions for certain shipments of PIH materials to facilitate international transportation of these materials until such time as the United Nations Committee of Experts on the Transport of Dangerous Goods amends the UN Recommendations to either adopt or permit the use of the U.S. PIH labels and placards. The exceptions apply to shipments of PIH materials transported under the provisions of the IMDG Code and the TDGR.

In its comments on the September 1999 IFR, Elf Atochem requests an expansion of the limited PIH labeling exception for international shipments to the import or export of small bulk packages in open freight containers. Elf Atochem states that the IFR fails to provide a similar exception for "small bulk" packages that are permitted to be labeled rather than placarded under 49 CFR 172.514(c) and 7.2.2.1 of the IMDG Code. Elf Atochem states that these small bulk packages will be subject to the same possibility of errors and mishandling in port areas, and that transportation workers will have the same potential increased exposure if they have to handle and re-label these packages in the port area. Therefore, Elf Atochem requests that the exception provided for non-bulk packages in the September 16, 1999 IFR be extended to include those small bulk packages that may be transported in an open vehicle or freight container that are imported or exported by vessel, and that are permitted or required to be labeled.

In this final rule, we are amending §§ 171.12 and 171.12a to permit a package containing a PIH material to be labeled or placarded with a label or placard that conforms to the IMDG Code or TDG regulatory hazard communication specifications for "Class 6.1" or "Class 2.3" labels and placards, as appropriate, if transported in a closed transport vehicle or freight container marked with identification numbers appropriate for the material and placarded as required under the HMR. We agree with Elf Atochem that small bulk packages should be included in

this exception. Therefore, this exception applies to both non-bulk and bulk packages transported in closed transport vehicles or freight containers. We do not agree that the PIH labeling exception should be expanded to packages in open vehicles or freight containers. Offerors and transporters of PIH materials should be aware that the PIH labeling exception applies to PIH materials shipped in domestic or international transportation in accordance with the IMDG Code.

We recognize that there are a limited number of materials for which the HMR identify a material as a PIH with a Division 6.1 primary or subsidiary hazard where the UN Recommendations, IMDG Code, and TDGR do not indicate such a primary or subsidiary hazard (e.g., Trichloroacetyl chloride, UN 2442). Packages of such materials shipped in closed transport vehicles or freight containers under the provisions of the UN Recommendations, IMDG Code, or TDGR in accordance with the exception provided in this final rule must be labeled or placarded to indicate the subsidiary PIH hazard. To indicate the subsidiary hazard, offerors may use labels or placards that conform to the UN Recommendations, IMDG Code, or TDGR requirements for "Class 6.1" or "Class 2.3" materials, as appropriate.

B. Shipments to or From Mexico

In comments on the September 1999 IFR, HMAC requested a delay in implementation of the PIH labeling requirements for shipments to or from Mexico. The September 16, 1999 IFR does not address shipments between the United States and Mexico. A number of HMAC's members who transport PIH materials to Mexico are concerned about the difficulties they could encounter as a result of this omission.

HMAC states that it recognizes that including an exception of this nature in the HMR is not as straightforward as those for shipments by vessel and shipments to and from Canada. However, it considers such an exception equally necessary and requests that we delay implementation of the PIH labeling requirements until such time that an appropriate means of including an exception for shipments to or from Mexico can be found.

We agree with HMAC that shipments of PIH materials to or from Mexico should be permitted to take advantage of the labeling exceptions allowed for other international shipments. Thus, we are adding a new paragraph (e) to § 171.12 to permit a material poisonous by inhalation transported in a closed transport vehicle or freight container by highway or rail from Mexico to the

United States or from the United States to Mexico to be labeled or placarded with a label or placard that conforms to the UN Recommendations on the Transport of Dangerous Goods specifications for a "Division 2.3" or "Division 6.1" label or placard in place of a POISON GAS or POISON INHALATION HAZARD label or placard. The transport vehicle or freight container must be marked with identification numbers for the materials in any quantity and placarded as required by subpart F of the HMR.

