

implement the channel change for Station WRCD at Canton, New York, and increase the Class A facilities of Station WCVT, Stowe, Vermont, we will substitute Channel 227A for Channel 269A at Saranac Lake, and substitute Channel 268C2 for Channel 268A at Canton. If a construction permit is granted prior to the receipt of formal concurrence in the allotments by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without the right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if objected to by Industry Canada." See 64 FR 54269, October 6, 1999.

A filing window for Channel 227A at Saranac Lake, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 268A and adding Channel 268C2 at Canton and removing Channel 269A and adding Channel 227A at Saranac Lake.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 177, 178, 179 and 180

[Docket No. RSPA-99-6213 (HM-218)]

RIN 2137-AD16

Hazardous Materials; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiative. This action reduces regulatory burden on industry where feasible, responds to petitions for rulemaking, and makes other minor adjustments to the regulations to enhance safety and align the HMR with international standards. The intended effect of these regulatory changes is to update, clarify and improve regulatory requirements and provide relief from certain of those requirements where feasible.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2000.

Compliance Date: Compliance with the regulations, as amended herein, is authorized after August 18, 2000.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in these amendments is approved by the Director of the Federal Register as of October 1, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

This final rule will primarily reduce regulatory burden on industry by incorporating changes into the HMR based on RSPA's own initiative and petitions for rulemaking submitted in accordance with 49 CFR 106.31. This final rule is also consistent with the goals of the President's Regulatory Reinvention Initiative. On March 4, 1995, the President directed Federal agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform. In a

continuing effort to review the HMR for necessary revisions, RSPA is eliminating, revising, clarifying and relaxing certain regulatory requirements in this final rule. On September 30, 1999, RSPA published a notice of proposed rulemaking (NPRM) under Docket RSPA-99-6213 (HM-218) (64 FR 53166). The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion.

RSPA received 22 comments in response to the NPRM. These comments were submitted by representatives of trade associations, hazardous materials consulting firms, chemical manufacturers, and carriers of hazardous materials. The majority of commenters expressed support for various proposals, but several raised concerns about certain provisions in the proposal that are discussed below.

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

Section-by-Section Review

Part 107

Section 107.105-107.705

Paragraph (a)(2) is revised to permit a person applying for an exemption or modification of an exemption to include an electronic mail address in the application. RSPA will use this information to transmit official documents to an applicant. This change was not proposed in the notice, is only administrative or procedural, and will be of significant benefit to exemption applicants by expediting the transmission of documents and reducing costs inherent with the handling and mailing of paper copies. This same change is also made to the other exemption and approval application provisions in §§ 107.107(b)(3), 107.109(a)(3), and 107.705(a)(4).

Part 171

Section 171.7

RSPA is updating the incorporation by reference of the American Society of Mechanical Engineers (ASME) Code to the 1998 Edition, without the 1999 Addenda.

One comment received in response to this proposal stated that the 1999 Addenda needs to be adopted in order for the 1998 Code to be used. RSPA disagrees with the commenter. RSPA has latitude in determining whether to fully incorporate, to except certain provisions of a standard, or to impose

more stringent requirements than those contained in a material incorporated by reference, and has done so in the past. The structural integrity requirements for pressure vessels, prescribed in § 178.337-3 of the HMR for cargo tank motor vehicles, provide for the maximum stress value prescribed in Section VIII of the ASME Code or 25 percent of the tensile strength of the material used. The currently referenced 1992 Edition and the new 1998 Edition of the ASME Code, Section VIII, Division I, mandate a safety factor of 4:1. The 1999 Addenda to Section VIII provides for reducing the safety factor to 3.5:1. RSPA does not have sufficient experience data to conclude that this reduced safety factor adequately considers dynamic loads that are normally encountered during transportation conditions. Therefore, any deviation from the currently required 4:1 safety factor must be approved under the terms of a DOT exemption.

Section 171.8

RSPA is revising the definition of "Aerosol" by removing the reference to a "metal" receptacle. This revision will more closely align the HMR definition with the UN Recommendations with regard to the material of construction for a non-refillable receptacle. Four comments were received to this proposal expressing agreement with the revision. One commenter stated that RSPA's definition for aerosol does not authorize pure compressed gases, as in the UN Recommendations, and requested that the definition be revised to include the authorization. This request is outside the scope of this rulemaking. Another commenter agreed with the proposed change to the aerosol definition, but stated that it is inconsistent with the change proposed in the NPRM in § 171.11. The revision in § 171.11(a)(14) is made to clarify that aerosols transported in the United States (US) must be in metal packagings if the capacity of the packaging is more than 4 fluid ounces. The revision in § 171.8 is made to authorize aerosols in non-metal containers if the capacity of the packaging is less than 4 fluid ounces.

