

marketing and other services, subject to paragraph (a)(3) of this section.

(1) For an incumbent independent LEC that provides in-region, interstate domestic interexchange services or in-region international interexchange services using no interexchange switching or transmission facilities or capability of the LEC's own (i.e., "independent LEC reseller,") the affiliate required in paragraph (a) of this section may be a separate corporate division of such incumbent independent LEC. All other provisions of this Subpart applicable to an independent LEC affiliate shall continue to apply, as applicable, to such separate corporate division.

(2) [Reserved]

(c) An incumbent independent LEC that is providing in-region, interstate, domestic interexchange services or in-region international interexchange services prior to April 18, 1997, but is not providing such services through an affiliate that satisfies paragraph (a) of this section as of April 18, 1997, shall comply with the requirements of this section no later than August 30, 1999.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. RSPA-98-4185 (HM-215C)]

RIN 2137-AD15

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

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

ACTION: Final rule; corrections and response to two petitions for reconsideration.

SUMMARY: On March 5, 1999, RSPA published a final rule under Docket HM-215C that amended the Hazardous Materials Regulations to maintain alignment with corresponding provisions of international standards. Changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of

Dangerous Goods (UN Recommendations) necessitated amendments to domestic regulations to provide consistency with international transport requirements and to facilitate the transport of hazardous materials in international commerce. This final rule makes certain corrections to the March 5 final rule and responds to two petitions for reconsideration.

DATES: *Effective Date:* October 1, 1999.

Delayed Compliance Date: October 1, 2000.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 5, 1999, RSPA published a final rule under Docket HM-215C (64 FR 10742) to maintain alignment with recent changes to corresponding provisions in international standards. This final rule corrects various errors and denies two petitions for reconsideration to the March 5, 1999 final rule. A document correcting printing errors appears elsewhere in today's edition of the **Federal Register**.

II. Section-by-Section Review

Section 172.101

The Hazardous Materials Advisory Council (HMAC) petitioned RSPA to replace the plus sign ("+") with a different symbol for materials classified on the basis of human experience. (The plus sign fixes the proper shipping name, hazard class and packing group for a hazardous material entry in the Hazardous Materials Table, regardless of the actual hazard characteristics of the material.)

HMAC stated:

To distinguish between materials that are classified on the basis of human experience and those that have been assigned a particular classification and/or packing group for other reasons, HMAC believes a different symbol, perhaps the pound (#) sign, would be better suited for this purpose. There are important differences in the ability of a shipper to reclassify dilute mixtures or solutions of these substances. For example, as pointed out in the preamble, a mixture or solution containing Epichlorohydrin, a material classified by human experience, could have a different PSN if the appropriate tests indicate it does not meet the corresponding hazard class. However, for materials assigned the "+" symbol for other

reasons, § 172.101(b)(1) requires the authorization of the Associate Administrator for Hazardous Materials Safety to change the PSN and hazard class.

RSPA disagrees with the need to distinguish between materials that are classed on the basis of human experience and those that have been assigned a particular classification or packing group. First, any material preceded by a plus sign can be classed differently and assigned a different proper shipping name when in a solution or mixture which justifies that different classification. Second, any material preceded by a plus sign can be authorized by the Associate Administrator to be reclassified and assigned a different proper shipping name. Therefore, there is no apparent benefit for distinguishing between those "plus-marked" materials that are classed on the basis of human experience and those that are classed for other reasons, and the petition for reconsideration is denied.

The Hazardous Materials Table (HMT).

For the entries "Aviation regulated liquid, n.o.s." and "Aviation regulated solid, n.o.s.," the "A" was mistakenly omitted in the NPRM and the final rule and is reinstated in this document.

The entries "Compounds, tree killing, liquid or Compounds, weed killing, liquid," NA1760 and NA1993 were amended by adding a "G" in Column (1) of the HMT to identify the entries as requiring a technical name in parentheses and in association with the basic description. However, the entry "Compounds, tree killing, liquid or Compounds, weed killing, liquid," NA2810 was mistakenly omitted in the NPRM and the final rule. RSPA is reinserting that entry and adding the letter "G" in this final rule.

The entries "Hydrocarbon gas mixture, compressed, n.o.s." and "Hydrocarbon gas mixture, liquefied, n.o.s." are corrected by removing the letter "G" from Column (1). These two entries were listed correctly in the NPRM (63 FR 44312), as not requiring a technical name; however, in the final rule the letter "G" was mistakenly added.

Section 172.101 Appendix B to § 172.101—List of Marine Pollutants

For the entry "*normal*-heptaldehyde," RSPA proposed to remove the severe marine pollutant designation ("PP"). Due to a typographical error, this entry was misspelled and printed twice, one with the "PP" designation and one without. This final rule removes the entries and replaces them with "n-Heptaldehyde."

Section 172.203

RSPA is removing paragraphs (k)(1) and (m)(2), which require n.o.s. descriptions to be supplemented with the technical name. The final rule adopted the letter "G" in Column (1) of the HMT to identify generic and n.o.s. entries that must be supplemented with a technical name. Therefore, these paragraphs are no longer necessary. In addition, RSPA is adding a sentence to paragraph (k) introductory text to alert readers about the letter "G" designator in Column (1) of the HMT. With the removal of paragraph (k)(1), paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively. With the removal of paragraph (m)(2), paragraph (m)(3) is redesignated as paragraph (m)(2).

Section 172.504

Although the wording in the regulatory text is correct in the March 5, 1999 final rule, RSPA notes that the preamble discussion mistakenly included the words "or adjacent to the POISON label."

