

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****42 CFR Parts 70 and 71**

RIN 0920-AA03

**Control of Communicable Diseases**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** On November 30, 2005, at 70 FR 71892, CDC published a proposed rule, "Control of Communicable Diseases," to revise existing regulations related to preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. and from one state or possession into another. CDC provided a 60 day public comment period. Written comments were to be received on or before January 30, 2006. We have received requests asking for an extension of the comment period. In consideration of these requests, CDC is extending the comment period by 30 days to March 1, 2006.

**DATES:** Written comments must be received on or before March 1, 2006. Written comments on the proposed information collection requirements must also be submitted on or before March 1, 2006. Please refer to

**SUPPLEMENTARY INFORMATION** for additional information.

**ADDRESSES:** You may submit written comments to the following address: Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, ATTN: Q Rule Comments, 1600 Clifton Road, NE, (E03), Atlanta, GA 30333. Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE, Atlanta, GA 30333. Please call ahead to 1-866-694-4867 and ask for a representative in the Division of Global Migration and Quarantine to schedule your visit. Comments also may be viewed at [www.cdc.gov/ncidod/dq](http://www.cdc.gov/ncidod/dq). You may submit written comments electronically via the Internet at <http://www.regulations.gov> or via e-mail to [qrulepubliccomments@cdc.gov](mailto:qrulepubliccomments@cdc.gov). To download an electronic version of the rule, you may access <http://www.regulations.gov>.

Mail written comments on the proposed information collection requirements to the following address: Office of Information and Regulatory Affairs, OMB, New Executive Office

Building, 725 17th Street, NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for CDC.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Brooks, Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, 1600 Clifton Road, NE, (E03), Atlanta, GA 30333; telephone (404) 498-2395.

**SUPPLEMENTARY INFORMATION:** On November 30, 2005, at 70 FR 71892, CDC published a proposed rule, "Control of Communicable Diseases," revising existing regulations related to preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. and from one state or possession into another. CDC provided a 60 day public comment period. Written comments were to be received on or before January 30, 2006. CDC has received requests asking for an extension of the public comment period beyond the 60 days originally provided. These requests have been made by industry trade organizations that represent businesses that will be affected by the proposed rule. In consideration of these concerns, CDC is extending the comment period by 30 days (until March 1, 2006) in order to give all interested persons the opportunity to comment fully.

CDC's general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change, including any personal identifiers or contact information.

**How Can I Get Copies of the NPRM and Other Related Information?**

CDC has posted the NPRM and related materials to their Web site. These can be found at [www.cdc.gov/ncidod/dq](http://www.cdc.gov/ncidod/dq).

Dated: January 23, 2006.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. E6-1048 Filed 1-26-06; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, 173, 175 and 176**

[Docket No. PHMSA-2005-23141 (HM-215F)]

RIN 2137-AD98

**Hazardous Materials: Revision and Reformatting of Requirements for the Authorization To Use International Transport Standards and Regulations**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In this notice of proposed rulemaking, the Pipeline and Hazardous Materials Safety Administration proposes to amend the Hazardous Materials Regulations by revising and consolidating the requirements applicable to the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, the Canadian Transport of Dangerous Goods Regulations, and the International Atomic Energy Agency Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The revisions and reformatting provide a user-friendly format to promote understanding of the conditions and limitations on the use of international standards and regulations, thereby ensuring that an acceptable level of safety is maintained while facilitating the transportation of hazardous materials.

**DATES:** Comments must be received by March 28, 2006. To the extent possible, we will consider late filed comments as we develop the final rule.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web site:* <http://dms/dot/gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL-401, Washington, DC 20590-0001

- *Hand Delivery:* To the Docket Management System; Room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name and docket number PHMSA-05-23141 (HM-215F) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act section of this document.

**Docket:** You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Duane Pfund, International Standards, telephone (202) 366-0656, or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

To facilitate the safe and efficient transportation of hazardous materials in international commerce, the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), with certain limitations, permit both domestic and international shipments of hazardous materials to be offered for transportation and transported under provisions of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Dangerous Goods Code (IMDG Code), the Canadian Transportation of Dangerous Goods Regulations (TDG Regulations), and the International Atomic Energy Agency Safety Standards Series: Regulations for the Safe Transportation of Radioactive Material (IAEA Regulations), as appropriate.

Uniformity of national and international hazardous materials transportation regulations is critical to enhance safety and facilitate trade. Consistency between U.S. and international regulations helps to assure the safety of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. For example, many shippers find that consistency in requirements aids their understanding of what is required, thereby permitting them to more easily comply with the regulations when

shipping hazardous materials in international commerce.

In this notice of proposed rulemaking (NPRM), the Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend the HMR by revising, consolidating, and clarifying the provisions that authorize the use of the ICAO Technical Instructions, the IMDG Code, the TDG Regulations, and the IAEA Regulations, as currently contained in §§ 171.11, 171.12 and 171.12a. Currently these sections permit both domestic and international shipments of hazardous materials to be offered for transportation and transported under the provisions of the applicable transport standards and regulations, subject to certain conditions and limitations:

- Section 171.11 authorizes the offering, acceptance, and transportation of hazardous materials by aircraft and motor vehicle in accordance with the ICAO Technical Instructions.
- Section 171.12 authorizes the offering, acceptance, and transportation of hazardous materials by vessel, motor vehicle, or rail in accordance with the IMDG Code, provided all or part of the transportation is by vessel.
- Section 171.12a authorizes the offering, acceptance, and transportation of hazardous materials by motor vehicle or rail in accordance with the TDG Regulations, for: (1) Shipments that originate in Canada and either terminate in the United States or transit the United States to a Canadian or foreign destination, or (2) the return to Canada of empty bulk packages containing residues of hazardous materials that were initially imported into the United States.
- Section 171.12(d) authorizes the offering, acceptance, and transportation of radioactive materials in accordance with the IAEA Regulations for shipments imported into or exported from the United States or transiting the United States during transportation between places outside the United States.

In addition, § 171.12a requires shipments of hazardous materials being transported by highway or rail between the United States and Mexico to be shipped in accordance with the HMR while being transported within the United States. Even though the Mexican standards, Normas Oficiales Mexicanos (NOMs) and the Regulations for Land Transportation of Hazardous Materials and Waste, are to a considerable degree consistent with the HMR, differences do exist and shippers must exercise caution to ensure that shipments are in full compliance with the applicable regulations of each country. For

additional information and guidance for preparing shipments of hazardous materials between the United States and Mexico, you may access <http://hazmat.dot.gov/nomslst.htm>.