As provided by § 173.306(a)(1), limited quantities of compressed gases (including aerosols) are authorized in non-specification containers of up to 4 fluid ounce capacity (7.22 cubic inches) each. As provided in § 173.306(a)(3), aerosols may be packaged in metal containers of up to one liter capacity.

RSPA is also revising the definition of "EX number." This change is made to recognize that RSPA assigns EX numbers to track materials approved by

the Associate Administrator for Hazardous Materials Safety under the provisions of § 173.56, regardless of whether they are approved under one of the explosives classifications or under a different hazard class.

The definition of "Placarded car" is revised to remove reference to a "FUMIGATION placard." As used in the HMR, a railcar containing lading which has been fumigated or is undergoing fumigation is required to display the "FUMIGANT marking" shown in § 173.9.

Section 171.11

RSPA is removing paragraph (d)(5), which requires an indication on a shipping paper that a material is a poison. The International Civil Aviation Organization (ICAO) Technical Instructions already require the shipping paper to identify subrisks; therefore, paragraph (d)(5) is unnecessary. RSPA is adding a new paragraph (d)(5) to require that the original approval (EX) number or traceable product code issued to an air bag inflator or seat-belt pretensioner be entered on the shipping paper in association with the basic description, as specified in § 173.166(c). Currently, shipping papers for devices offered under the ICAO Technical Instructions are not required to contain the EX number or product code for an approved inflator or pretensioner. RSPA believes this shipping paper provision should include air bags or seat-belt pretensioners when offered and transported in the US under the authority of international regulations. Devices containing a pressure vessel and transported as Division 2.2 (UN3353) are excluded from this shipping paper notation requirement. In addition, paragraph (d)(14) is revised to clarify that "Aerosols" transported in the US under the provisions of the ICAO Technical Instructions must be in metal packagings if the packaging exceeds 7.22 cubic inches (see earlier preamble discussion to § 171.8).

Section 171.12

RSPA is revising paragraph (a) to clarify that the shipping paper documentation required under the International Maritime Dangerous Goods Code (IMDG) or the International Atomic Energy Agency (IAEA) regulations must be written in English as currently required by § 172.201(a)(2). Similar to the change made to § 171.11 discussed earlier in this preamble, RSPA is adding paragraph (b)(19) to require that the approval (EX) number or traceable product code be entered on shipping papers for other than Division

2.2 airbag inflators and seat belt pretensioners that are offered for transportation under the IMDG Code.

Part 172

Section 172.101

Paragraphs (b)(2) and (b)(6) are revised to clarify that proper shipping names denoted with an "A" or "W" in Column (1), in the Hazardous Materials Table (HMT), may be used to describe hazardous materials transported in any mode when all applicable requirements are met.

RSPA is removing paragraph (c)(8), which is specific to determining a proper shipping description for hazardous substances, as it is redundant with § 172.101(c). One commenter disagreed with this revision, stating that this paragraph provides valuable instruction on how to assign a proper shipping name for a hazardous substance, and is the only place in the HMR that states that the list of Hazardous Substances is provided in Appendix A. RSPA disagrees with this commenter. A hazardous substance is assigned a proper shipping name the same way any other hazardous material is assigned a proper shipping name. Further, the definition of a hazardous substance in § 171.8 refers to Appendix A for the list of hazardous substances. In addition, in this final rule, we are revising a reference to § 172.101(c)(8) in Appendix A to Part 172 to reference § 172.101(c) in its entirety.

A new paragraph (c)(8) is added to allow the word "liquid" or "solid" to be included as part of the proper shipping name when a hazardous material specifically listed by name may, due to differing physical states, be a liquid or solid. This is consistent with existing provisions in the UN Recommendations, the ICAO Technical Instructions and the IMDG Code.

The entry "Chemical kits or First aid kits (containing hazardous materials)" is separated into two individual entries for easier reference. In addition, the wording "(containing hazardous materials)" is removed.

The entry "1-Chloro-3-Bromopropane" is changed to read "1-bromo-3-chloropropane" to be in accordance with the UN Recommendations.

A new entry "Fumigated transport vehicle or freight container, see § 173.9" is added to reference § 173.9 which contains requirements for transporting fumigated lading. This change will facilitate the location of these requirements by readers.