C. Placarding Exception in Port Areas

In this final rule, we are also providing a limited exception from PIH placarding requirements applicable to transport vehicles and freight containers. A transport vehicle or freight container used to transport packages of PIH materials in international transportation may be placarded with placards that conform to IMDG Code for "Class 6.1" or "Class 2.3" materials, as appropriate, instead of the new PIH placards, when transported within a single port area (including contiguous harbor) and when marked with appropriate identification numbers. For highway or rail transportation to or from the port area within the United States, the transport vehicle or freight container must display the appropriate PIH placard.

D. Additional Revisions

In this final rule, we are revising §§ 171.12(b)(8) and 171.12a(b)(5) for clarity. In addition, we are revising §§ 172.400a, 172.407(f) and 172.519(f) to make the current labeling and placarding exceptions consistent with the PIH labeling and placarding exceptions in this final rule.

III. Transitional Provisions

In the final rule issued under Docket HM-206, we included transitional provisions for continued use of the old POISON or POISON GAS placards until October 1, 2001. These transitional provisions remain in effect. Therefore, for materials poisonous by inhalation offered for transportation or transported by all modes of transportation, until October 1, 2001, placards may be used that conform to specifications for placards: (1) In effect on September 30, 1991; (2) specified in the December 21, 1990 final rule for highway transportation only; or specified in the July 22, 1997 final rule.

IV. Regulatory 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. A regulatory evaluation prepared for the January 8, 1997 final rule is available and has been placed in the docket for this rulemaking. The possible savings associated with avoiding delay or frustration of shipments are considered so minimal as to not warrant revision of the regulatory evaluation. This rule is not significant 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 preempts 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.

Federal hazardous materials 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 material; 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 item 2 above and preempts state, local, and Indian tribe requirements not meeting the “substantively the same”

standard. This final rule is necessary to assure an acceptable level of safety for the transportation of PIH materials and to facilitate international transportation of these materials.

Federal hazardous materials transportation law provides at section 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. RSPA has determined that the effective date of federal preemption be 90 days from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“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 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires an agency to review regulations to assess their impact on small entities unless the agency determinates that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule provides relief to certain small entities by excepting certain international shipments of PIH materials from labeling and placarding requirements that differ from international requirements. I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. 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 contain any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading of this document 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.

H. Environmental Assessment

This final rule provides a limited exception from PIH labeling and placarding requirements for certain shipments offered for or transported in international commerce. The limited exception will not affect emergency response to incidents involving PIH materials because the PIH hazard will be prominently highlighted on shipping papers, on package markings, and by use of applicable 4-digit identification numbers and PIH placards on freight containers and transport vehicles. We find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim rule amending 49 CFR parts 171 and 172 which was published at 64 FR 50260 on September 16, 1999, and amended at 64 FR 51719 on September 24, 1999, is adopted as a final rule with the following changes:

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 part 1.

2. In § 171.12, paragraphs (b)(8)(iii) and (iv) are revised and new paragraphs (b)(8)(v), (b)(8)(vi), and (e) are added to read as follows:

§ 171.12 Import and export shipments.

* * * * *
(b) * * *

(8) * * *

(iii) The package must be marked in accordance with § 172.313 of this subchapter;

(iv) Except as provided in paragraph (b)(8)(v) of this section, the package must be labeled or placarded POISON GAS or POISON INHALATION HAZARD, as appropriate, in accordance with subparts E and F of this subchapter;

(v) A label or placard that conforms to IMDG Code specifications for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard required by paragraph (b)(8)(iv) of this section on a package transported in a closed transport vehicle or freight container. The transport vehicle or freight container must be marked with identification numbers for the hazardous material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of this subchapter;

(vi) A package, freight container, or transport vehicle may be placarded in conformance with IMDG Code placard specifications for "Class 2.3" or "Class 6.1", as appropriate, in place of the POISON GAS or POISON INHALATION HAZARD placard required by paragraph (b)(8)(iv) of this section when moving within a single port area, including contiguous harbor.