The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) requires PHMSA to align the HMR with international transport standards and requirements to the extent practicable (see § 5120). Harmonization improves safety and compliance, and facilitates the transportation of hazardous materials in international commerce. The Federal hazmat law permits PHMSA to deviate from international transport standards and requirements when such action is in the public interest. Therefore, we continue to align the HMR with international transport standards and regulations through various rulemakings. We also periodically review and revise the provisions for the authorization to use the international transport standards and regulations in order to maintain a safety level equal to that of the HMR, thereby assuring the protection of people, property, and the environment.

**II. Consolidation of the Conditions and Limitations for Use of the ICAO Technical Instructions, IMDG Code, and TDG Regulations**

The HMR, ICAO Technical Instructions, IMDG Code, and TDG Regulations are based on the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations), which are model regulations issued by the UN Committee of Experts on the Transport of Dangerous Goods and the Globally Harmonized System of Classification and Labeling of Chemicals (UN COE). The authorizations to use the ICAO Technical Instructions, IMDG Code and TDG Regulations in §§ 171.11, 171.12 and 171.12a, respectively, contain many of the same conditions and limitations for use. Therefore, we are propose consolidating into one section those conditions and limitations applicable to all of the authorized international transport standards and regulations. Following that section, we propose separate sections containing the additional provisions specific to each authorized standard. These newly numbered sections are contained in a separate subpart.

The proposed reorganization of part 171, subpart A includes provisions concerning the applicability of the HMR and general requirements for transportation, and provisions for the Paperwork Reduction Act, reference material, definitions and abbreviations,

rules of construction, and units of measure. Proposed subpart B includes provisions for incident reporting, approvals and authorizations issued by the Bureau of Explosives, submission of reports, and investigations and special studies. Proposed subpart C includes the provisions authorizing the use of international standards and regulations for transportation in the United States.

In new subpart C, we propose to consolidate into one section the conditions and limitations that apply to the use of the ICAO Technical Instructions, IMDG Code, the TDG Regulations, and the IAEA regulations. We are proposing to add separate sections specific to the use of the ICAO Technical Instructions, IMDG Code, TDG Regulations, IAEA Regulations, and for shipments to or from Mexico. These separate sections contain additional conditions and limitations for the particular international transport standard or regulation being used. The proposed, reformatted international sections are located in §§ 171.22 through 171.28 in the new subpart C.

We propose to minimize references to other parts of the HMR by incorporating the complete text for certain requirements in place of the reference. Consolidating and reformatting the conditions and limitations into a more user-friendly format provides HMR users with a clearer understanding of the conditions and limitations for the use of authorized international standards, particularly for persons transporting hazardous materials by multiple modes of transportation.

### III. Review of Proposed Changes

In this NPRM we are also proposing several revisions to the current conditions and limitations for use of international standards and regulations, including: (1) The removal of certain unnecessary requirements; (2) clarification of labeling requirements for limited quantities of Division 6.1 materials in Packing Groups II and III; (3) revision of shipping paper requirements to require an indication of the international standard being used; (4) clarification of requirements for the use of International Maritime Organization (IMO) Type 5 tanks; and (5) authorization for the use of the TDG Regulations for return shipments from the United States to Canada. These revisions are explained in more detail below.

We are also proposing to incorporate by reference the most recent edition of the TDG regulations—Amendment 5, which was published on September 21, 2005. We invite commenters to address

Amendment 5 for incorporation by reference into the HMR.

#### A. Removal of Unnecessary HMR Requirements

We propose to remove the following conditions and limitations from the HMR because they have been incorporated into the most recent editions of the ICAO Technical Instructions, the IMDG Code, and the TDG regulations:

1. The current HMR restriction in §§ 171.11((d)(12), 171.12(b)(14), and 171.12a(b)(14) precluding ammonium nitrate fertilizer or ammonium nitrate mixed fertilizer from being a Class 1 (explosive).
2. The current limitation on the use of abbreviations in §§ 171.11, 171.12 and 171.12a.
3. The current prohibition in § 171.12a(b)(6) from displaying a product identification number (PIN) preceding a UN number because it is no longer authorized in the TDG Regulations.
4. The requirement in § 171.12a(b)(5)(vi) that shipping papers for shipments of anhydrous ammonia contain an indication that the markings, labels and placards have been applied in conformance with the TDG Regulations. Because of our proposal, discussed below, to require an indication on shipping papers of the regulation utilized for the shipment, this is no longer necessary.

#### B. Division 6.1 PG II and III Limited Quantity Labeling Requirements

We are proposing to indicate that Division 6.1 materials transported as limited quantities are not excepted from labeling when shipped to, from, or within the United States under the ICAO Technical Instructions, IMDG Code, or TDG Regulations.

#### C. Entering an Indication of the Transport Standard or Regulation Used on Shipping Papers

In proposed new paragraphs (g)(4) in § 171.22 and (p) in § 172.203, we propose to require shipping papers to include an indication of the international transport standard or regulation (ICAO, IMDG, TDG or IAEA) under which the hazardous materials are being transported. Identifying the particular transport standard or regulation that is being used will expedite shipments by providing on-the-spot information to inspectors, carrier personnel and freight forwarders. Moreover, under the provisions in the ICAO Technical Instructions, IMDG Code, TDG Regulations or IAEA Regulations as authorized, the material

preparation or transport requirements may vary in some respect from the detailed requirements of the HMR. Requiring an indication on the shipping paper that the shipment was prepared or is being transported under the provisions of an authorized transport standard or regulation provides the shipper a practical and easily recognizable means to communicate this fact to all interested parties in the transportation chain.

In addition, we are proposing to require the shipper to provide a “shipper’s certification” as required by § 172.204 of the HMR for all shipments into the United States. The TDG Regulations do not require such a certification. The certification is necessary for determining who has responsibility for compliance with the requirements of the HMR.

#### D. Use of IMO Type 5 Tanks

In this NPRM, we are proposing in § 171.24 to clarify the conditions under which IMO Type 5 tanks are authorized. An IMO Type 5 tank is only authorized when specifically identified in the applicable packaging section of the HMR. If an IMO Type 5 tank is not specifically listed as an authorized packaging, the portable tank must meet DOT 51 or UN portable tank requirements.

#### E. Bulk Shipments to Canada

In § 171.12a, the use of the TDG Regulations includes the return to Canada of empty bulk packages containing only a residue of the hazardous materials initially imported into the United States. We are proposing in new § 171.26 to expand this authorization to permit the use of bulk packagings authorized in the TDG regulations to transport hazardous materials while returning to Canada from the United States.