For the entries, "Polychlorinated biphenyls, liquid" and "Polychlorinated

biphenyls, solid,” UN2315, in Column 1, the symbols “A, W” are removed and a new Special Provision 140 is added in Column 7. Special Provision 140 states that the material is only regulated when it meets the defining criteria for a hazardous substance or a marine pollutant. In addition, as requested by a commenter, Special Provision 140 is revised to state that the Column 5 reference is modified to read “III” on those occasions when the material is offered for transportation or transported by highway. Two commenters disagreed with removal of the symbols “A, W” stating that the ICAO Technical Instructions and the IMDG Code currently regulate Polychlorinated biphenyls (PCBs) in liquid and solid form in any amount and that this inconsistency will cause confusion. RSPA disagrees with these commenters. The ICAO Technical Instructions regulate PCBs only when they are present in a reportable quantity, as stipulated in Special Provision A97 and State Variation US4. The IMDG Code regulates PCBs in all quantities; however, we do not believe that it is necessary to adopt this approach because it will place unnecessary burden on shippers and carriers within the U.S.

For the entry “Air, compressed,” Special Provision 78 is added in Column 7 to specify that only mixtures with oxygen concentrations of 23.5 percent or less may be transported under this entry. An OXIDIZER label is not required for mixtures in these concentrations. This aligns the HMR with a recent amendment adopted in the eleventh revised edition of the UN Recommendations. In addition, for the entry “Rare gases and oxygen mixtures, compressed,” Special Provision 79 is added to state that this entry may not be used for mixtures meeting the criteria for oxidizing gas in § 171.8. RSPA believes that it is more appropriate to use a generic oxidizing gas entry (e.g., Compressed gas, oxidizing, n.o.s.) when such mixtures meet the criteria of an oxidizing gas.

For the entry, “Sodium chlorate, aqueous solution,” PG II, Special Provision “B6” is removed. A commenter pointed out that similar entries (Potassium chlorate, aqueous solution and Chlorates, inorganic, aqueous solution) are not assigned this Special Provision. RSPA agrees that Special Provision B6 was mistakenly assigned.

RSPA is revising a number of HMT entries that contain inconsistently applied vessel stowage codes in column 10B. These codes pertain to segregation of Division 2.3 and 6.1 and Class 8

hazardous materials with foodstuffs. These changes align the HMR with Amendment 30 to the IMDG Code.

Appendix A to § 172.101

In Appendix A to § 172.101, in number 3., the reference to § 172.101(c)(8) is revised. This final rule is removing § 172.101(c)(8); therefore, the reference in Appendix A is revised to refer to § 172.101(c) for determining a proper shipping name. In addition, “Acrolein” is added to Table 1.— Hazardous Substances Other Than Radionuclides with a reportable quantity of 1 pound (0.454 kg). This entry was inadvertently omitted in the reprinting of the HMR.

Section 172.102

In paragraph (c)(1), a new Special Provision 78 is added to specify that the entry “Air, compressed” may not be used to describe compressed air which contains more than 23.5% of oxygen. This change aligns the HMR with a recent amendment adopted in the eleventh revised edition of the UN Recommendations. A new Special Provision 79 is added to specify that the entry “Rare gases and oxygen mixtures, compressed” may not be used for gas mixtures that meet the criteria for an oxidizing gas. This change ensures that the correct emergency response information is provided. We are also adding a new Special Provision 140 to the entries “Polychlorinated biphenyls, liquid” and “Polychlorinated biphenyls, solid,” UN 2315 to state that the material is only regulated when it meets the defining criteria for a hazardous substance or marine pollutant and that the material may be assigned packing group III when transported by highway or rail. This change is consistent with international regulations.

In paragraph (c)(5), we are revising Special Provision N10 which pertains to lighters. Currently, approvals for lighters require the approval number to be marked on the package and on the shipping papers. We believe that this requirement should be contained in the HMR. Also, in paragraph (c)(5), we are adding Special Provision N20, which was inadvertently removed in a previous rulemaking. Special Provision N20 authorizes the use of a 5M1 non-bulk multi-wall paper bag and is currently assigned to the entry “Environmentally hazardous substances, solid, n.o.s.”, in column 7, of the § 172.101 Hazardous Materials Table.