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(e) *Shipments to or from Mexico.*

Unless otherwise excepted, hazardous materials shipments from Mexico to the United States or from the United States to Mexico must conform to all applicable requirements of this subchapter. When a hazardous material that is a material poisonous by inhalation (see § 171.8) is transported by highway or rail from Mexico to the United States, or from the United States to Mexico, the following requirements apply:

(1) The shipping description must include the words "Toxic Inhalation Hazard" or "Poison-Inhalation Hazard" or "Inhalation Hazard", as required in § 172.203(m) of this subchapter.

(2) The material must be packaged in accordance with requirements of this subchapter.

(3) The package must be marked in accordance with § 172.313 of this subchapter.

(4) Except as provided in paragraph (c)(5) of this section, the package must be labeled or placarded POISON GAS or POISON INHALATION HAZARD, as appropriate, in accordance with subparts E and F of this subchapter.

(5) A label or placard that conforms to the UN Recommendations on the Transport of Dangerous Goods specifications for a "Division 2.3" or "Division 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard required by §§ 172.400(a) and 172.504(e) of this subchapter on a package transported in a closed transport vehicle or freight container. The transport vehicle or freight container must be marked with identification numbers for the material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of this subchapter.

3. In § 171.12a, paragraphs (b)(5)(iii) and (iv) are revised and new paragraphs (b)(5)(v) and (vi) are added, to read as follows:

§ 171.12a Canadian shipments and packagings.
* * * * *

(b) * * *

(5) * * *

(iii) The package must be marked in accordance with § 172.313 of this subchapter;

(iv) Except as provided in paragraph (b)(5)(v) of this section and for a package containing anhydrous ammonia, the package must be labeled or placarded POISON GAS or POISON INHALATION HAZARD, as appropriate, in accordance with subparts E and F of this subchapter;

(v) A label or placard that conforms to the specifications in the TDG Regulations for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard required by paragraph (b)(5)(iv) of this section on a package transported in a closed transport vehicle or freight container. The transport vehicle or freight container must be marked with identification numbers for the material, regardless of quantity, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of this subchapter. When moving in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate TDG regulations in addition to the POISON GAS or POISON INHALATION HAZARD placards required by paragraph (b)(5)(iv) of this section;

(vi) For shipments of anhydrous ammonia, the shipping paper must contain an indication that the markings, labels and placards have been applied

in conformance with the TDG Regulations and this paragraph (b)(5).

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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 § 172.400a, new paragraph (d) is added to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(d) A package containing a material poisonous by inhalation (see § 171.8 of this subchapter) in a closed transport vehicle or freight container may be excepted from the POISON INHALATION HAZARD or POISON GAS label or placard, under the conditions set forth in §§ 171.12 and 171.12a of this subchapter.

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

§ 172.407 Label specifications.

* * * * *

(f) *Exceptions.* Except for materials poisonous by inhalation (See § 171.8 of this subchapter), a label conforming to specifications in the UN Recommendations may be used in place of a corresponding label that conforms to the requirements of this subpart.

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7. In § 172.519, paragraph (f) is revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(f) *Exceptions.* When hazardous materials are offered for transportation or transported under the provisions of §§ 171.11, 171.12, or 171.12a of this subchapter, a placard conforming to the specifications in the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, respectively, may be used in place of a corresponding placard that conforms to the requirements of this subpart, except that a bulk packaging, transport vehicle, or freight container containing a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded in accordance with this subpart (see §§ 171.12(b)(8), 171.12(e) and 171.12a(b)(5) of this subchapter).

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Issued in Washington, DC, on August 15, 2001, under the authority delegated in 49 CFR part 1.

Robert A. McGuire,

Acting Deputy Administrator, Research and Special Programs Administration.

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