PHMSA and Transport Canada compared the cargo tank, rail tank car and portable tank requirements in the HMR and the TDG Regulations. The Canadian cargo tank motor vehicle and portable tank requirements are incorporated in the Canadian Standards Board (CSA) B620, B621 and B622 (2003 editions) standards and the rail tank car requirements are in the Canadian General Standards Board (CGSB) standard, CGSB-43.147 for the “Construction, Modification, Qualification, Maintenance and selection and Use of Rail Tank Cars,” March 2002. These standards provide a level of safety that is equivalent to that established in the HMR for cargo tank trucks, portable tanks, and rail tank cars.

Our proposed expansion of authorization for use of the TDG Regulations in the United States provides additional flexibility and is consistent with the reciprocity afforded to DOT specification bulk packagings in the TDG Regulations. As part of this proposed revision, we are amending the HMR to clarify the parts of the HMR applicable to Canadian specification bulk packagings (e.g., material authorizations in the § 172.101 Hazardous Materials Table (HMT) Special Provision B Codes, material specific requirements in part 173, operational requirements in parts 174 and 177 for rail and motor vehicle transportation, and periodic testing and inspection requirements in part 180).

We are also requesting comments concerning whether we should expand reciprocity and allow the unrestricted use in the United States of cargo tanks, rail tank cars, and portable tanks built to Canadian specifications as Canada permits unrestricted use of similar packagings built to U.S. specifications. Comments should address whether there are safety or operational considerations we should examine before expanding reciprocal treatment beyond the amendments we propose in this NPRM.

We are proposing to remove the statement currently in § 171.12a(a) concerning TDG reciprocal provisions for U.S. shipments. The statement is not regulatory in nature and, thus, is not appropriate for inclusion in the HMR. We also propose to remove the information currently contained in § 171.12a(b) that tells the reader how to obtain copies of the Canadian TDG Regulations; this is covered in the Reference Material provisions of § 171.7.

#### F. Combustible Liquids

When packaged in non-bulk packagings, a material with a flashpoint of 38 °C (100 °F) or more but less than 60.5 °C (141 °F) may be classed as a combustible liquid under the HMR. Such materials are not subject to the provisions of the HMR when transported by highway or rail. However, these same materials are regulated as flammable liquids when transported by vessel in accordance with the IMDG Code or by air under the ICAO Technical Instructions. We are proposing to include a statement indicating that a material reclassified as a combustible liquid under the HMR may require classification as a flammable liquid when offered for transportation or transported internationally.

A material with a flashpoint greater than 60.5 °C (141 °F) is not regulated as

a hazardous material under the ICAO Technical Instructions or the IMDG Code; however, a material with a flashpoint between 60.5 °C (141 °F) and 93 °C (200 °F) is regulated as a combustible liquid under the HMR. When transported in bulk packages, a combustible liquid must be placarded with a COMBUSTIBLE placard (see § 172.544). The COMBUSTIBLE placard is not recognized overseas; thus, shipments prepared to comply with the HMR may be frustrated internationally by inspectors and enforcement personnel who are not familiar with the U.S. requirements. To avoid such frustration, shippers and carriers may remove the COMBUSTIBLE placard prior to placing the shipment on board a vessel for overseas shipment. However, these efforts are complicated by the requirement for the COMBUSTIBLE placard to remain on bulk packages while in the United States. Shipments originating overseas and bound for the United States encounter a similar problem when the shipment arrives in the United States, and the COMBUSTIBLE placard must be affixed prior to the shipment's movement. Therefore, in this NPRM, we are proposing an exception from placarding for bulk shipments of combustible liquids in port areas.

#### IV. Rulemaking Analyses and Notices

##### A. Statutory/Legal Authority for This Rulemaking

Under § 5120(b) of Federal hazmat law, the Secretary of Transportation must ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. We are proposing revisions to the requirements authorizing the use of international standards and regulations in the United States. The continually increasing amount of hazardous materials transported in international commerce warrants harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements.

##### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This proposed rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

This proposed rule reorganizes and clarifies the conditions and limitations on the use of international standards and regulations for transporting hazardous materials in the United States. The proposed rule also removes unnecessary and outdated requirements and includes provisions to increase shipper flexibility for the transport of hazardous materials to Canada. The proposed rule includes a new requirement for shipping papers to include an indication of the international standard or regulation being used; the impact of this new requirement is expected to be minimal.

##### C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Any rule resulting from this rulemaking will preempt State, local and Indian tribe requirements but will not have 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 hazmat law 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 materials; 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 proposed 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 hazmat 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 a final rule and not later than two years after the date of issuance. The proposed effective date of Federal preemption for this rule is (90 days after publication of a final rule).

#### D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. 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 determines the rule is not expected to have a significant impact on a substantial number of small entities. While the requirements in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

*Identification of potentially affected small entities.* Businesses likely to be affected by the rule are persons who offer for transportation or transport hazardous materials in commerce, including hazardous materials manufacturers and distributors; transportation companies, including air, highway, rail, and vessel carriers; hazardous waste generators; and container and packaging manufacturers.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of “small business” has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the proposed amendments if adopted. Based on data

for 1997 compiled by the U.S. Census Bureau, upwards of 95 percent of persons that would be affected by this rule are small businesses.

*Reporting and recordkeeping requirements.* This proposed rule includes no new requirements for reporting or recordkeeping.

*Related Federal rules and regulations.* There are no related Federal rules or regulations governing the transportation of hazardous materials in domestic or international commerce.

*Alternate proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

*Conclusion.* While the proposed rule would apply to a substantial number of small entities, there will not be a significant impact on those entities. This proposed rule reorganizes and clarifies the conditions and limitations on the use of international standards and regulations for transporting hazardous materials in the United States. The proposed rule also removes unnecessary and outdated requirements and includes provisions to increase shipper flexibility for the transport of hazardous materials to Canada. The proposed rule adds a requirement for shipping papers to include an identification of the international standard or regulation being used; the impact of this new requirement is expected to be minimal.

This proposed rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### F. Paperwork Reduction Act

This NPRM may result in a minimal increase in information collection and recordkeeping burden under OMB Control Number 2137–0034, due to changes to the HMR requiring shipping papers to include an indication of the international transport standard or regulation (ICAO, IMDG, TDG or IAEA) under which the hazardous materials are being transported. PHMSA currently has an approved information collection under OMB Control Number 2137–0034, “Hazardous Materials Shipping Papers

& Emergency Response Information” with 6,500,000 burden hours and expires on May 31, 2008.

Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

#### G. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 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.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment.

We regulate hazardous materials transported by aircraft, vessel, rail, and highway. The potential for

environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

The proposals in this NPRM will improve the effectiveness of the HMR by clarifying the conditions under which international transport standards and regulations may be used for shipments transported in the United States. When used as authorized in this NPRM, the international standards and regulations provide an equivalent level of safety and environmental protection as the HMR. Thus, there are no significant

environmental impacts associated with this proposed rule.