Section 172.201

Paragraph (a)(1)(ii) is revised to clarify that when a reproduced shipping paper

identifies hazardous materials entries by highlighting the basic description in a contrasting color, the packing group also must be highlighted. The packing group is identified as a basic description element by § 172.202(a)(4) and (b).

Section 172.204

For consistency with paragraphs (a)(1), (a)(2) and the ICAO Technical Instructions, paragraph (c)(1) is revised to change the word “packed” to read “packaged.” To reduce costs, a transition period of 10 years is provided for depletion of preprinted shipping papers showing the word “packed”.

Sections 172.332 and 172.336

In response to a petition for rulemaking from the American Trucking Associations (ATA) [P-1364], RSPA is amending §§ 172.332(a) and 172.336(b) to authorize the use of white square-on-point configurations for display of identification number markings, regardless of whether a placard is required for that material. RSPA agrees with ATA that it is unnecessarily restrictive to prevent the use of identification number markings displayed on square-on-point configurations in conjunction with placards. Commenters brought to our attention that certain section references were inadvertently omitted from § 172.332(a) and the first sentence of § 172.336(b) was not easily understood. RSPA agrees with both commenters and has revised the sections accordingly.

Section 172.504

RSPA is revising the Class 9 table entry to reference § 172.504(f)(9), which provides an exception from displaying a Class 9 placard for domestic transportation. In addition, paragraph (f)(8), regarding the placarding of a material classed as a combustible liquid that also meets the definition of a Class 9, is removed. A new paragraph (f)(8) is added to provide an exception, in domestic transportation, from meeting the requirement to display a POISON INHALATION HAZARD placard on a transport vehicle if it already displays a POISON GAS placard.

Section 172.516

Paragraph (a) is revised to change the wording “motor vehicle” to “transport vehicle” the second time it appears in the first sentence. This corrects an inaccurate usage of the term “motor vehicle”. This change clarifies that each placard on a motor vehicle must be clearly visible from the direction it faces, except from the direction of another transport vehicle to which the motor vehicle is coupled.

Section 172.519

Paragraph (b)(3) is revised to clarify that text is required on the DANGEROUS placard. In addition, the paragraph is revised to clarify that text is not required on an OXYGEN placard when the specific identification number is displayed on the placard.

Section 172.604

Paragraph (c)(2) is revised to clarify that hazardous materials transported under the proper shipping name "Consumer commodity" do not require emergency response information, regardless of whether the hazard class is "ORM-D" as provided by the HMR, or "9" as provided by the ICAO Technical Instructions.

Section 172.704

In § 172.704, paragraph (b) is revised to add the reference, "29 CFR 1910.1200," in addition to 29 CFR 1910.120 issued by the Department of Labor's Occupational Safety and Health Administration (OSHA). This change is necessary to clarify that any relevant training received due to OSHA's requirements need not be repeated to meet training requirements in the HMR.

Part 173

Section 173.4

RSPA proposed to revise paragraphs (a)(1)(i), (ii) and (iii) to clarify that the one-gram limit for Division 6.1 material per inner receptacle applies only to materials that are a poison inhalation hazard. One commenter disagreed with this proposal because it has been shipping ethylene oxide, which is a Division 2.3 material, under an approval as provided by § 173.4(c). Ethylene oxide is a poison inhalation hazard material in Hazard Zone D. Adoption of this proposal would restrict transportation of ethylene oxide as a small quantity to 1 gram, even under the terms of an approval. RSPA has considered this comment and believes that a restriction on materials that are Division 6.1, Packing Group I, Hazard Zone A or B only, is necessary. Therefore, the provisions in §§ 173.4(a)(1)(i), (ii) and (iii) are revised to clarify that Division 6.1, Packing Group I, materials in Hazard Zone A and B are restricted to 1 gram. In addition, a note is added to § 173.4(a)(6)(ii) to clarify that the same package need not be subjected to all of the tests specified in § 173.4; another identical package may be used for each test.

Section 173.5

In § 173.5, paragraph (a) is revised to grant an exception from the emergency response information and training requirements in subparts G and H of Part 172, respectively, to Class 2 agricultural products that are transported over local roads between fields of the same farm. Agricultural products other than Class 2 materials are completely excepted from the HMR when transported between fields of the same farm. RSPA believes that this limited relief from emergency response information and training requirements is warranted for Class 2 materials.