Section 173.28

Certain existing text, which was omitted in the final rule and resulted in the unintentional removal of an exception, is reinstated in this final rule. The exception provides that replacing a removable gasket or closure device on a UN 1H1 plastic drum with one of the same design and material providing equivalent performance does not constitute reconditioning.

Section 173.32c

Due to a typographical error in paragraph (j), the word "not" was inadvertently omitted from the first sentence concerning the filling restriction and is added in this document. The intent of this prohibition was clearly indicated in the preamble of the final rule.

Section 173.222

In introductory paragraph (c) and paragraph (c)(4), an incorrect limitation of this requirement to transportation by aircraft is removed. The requirement applies to all modes of transportation.

Section 178.603

RSPA received a petition for reconsideration from the Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) requesting an amendment to § 178.603(f)(5) concerning the drop test criteria. COSTHA expressed concern that the requirements for combination packagings are more stringent than those for drums, jerricans and bags.

COSTHA's request is beyond the scope of this rulemaking and will be considered in a separate rulemaking.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal hazardous materials transportation law, 49 U.S.C. 5701–5127, 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:

- (i) The designation, description, and classification of hazardous material;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, 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 subjects under items i, ii, iii and v above and, adopted as final, would preempt State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements is February 14, 2000.

Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Executive Order 13084

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

D. Regulatory Flexibility Act

This final rule corrects certain provisions incorporated into the Hazardous Materials Regulations based on changes introduced in the tenth revised edition of the UN Recommendations, the 1997–98 ICAO Technical Instructions, and Amendment 29 to the IMDG Code (Docket HM–215C, 64 FR 10742). (The ICAO Technical Instructions and the IMDG Code were updated in a final rule, published October 29, 1998 (Docket HM–215C; 63 FR 44312).) This final rule applies to offerors and carriers of hazardous materials and will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. The costs associated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. 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.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

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

List of Subjects*49 CFR Part 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.

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

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

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

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

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, in Column (1), as amended at 64 FR 10753 effective October 1, 1999, the following changes are made:

a. In Column (1), for the entries “Aviation regulated liquid, n.o.s.” and “Aviation regulated solid, n.o.s.”, the letter “A” is added in alphabetical order.

b. In Column (1), for the entry, “Compounds, tree killing, liquid or Compounds, weed killing, liquid” (NA2810), the letter “G” is added in alphabetical order.

c. For the entries “Hydrocarbon gas mixture, compressed, n.o.s.” and “Hydrocarbon gas mixture, liquefied, n.o.s.”, the letter “G” is removed each place it appears.

3. In Appendix B to § 172.101, the List of Marine Pollutants is amended by removing two entries and adding one entry in alphabetical order to read as follows:

APPENDIX B TO § 172.101—LIST OF MARINE POLLUTANTS

S.M.P. (1)	Marine pollutant (2)
[REMOVE:]	
PP	<i>normal</i> -Heptyl aldehyde.
	<i>normal</i> -heptaldehyde.
[ADD:]	
*	*
*	*
	n-Heptaldehyde.
*	*
*	*

4. In § 172.203, in paragraph (k) introductory text, a new sentence is added at the end to read as follows:

§ 172.203 Additional description requirements.

(k) * * * Shipping descriptions for toxic materials that meet the criteria of Division 6.1, PG I or II (as specified in § 173.132(a) of this subchapter) or Division 2.3 (as specified in § 173.115(c) of this subchapter) and are identified by the letter “G” in Column (1) of the § 172.101 Table, must have the technical name of the toxic constituent entered in parentheses in association with the basic description.

* * * * *

§ 172.203 [Amended]

5. In addition, in § 172.203 as amended at 64 FR 10775 effective October 1, 1999, the following changes are made:

- Paragraph (k)(1) is removed.
- Paragraphs (k)(2) and (k)(3) are redesignated as paragraphs (k)(1) and (k)(2), respectively.
- Paragraph (m)(2) is removed.
- Paragraph (m)(3) is redesignated as paragraph (m)(2).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

7. In § 173.28, in paragraph (c)(2)(iii), as revised at 64 FR 10776 effective October 1, 1999, “; and” is removed at the end of the sentence and a period is added in their place and a new sentence is added to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(c) * * *

(2) * * *

(iii) * * * (For a UN 1H1 plastic drum, replacing a removable gasket or closure device with another of the same design and material that provides equivalent performance does not constitute reconditioning); and

* * * * *

§ 173.28 [Amended]

8. In addition, in § 173.28, in paragraph (c)(2) introductory text, as revised at 64 FR 10776 effective October 1, 1999, the wording “or a UN 1H1 plastic drum” is added immediately following the words “other than a metal drum”.

§ 173.32c [Amended]

9. In § 173.32c, in paragraph (j), as revised at 64 FR 10777 effective October 1, 1999, in the first sentence, the wording “may be loaded to” is removed and the words “may not be loaded to” are added in its place.

§ 173.222 [Amended]

10. In § 173.222, as revised at 64 FR 10779 effective October 1, 1999, the following changes are made:

- In paragraph (c) introductory text, the wording “For transportation by aircraft, the” is removed and “The” is added in its place.
- In paragraph (c)(4), the wording “and is offered for transportation by aircraft” is removed.

Issued in Washington, DC, on August 9, 1999, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–21074 Filed 8–13–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990212047–9208–02; I.D. 111998C]

RIN 0648–AL28

International Fisheries Regulations; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations.

SUMMARY: NMFS issues final regulations to implement recommendations of the