#### J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), which may also be found at <http://dms.dot.gov>.

#### 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 175

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

##### 49 CFR Part 176

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

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

#### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 Note); Pub. L. 104–134 section 31001.

2. In part 171, §§ 171.1 through 171.14 are designated as subpart A and a new subpart A heading is added immediately before § 171.1 to read as follows:

#### Subpart A—Applicability and General Requirements

\* \* \* \* \*

##### § 171.7 [Revised]

3. In § 171.7, in paragraph (a)(3), in the Table of Material Incorporated by Reference, the following changes are made:

a. The entry “Canadian General Standards Board” is added in alphabetical order.

b. The entry “Canadian Standards Association” is added in alphabetical order.

c. Under the entry “International Atomic Energy Agency (IAEA),” in the entry “IAEA, Regulations for the Safe Transport of Radioactive Material, 1996 Edition (Revised), No. TS–R–1 (ST–1, Revised),” in the second column, remove “171.12” and add “171.22, 171.27” in its place.

d. Under the entry “International Civil Aviation Organization (ICAO),” in the entry “Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2005–2006 Edition,” in the second column, remove “171.11” and add “171.22, 171.23, 171.24” in its place.

e. Under the entry “International Maritime Organization (IMO),” in the entry “International Maritime Dangerous Goods (IMDG) Code, 2004 Edition, Incorporating Amendment 32–04 (English Edition), Volumes 1 and 2,” in the second column, remove “171.12” and add “171.22, 171.23, 171.25” in its place.

f. Under the entry “Transport Canada,” revise the entire entry for “Transportation of Dangerous Goods (TDG) Regulations, August 2001 including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2001–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; and Amendment 3 (SOR/2003–400) December 3, 2003”.

The amendments read as follows:

##### § 171.7 Reference material.

(a) \* \* \*

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

Source and name of material	49 CFR reference
<p style="text-align: center;">* * * * *</p> <p>Canadian General Standards Board, Place du Portage III, 6B1 11 Laurier Street, Gatineau, Quebec, Canada K1A 1G6</p> <p>National Standard of Canada (CAN/CGSB 43.147–2005) Construction, Modification, Qualification, Maintenance, and Selection and Use of Means of Containment for the Handling, Offering for Transport, or Transportation of Dangerous Goods by Rail.</p> <p>Canadian Standards Association, 5060 Spectrum Way, Mississauga, Ontario, Canada L4W 5N6</p> <p>CSA Standard B620–2003, Highway Tanks and Portable Tanks for the Transportation of Dangerous Goods, July 2003.</p> <p style="text-align: center;">* * * * *</p> <p>Transport Canada * * *</p> <p>Transportation of Dangerous Goods (TDG) Regulations, August 2001 including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2002–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; Amendment 3 (SOR/2003–400) December 3, 2003; and Amendment 5 (SOR/2005–279) September 21, 2005.</p> <p style="text-align: center;">* * * * *</p>	<p>171.26</p> <p>171.26</p> <p>171.22; 171.23; 171.26; 172.401; 172.502; 172.519; 172.602; 173.301.</p>

**§§ 171.11; 171.12; and 171.12a [Removed and Reserved]**

4. Remove and reserve §§ 171.11; 171.12; and 171.12a.

5. In part 171, §§ 171.15 through 171.21 are designated as subpart B and a new subpart B heading is added immediately before § 171.15 to read as follows:

**Subpart B—Incident Reporting, Notification, BOE Approvals and Authorization**

\* \* \* \* \*

6. In Part 171, new Subpart C is added to read as follows:

**Subpart C—Authorization and Requirements for the Use of International Transport Standards and Regulations**

Sec.

- 171.22 Authorization and conditions for the use of international standards and regulations.
- 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Canada’s TDG Regulations, or the IAEA regulations.
- 171.24 Additional requirements for the use of the ICAO Technical Instructions.
- 171.25 Additional requirements for the use of the IMDG Code.
- 171.26 Additional requirements for the use of Canada’s TDG Regulations.
- 171.27 Additional requirements for the use of the IAEA Regulations.
- 171.28 Shipments to or from Mexico.

**§ 171.22 Authorization and conditions for use of international standards and regulations.**

(a) *Authorized international standards and regulations.* This subpart authorizes, with certain conditions and limitations, the offering for transportation and the transportation in commerce of hazardous materials to,

from, or within the United States in accordance with the International Civil Aviation Organization’s Technical Instructions for the Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Dangerous Goods Code (IMDG Code), the Canadian Transportation of Dangerous Goods Regulations (TDG Regulations), and the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material (IAEA Regulations) (IBR, see § 171.7 of this subchapter).

(b) *Compliance.* No person may offer for transportation or transport a hazardous material in commerce in the United States in accordance with the ICAO Technical Instructions, the IMDG Code, Canada’s TDG Regulations, or the IAEA Regulations unless the hazardous materials is offered for transportation and transported in accordance with this subpart.

(c) *Limitations on the use of international standards and regulations.* A person may offer for transportation or transport a hazardous material in accordance with the international standards and regulations authorized in paragraph (a) of this section provided:

- (1) The hazardous material is subject to the requirements of the applicable international standard or regulation and is offered for transportation or transported in conformance with the applicable standard or regulation; and
- (2) The shipment conforms to all applicable requirements of this subpart.

(d) *Materials excepted from regulation under international standards and regulations.* A material designated as a hazardous material under this subchapter, but excepted from or not subject to the international transport standards and regulations authorized in paragraph (a) of this section (*e.g.*,

paragraph 1.16 of the TDG Regulations excepts from regulation quantities of hazardous materials less than or equal to 500 kg gross transported by rail) must be transported in accordance with all applicable requirements of this subchapter.

(e) *Materials not regulated under this subchapter.* Materials not designated as hazardous materials under this subchapter but regulated by an international transport standard or regulation authorized in paragraph (a) of this section may be offered for transportation and transported in the United States in full compliance (*i.e.*, packaged, marked, labeled, classed, described, stowed, segregated, secured, etc.) with the applicable international transport standard or regulation.

(f) *Forbidden materials.* No person may offer for transportation or transport a hazardous material that is a forbidden material or package as designated in:

- (1) Section 173.21 of this subchapter;
- (2) Column (3) of the § 172.101 Table of this subchapter;
- (3) Column (9A) of the § 172.101 Table of this subchapter when offered for transportation or transported on passenger aircraft or railcar; or
- (4) Column (9B) of the § 172.101 Table of this subchapter when offered for transportation or transported by cargo aircraft.

(g) *Complete information and certification.* (1) Except for shipments into the United States from Canada conforming to § 171.26, each person importing a hazardous material into the United States must provide the forwarding agent at the place of entry into the United States with timely and complete written information as to the requirements of this subchapter applicable to the particular shipment.

(2) The shipper, directly or through the forwarding agent at the place of entry, must provide the initial U.S. carrier with the shipper's certification required by § 172.204 of this subchapter. A carrier may not accept a hazardous material for transportation unless provided a shipper's certification.

(3) All shipping paper information and package markings required in accordance with this subchapter must be in English. The use of shipping papers and a package marked with both English and a language other than English, in order to dually comply with this subchapter and the regulations of a foreign entity, is permitted under this subchapter.

(4) A shipping paper must include the letters "ICAO" for a hazardous material offered for transportation in accordance with the ICAO Technical Instructions; "IMDG" for a hazardous material offered for transportation in accordance with the IMDG Code; "TDG" for a hazardous material offered for transportation in accordance with Canada's TDG Regulations; or "IAEA", for a hazardous material offered for transportation in accordance with the IAEA Regulations.

(5) Each person who provides or receives a shipping paper must retain a copy of the shipping paper or an electronic image thereof that is accessible at or through its principal place of business in accordance with § 172.201(e) of this part.

(h) *Additional requirements for the use of international standards and regulations.* All shipments offered for transportation or transported in the United States in accordance with this subpart must conform to the following requirements of this subchapter, as applicable:

(1) The emergency response information requirements in subpart G of part 172 of this subchapter;

(2) The training requirements in subpart H of part 172 of this subchapter, including function-specific training in the use of the international transport standards and regulations authorized in paragraph (a) of this section, as applicable;

(3) The security requirements in subpart I of part 172 of this subchapter;

(4) The incident reporting requirements in §§ 171.15 and 171.16 of this part for incidents occurring within the jurisdiction of the United States including on board vessels in the navigable waters of the United States and aboard aircraft of United States registry anywhere in air commerce;

(5) For export shipments, the general packaging requirements in §§ 173.24 and 173.24a of this subchapter;

(6) The requirements for the reuse, reconditioning, and remanufacture of packagings in § 173.28 of this subchapter; and

(7) The registration requirements in subpart G of part 107 of this chapter.

**§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Canada's TDG Regulations, or the IAEA Regulations.**

All shipments offered for transportation or transported in the United States under the ICAO Technical Instructions, IMDG Code, Canada's TDG Regulations, or the IAEA Regulations must conform to the requirements of this section, as applicable.

(a) *Conditions and requirements for cylinders.* Except as provided in this subchapter, a filled non-DOT specification cylinder, other than a DOT exemption cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309 of this subchapter, may not be offered for transportation or transported to, from, or within the United States. A cylinder manufactured to other than a DOT specification and certified as being in conformance with the transportation standards of another country may be authorized for transportation within a single port, upon written request to, and approval by, the Associate Administrator provided the following requirements are met:

(1) The cylinder must be transported in a closed freight container;

(2) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the requirements in this subchapter for a comparable DOT specification cylinder; and

(3) The cylinder is not refilled for export unless in compliance with filling of non-DOT specification cylinder requirements of this subpart for export by any mode of transportation.

(b) *Conditions and requirements specific to certain materials.* (1) *Aerosols.* Except for a limited quantity of a compressed gas in a container of not more than 4 fluid ounces capacity meeting the requirements in § 173.306(a)(1) of this subchapter, the use of the proper shipping name "Aerosol," UN1950, may be used only for a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than Division 6.1, Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device (see § 171.8). In addition, an aerosol must be in a metal

packaging when the packaging exceeds 7.22 cubic inches.

(2) *Air bag inflator, air bag module and seat-belt pretensioner.* For each approved air bag inflator, air bag module and seat-belt pretensioner, the shipping paper description must conform to the requirements in § 173.166(c) of this subchapter:

(i) The EX number or product code must be included in association with the basic shipping description. When a product code is used, it must be traceable to the specific EX number assigned to the inflator, module or seat-belt pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

(ii) The proper shipping name "Articles, pyrotechnic for technical purposes, UN0431" must be used for all air bag inflators, air bag modules, and seat-belt pretensioners meeting the criteria for a Division 1.4G material.

(3) *Chemical oxygen generators.* Chemical oxygen generators must be approved, classed, described, packaged, and transported in accordance with the requirements of this subchapter.

(4) *Class 1 (explosive) materials.* Prior to being transported, Class 1 (explosive) materials must be approved by the Associate Administrator in accordance with § 173.56 of this subchapter. Each package containing a Class 1 (explosive) material must conform to the marking requirements in § 172.320 of this subchapter.

(5) *Combustible liquids.* A Class 3 material with a flashpoint of at least 38 °C (100 °F) but less than 60.5 °C (141 °F) that is authorized to be reclassified as a combustible liquid in accordance with § 173.150(f) of this subchapter should be packaged, described, marked, labeled and certified as a flammable liquid when offered for transportation or transported in accordance with the ICAO Technical Instructions, IMDG Code, or Canada's TDG Regulations.

(6) *Hazardous substances.* Except for Class 7 (radioactive) materials, a material meeting the definition of a hazardous substance as defined in § 171.8, must conform to the shipping paper requirements in § 172.203(c) of this subchapter and the marking requirements in § 172.324 of this subchapter:

(i) The proper shipping name must identify the hazardous substance by name, or the name of the substance must be entered in parentheses in association with the basic description and marked on the package in association with the proper shipping name. If the hazardous substance meets the definition for a hazardous waste, the



waste code (for example, D001), may be used to identify the hazardous substance;

(ii) The shipping paper and the package markings must identify at least two hazardous substances with the lowest reportable quantities (RQs) when the material contains two or more hazardous substances; and

(iii) The letters "RQ" must be entered on the shipping paper either before or after the basic description, and marked on the package in association with the proper shipping name for each hazardous substance listed.

(7) *Hazardous wastes.* A material meeting the definition of a hazardous waste (see § 171.8) must conform to the following:

(i) The shipping paper and the package markings must include the word "Waste" immediately preceding the proper shipping name;

(ii) The shipping paper must be retained by the shipper and by each carrier for three years after the material is accepted by the initial carrier (see § 172.205(e)(5)); and

(iii) A hazardous waste manifest must be completed in accordance with § 172.205 of this subchapter.

(8) *Marine pollutants.* Except for marine pollutants (see § 171.8) transported in accordance with the IMDG Code, marine pollutants transported in bulk packages must meet the shipping paper requirements in § 172.203(l) of this subchapter and the package marking requirements in § 172.322 of this subchapter.

(9) *Organic peroxides.* Organic peroxides not identified by technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with § 173.128(d) of this subchapter.

(10) *Poisonous materials, Division 6.1.* (i) For liquid or solid poisonous materials meeting the definition of Division 6.1, Packing Group I or II, the word "Poison" or "Toxic" must be included on the shipping paper in association with the basic description when the shipping name or hazard class does not describe the material as a poison or toxic material.

(ii) Division 6.1 hazardous materials transported as limited quantities are not excepted from labeling (see § 173.153(b)).

(11) *Poisonous by inhalation materials.* A material poisonous by inhalation (see § 171.8) must conform to the following requirements:

(i) The words "Poison-Inhalation Hazard" or "Toxic-Inhalation Hazard" and the words "Zone A," "Zone B," "Zone C," or "Zone D" for gases, or

"Zone A" or "Zone B" for liquids, as appropriate, must be entered on the shipping paper immediately following the basic shipping description. The word "Poison" or "Toxic" or the phrase "Poison-Inhalation Hazard" or "Toxic-Inhalation Hazard" need not be repeated if it otherwise appears in the shipping description;

(ii) The material must be packaged in accordance with the requirements of this subchapter;

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

(iv) The package must be labeled or placarded with POISON INHALATION HAZARD or POISON GAS, as appropriate, in accordance with Subparts E and F of Part 172 of this subchapter.

(A) For a package transported in accordance with the IMDG Code in a closed transport vehicle or freight container, a label or placard conforming to the 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, as appropriate. The transport vehicle or freight container must be marked with the 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 part 172 of this subchapter.

(B) For a package transported in accordance with Canada's TDG Regulations in a closed transport vehicle or freight container, a label or placard conforming to the TDG Regulations 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, as appropriate. The transport vehicle or freight container must be marked with the 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 part 172 of this subchapter. While in transportation in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate TDG Regulations in addition to being placarded with the POISON GAS or POISON INHALATION HAZARD placards.

(12) *Class 7 (radioactive) materials.* (i) Highway route controlled quantities (see § 173.403 of this subchapter) must be shipped in accordance with

§§ 172.203(d)(4) and (d)(10); 172.507, and 173.22(c) of this subchapter;

(ii) For fissile materials and Type B, Type B(U), and Type B(M) packagings, the competent authority certification and any necessary revalidation must be obtained from the appropriate competent authorities as specified in §§ 173.471, 173.472, and 173.473 of this subchapter, and all requirements of the certificates and revalidations must be met;

(iii) Type A package contents are limited in accordance with § 173.431 of this subchapter;

(iv) The country of origin for the shipment must have adopted the edition of TS-R-1 of the IAEA Regulations referenced in § 171.7;

(v) The shipment must conform to the requirements of § 173.448, when applicable;

(vi) The definition for "radioactive material" in § 173.403 of this subchapter must be applied to radioactive materials transported under the provisions of this subpart;

(vii) Except for limited quantities, the shipment must conform to the requirements of § 172.204(c)(4) of this subchapter; and

(viii) Excepted packages of radioactive material, instruments or articles, or articles containing natural uranium or thorium must conform to the requirements of §§ 173.421, 173.424, or 173.426 of this subchapter, as appropriate.

(13) *Self-reactive materials.* Self-reactive materials not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with § 173.124(a)(2)(iii) of this subchapter.

#### § 171.24 Additional requirements for the use of the ICAO Technical Instructions.

(a) A hazardous material may be offered for transportation or transported within the United States by aircraft, and by motor vehicle or rail either before or after being transported by aircraft in accordance with the ICAO Technical Instructions (IBR; see § 171.7), as authorized in paragraph (a) of § 171.22, provided the requirements in § 171.22, as applicable, and this section are met.

(b) Any person who offers for transportation or transports a hazardous material in accordance with the ICAO Technical Instructions must conform to the following additional conditions and requirements:

(1) All applicable requirements in parts 171 and 175 of this subchapter (also see 14 CFR 121.135, 121.401,

121.433a, 135.323, 135.327 and 135.333);

(2) The quantity limits prescribed in the ICAO Technical Instructions for transportation by passenger-carrying or cargo aircraft, as applicable;

(3) The conditions or requirements of a United States variation, when specified in the ICAO Technical Instructions.

(c) Highway transportation. For transportation by highway prior to or after transportation by aircraft, a shipment must conform to the applicable requirements of part 177 of this subchapter, and the motor vehicle must be placarded in accordance with subpart F of part 172.

(d) Conditions and requirements specific to certain materials. Hazardous materials offered for transportation or transported in accordance with the ICAO Technical Instructions must conform to the following specific conditions and requirements, as applicable:

(1) Batteries. (i) Nonspillable wet electric storage batteries. Nonspillable wet electric storage batteries are not subject to the requirements of this subchapter provided:

(A) The battery meets the conditions specified in Special Provision 67 of the ICAO Technical Instructions;

(B) The battery, its outer packaging, and any overpack are plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY"; and

(C) The batteries or battery assemblies are offered for transportation or transported in a manner that prevents short circuiting or forced discharge, including, but not limited to, protection of exposed terminals.

(ii) Primary lithium batteries and cells. Primary lithium batteries and cells may not be transported aboard passenger carrying aircraft. Equipment containing or packed with primary lithium batteries or cells may not be transported aboard passenger-carrying aircraft except as provided in § 172.102, Special Provision A101 or A103, of this subchapter. Except for primary lithium batteries and cells contained in or packed with equipment, packagings containing primary lithium batteries and cells meeting the exceptions in § 173.185(b) and (c) of this subchapter must be marked "PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT" and may be transported aboard cargo-only aircraft.

(iii) Prototype lithium batteries and cells. Prototype lithium batteries and cells are forbidden for transport aboard passenger aircraft and must be approved by the Associate Administrator prior to

transportation aboard cargo aircraft, in accordance with the requirements of Special Provision A55 in § 172.102 of this subchapter.

(2) Oxygen cylinders. A cylinder containing "Oxygen, compressed" may not be transported aboard a passenger-carrying aircraft, or in an inaccessible cargo location aboard a cargo-only aircraft, unless it is packaged as required by parts 173 and 178 of this subchapter and is placed in an overpack or outer packaging that satisfies the requirements of Special Provision A52 in § 172.102.

#### § 171.25 Additional requirements for the use of the IMDG Code.

(a) A hazardous material may be offered for transportation or transported to, from, or within the United States by vessel, and by motor carrier and rail in accordance with the IMDG Code (IBR; see § 171.7 of this subchapter), as authorized in § 171.22, provided all or part of the transportation is by vessel and the requirements in § 171.22, as applicable, and this section are met.

(b) Any person who offers for transportation or transports a hazardous material in accordance with the IMDG Code must conform to the following additional conditions and requirements:

(1) Unless otherwise excepted, a shipment must conform to the requirements in part 176 of this subchapter. For transportation by rail or highway prior to or subsequent to transportation by vessel, a shipment must conform to the applicable requirements of parts 174 and 177 respectively, of this subchapter, and the motor vehicle or rail car must be placarded in accordance with subpart F of part 172 of this subpart. When a hazardous material regulated by this subchapter for transportation by highway is transported by motor vehicle on a public highway under the provisions of this subpart, the segregation requirements of part 7, Chapter 2 of the IMDG Code are authorized.

(2) The stowage and segregation requirements in part 7 of the IMDG Code may be substituted for the stowage and segregation requirements in part 176 of this subchapter.

(c) Conditions and requirements for bulk packagings. Except for IBCs and UN portable tanks used for the transportation of liquids or solids, the bulk packaging requirements of this subchapter must be met. Additionally, the following requirements apply:

(1) UN portable tanks must conform to the requirements in Special Provisions TP37, TP38, TP44 and TP45 when applicable, and any applicable bulk

special provisions assigned to the hazardous material in the Hazardous Materials Table in § 172.101 of this subchapter;

(2) IMO Type 5 portable tanks must conform to DOT Specification 51 or UN portable tank requirements, unless specifically authorized in this subchapter or approved by the Associate Administrator;

(3) Except as specified in this subpart, for a material poisonous (toxic) by inhalation, the T Codes specified in Column 13 of the Dangerous Goods List in the IMDG Code may be applied to the transportation of those materials in IM, IMO and DOT Specification 51 portable tanks, when these portable tanks are authorized in accordance with the requirements of this subchapter; and

(4) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

(d) Use of IMDG Code in port areas.

(1) Except for Division 1.1, 1.2, and Class 7 materials, a hazardous material being imported into or exported from the United States or passing through the United States in the course of being shipped between locations outside the United States may be offered and accepted for transportation and transported by motor vehicle within a single port area, including contiguous harbors, when packaged, marked, classed, labeled, stowed and segregated in accordance with the IMDG Code, offered and accepted in accordance with the requirements of subparts C and F of part 172 of this subchapter pertaining to shipping papers and placarding, and otherwise conforms to the applicable requirements of part 176 of this subchapter. When offered for transportation or transported in international transportation (see § 171.8 of this subchapter) a combustible liquid (see § 173.120(b)(1) of this subchapter) is excepted from placarding when transported in a single port area, placed on board a vessel for export, or on board a vessel as an import shipment.

(2) The requirement in § 172.201(d) of this subchapter for an emergency telephone number does not apply to shipments made in accordance with the IMDG Code if the hazardous material is not off-loaded from the vessel, or is off-loaded between ocean vessels at a U.S. port facility without being transported by public highway.

**§ 171.26 Additional requirements for the use of Canada's TDG Regulations.**

(a) A hazardous material shipment originating in Canada and either terminating in the United States or transiting the United States to Canada or a foreign destination may be offered for transportation or transported by motor carrier and rail in accordance with Canada's TDG Regulations (IBR; see § 171.7 of this subchapter) as authorized in § 171.22, provided the requirements in § 171.22, as applicable, and this section are met. Except as otherwise provided in this subpart, the requirements in parts 172, 173, and 178 of this subchapter do not apply for a material transported in accordance with the TDG if all other requirements of this subpart and the TDG Regulations are met.

(b) *Packaging requirements.* (1) *General.* When the provisions of this subchapter require a DOT specification or UN standard packaging to be used for transporting a hazardous material, a packaging authorized by the TDG Regulations may be used, subject to the limitations of this subpart, and only if it is equivalent to the corresponding DOT specification, UN packaging (see § 173.24(d)(2) of this subchapter) authorized by this subchapter.

(2) *Bulk packagings.* A bulk packaging equivalent to a corresponding DOT specification and conforming to and authorized by the TDG Regulations may be used provided:

(i) An equivalent type of packaging is authorized for the hazardous material according to the § 172.101 table of this subchapter;

(ii) The bulk packaging conforms to the requirements of the applicable part 173 bulk packaging section specified in the § 172.101 table for the material to be transported;

(iii) The bulk packaging conforms to the requirements of all assigned bulk packaging, IBC, and portable tank special provisions (B codes, IB and IP codes, and T and TP codes) in § 172.102 of this subchapter; and

(iv) The bulk packaging conforms to all applicable requirements of §§ 173.31, 173.32, 173.33 and 173.35 of this subchapter, and parts 177 and 180 of this subchapter. The periodic retests and inspections required by §§ 173.31, 173.32 and 173.33 of this subchapter may be performed in accordance with Part 180 of this subchapter or in accordance with the requirements of the TDG Regulations provided that the intervals prescribed in part 180 of this subchapter are met.

(3) *Shipments to Canada.* A cargo tank motor vehicle, rail tank car, or portable tank authorized under the TDG

Regulations may be used to transport a hazardous material from the United States to Canada provided the portable tank, cargo tank motor vehicle, or rail tank car conforms to the applicable requirements of this paragraph (b). Highway tanks and portable tanks must conform to the requirements of Canadian Standards Association standard B620-2003 (IBR; see § 171.7 of this subchapter). Rail tank cars must conform to the requirements of Canadian General Standards Board standard 43.146-2005 (IBR; see § 171.7 of this subchapter).

(4) *Cylinders.* A Canadian Transport Commission (CTC) or Transport Canada (TC) specification cylinder manufactured, originally marked, and approved in accordance with the TDG regulations, and in full conformance with the TDG Regulations is authorized for transportation to, from or within the United States provided:

(i) The CTC or TC specification cylinder corresponds with a DOT specification cylinder and the markings are the same as those specified in this subchapter, except that the original markings were "CTC" or "TC";

(ii) The CTC or TC cylinder has been requalified under a program authorized by the TDG regulations or requalified in accordance with the requirements in § 180.205 of this subchapter within the prescribed requalification period specified for the corresponding DOT specification;

(iii) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of "DOT," a cylinder marked "CTC" or "TC" otherwise bearing the same markings required of the specified "DOT" cylinder may be used; and

(iv) Transportation of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (for example, valve protection, filling requirements, operational requirements, etc.).

(c) *Class 1 (explosive) materials.* When transporting Class 1 (explosive) material, rail and motor carriers must comply with 49 CFR 1572.9 and 1572.11 to the extent the requirements apply.

**§ 171.27 Additional requirements for the use of the IAEA Regulations.**

A Class 7 (radioactive) material being imported into or exported from the United States or passing through the United States in the course of being shipped between places outside the United States may be offered for transportation or transported in accordance with the IAEA Regulations as authorized in paragraph (a) of

§ 171.22, provided the requirements in § 171.22, as applicable, are met.

**§ 171.28 Shipments to or from Mexico.**

(a) Except as provided in paragraph (b) of this section, hazardous material shipments transported to or from Mexico must conform to all applicable requirements of this subchapter when being transported within the United States.

(b) The requirements of this subchapter apply to a hazardous material meeting that definition of a material poisonous by inhalation ( see § 171.8 of this subchapter), except a label or placard conforming to the UN Recommendations (IBR; see § 171.7 of this subchapter) specifications for a Class 2.3 or Class 6.1 label or placard may be substituted for the POISON INHALATION HAZARD or POISON GAS label or placard, as 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 the identification number for the hazardous material regardless of the total quantity contained in the transport vehicle or freight container. The transport vehicle or freight container must be marked in the manner specified in § 172.313(c) of this subchapter, and placarded as required by subpart F of this subchapter.

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

7. The authority citation for part 172 is revised to read as follows:

**Authority:** 49 U.S.C. 5101-5128; 44701; 49 CFR, 1.53.

8. In § 172.203, add paragraph (p) to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(p) *Use of international standards and regulations.* A shipping paper must include, following the basic description, the acronym "ICAO" for a hazardous material offered for transportation in accordance with the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter); "IMDG" for a hazardous material offered for transportation in accordance with the IMDG Code (IBR; see § 171.7 of this subchapter); "TDG" for a hazardous material offered for transportation in accordance with Canada's TDG Regulations (IBR, see

§ 171.7 of this subchapter), or “IAEA”, for a hazardous material offered for transportation in accordance with the IAEA Regulations (IBR; see § 171.7 of this subchapter). If a hazardous material is accompanied by hazard communications for more than one of the standards listed above then all applicable acronyms must be listed following the basic description of the hazardous material on the shipping paper.

9. In § 172.400a, paragraph (d) is revised 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 § 171.23(b)(11) of this subchapter.

10. 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 subpart C of part 171 of this subchapter, a placard conforming to the specifications in the ICAO Technical Instructions, the IMDG Code, or Canada’s TDG Regulations may be used in place of a corresponding placard conforming to the requirements of this subpart. However, 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 § 171.23(b)(11) of this subchapter).

\* \* \* \* \*

11. In § 172.704, paragraph (a)(2)(ii) is revised to read as follows:

**§ 172.704 Training requirements.**

(a) \* \* \*

(2) \* \* \*

(ii) In addition to any relevant function-specific training requirements in this subchapter, training relating to the requirements of the ICAO Technical Instructions, IMDG Code, TDG Regulations and IAEA Regulations (IBR, see § 171.7 of this subchapter) must be provided to the extent such training addresses functions performed as authorized in subpart C of part 171 of this subchapter.

\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

12. The authority citation for part 173 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

**§ 173.21 [Amended]**

13. In § 173.21, in paragraph (k), in the first sentence, the phrase “including § 171.11 and” is revised and the phrase “including subpart C of part 171 and” is inserted in its place.

14. In § 173.24, paragraphs (c)(2) and (i) are revised to read as follows:

**§ 173.24 General requirements for packagings and packages.**

\* \* \* \* \*

(c) \* \* \*

(2) The packaging is permitted under, and conforms to, provisions contained in subpart C of part 171 of this subchapter and §§ 173.3, 173.4, 173.5, 173.5a, 173.6, 173.7, 173.8, 173.27, or § 176.11 of this subchapter.

\* \* \* \* \*

(i) *Air transportation.* Except as provided in subpart C of part 171 of this subchapter, packages offered or intended for transportation by aircraft must conform to the general requirements for transportation by aircraft in § 173.27.

15. In § 173.27, paragraph (f) introductory text is revised to read as follows:

**§ 173.27 General requirements for transportation by aircraft.**

\* \* \* \* \*

(f) *Combination packagings.* Unless otherwise specified in this part, or in subpart C of part 171 of this subchapter, when combination packagings are offered for transportation aboard aircraft, inner packagings must conform to the quantity limitations set forth in Table 1 of this paragraph for transport aboard passenger-carrying aircraft and Table 2 of this paragraph for transport aboard cargo aircraft only, as follows:

\* \* \* \* \*

16. In § 173.56, paragraph (g) is revised to read as follows:

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

\* \* \* \* \*

(g) An explosive may be transported under subpart C of part 171 or § 176.11 of this subchapter without the approval of the Associate Administrator as required by paragraph (b) of this section if the Associate Administrator has acknowledged in writing the acceptability of an approval issued by

the competent authority of a foreign government pursuant to the provisions of the UN Recommendations, the ICAO Technical Instructions, the IMDG Code (IBR; see § 171.7 of this subchapter), or other national or international regulations based on the UN Recommendations. In such a case, a copy of the foreign competent authority approval, and a copy of the written acknowledgement of its acceptance must accompany each shipment of that explosive.

\* \* \* \* \*

**PART 175—CARRIAGE BY AIRCRAFT**

17. The authority citation for part 175 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

18. In § 175.30, in paragraph (a)(2), the first sentence is revised to read as follows:

**§ 175.30 Accepting and inspecting shipments.**

(a) \* \* \*

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by subpart C of part 171 of this subchapter. \* \* \*

\* \* \* \* \*

19. In § 175.33, paragraph (a)(1)(ii) is revised to read as follows:

**§ 175.33 Notification of pilot-in-command.**

(a) \* \* \*

(1) \* \* \*

(ii) The ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), any additional information required to be shown on shipping papers by subpart C of part 171 of this subchapter must also be shown in the notification.

\* \* \* \* \*

**PART 176—CARRIAGE BY VESSEL**

20. The authority citation for part 176 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

21. In § 176.11:

A. Amend paragraph (a) introductory text by revising the first sentence.

B. Revise paragraph (b).

**§ 176.11 Exceptions**

(a) A hazardous material may be offered and accepted for transport by vessel when in conformance with the IMDG Code (IBR, see § 171.7 of this subchapter), subject to the conditions and limitations set forth in subpart C of part 171 of this subchapter. \* \* \*

\* \* \* \* \*

(b) Canadian shipments and packages may be transported by vessel if they are

transported in accordance with this subchapter. (See subpart C of part 171 of this subchapter.)

\* \* \* \* \*

**§ 176.24 [Amended]**

22. In § 176.24, in paragraph (a), the phrase “authorized by § 171.12 of this subchapter” is removed and the phrase “authorized by subpart C of part 171 of this subchapter” is inserted in its place.

23. In § 176.27, in paragraph (b), the last sentence is revised to read as follows:

**§ 176.27 Certificate.**

\* \* \* \* \*

(b) \* \* \* See subpart C of part 171 of this subchapter.

\* \* \* \* \*

Issued in Washington, DC, on January 10, 2006, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**  
*Associate Administrator for Hazardous Materials Safety.*

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