Section 173.7

RSPA is adding a new paragraph (e) that incorporates and expands the existing exception in § 173.62(d) for Class 1 explosives owned by the Department of Defense (DOD). Currently, under § 173.62(d), DOD is authorized to ship its Class 1 materials that were packaged prior to January 1, 1990, without regard to the current packaging requirements in Part 178. In addition to this exception, RSPA is excepting these packagings from the current marking and labeling requirements, provided they are marked and labeled in conformance with the requirements of the HMR that were in effect at the time they were originally marked and labeled. This will alleviate the need to re-mark and re-label DOD stockpiled hazardous materials. Because the revised exception applies to marking and labeling of DOD packagings in addition to the Part 178 packaging requirements, RSPA is placing these exceptions in § 173.7 and is removing current paragraph (d) in § 173.62.

Section 173.12

In § 173.12, paragraph (b)(3) is revised to clarify that materials poisonous by inhalation are not authorized in lab packs.

Section 173.13

In § 173.13, paragraph (a) is revised to clarify that use of the CARGO AIRCRAFT ONLY label is required. As discussed in the preamble to Docket HM-222 [May 30, 1996; 61 FR 27169], it was RSPA's intention to except use of primary and subsidiary hazard labels only. Hazardous materials transported under the provisions of § 173.13 are not authorized for transportation by passenger-carrying aircraft. When transported without the CARGO AIRCRAFT ONLY label, RSPA believes that some packagings offered for transportation under § 173.13 may inadvertently be placed on a passenger-carrying aircraft in violation of the

HMR. This change is consistent with § 172.402(c) regarding display of the CARGO AIRCRAFT ONLY label.

Section 173.32

In § 173.32, paragraph (e)(3) is amended to authorize smaller markings on specification portable tanks that were originally authorized to be marked with letters and numerals as small as 1/8 of an inch in height. The specification plates originally attached to these packagings do not have sufficient space to accommodate the larger size retest markings currently required.

Section 173.60

In § 173.60, a new paragraph (b)(14) is added, consistent with the UN Recommendations, to allow large explosive articles normally intended for military use to be transported unpackaged under specified conditions. This provision is currently found in § 173.62, Packing Instruction (PI) 130; however, the provision only applies to those explosives assigned to PI 130. Inclusion of this new paragraph will allow any large explosive article normally intended for military use to be transported unpackaged under the specified conditions.

Section 173.61

In § 173.61, paragraph (a) is revised to clarify that explosives may be packed with non-hazardous materials that will not adversely affect the explosive. RSPA believes that relaxing this provision will avoid the need for exemptions.

Section 173.62

In § 173.62, paragraph (d) is removed, as stated earlier in the preamble discussion of § 173.7.

Section 173.150

RSPA proposed to remove the wording "and combustible liquids" in the first sentence of § 173.150(b) as unnecessary because combustible liquids are already generally excepted from the provisions of paragraph (f)(2) of this section. We believed that referring to combustible liquids was unnecessary because there is no requirement for labeling or specification packaging. Several commenters pointed out that by adopting this revision, RSPA inadvertently would be removing exceptions for limited quantities of combustible liquids that are also hazardous substances, hazardous wastes or marine pollutants. RSPA agrees; therefore, this proposal is not adopted. In § 173.150, paragraph (f)(3)(iv) is revised to clarify that placards are not required for a combustible liquid that is a hazardous substance, hazardous waste

or marine pollutant in a non-bulk packaging.

In the NPRM, we proposed to revise paragraph (f)(3)(viii) by changing the reference for § 177.834 to § 177.834(j). This revision would have clarified that combustible liquids are not subject to the other provisions of § 177.834, such as those pertaining to attendance. The proposal resulted from a petition for rulemaking (P-1376) from the Petroleum Marketers Association of America (PMAA).

Three commenters addressed this proposal, one in support and two in opposition. PMAA reiterated its support for the change, noting that it would result in significant savings to the heating oil industry and expressing confidence that there would be no compromise in safety. The American Trucking Associations (ATA) and the Hazardous Materials Advisory Council (HMAC) oppose the proposed change. ATA believes that total elimination of attendance requirements for loading and unloading combustible liquids would diminish overall hazardous materials transportation safety. ATA recommends that we consider a limited exception for the delivery of home heating fuels similar to the exception provided for deliveries of liquefied petroleum gas and anhydrous ammonia in a final rule issued under HM-225A (RSPA-97-2718; 64 FR 28030). HMAC is concerned that, under the provisions of the NPRM, deliveries of furnace oil to homes and businesses and diesel fuel to gas stations would not require attendance to the detriment of transportation safety. HMAC also notes that the proposal could provide an inducement to shippers to take advantage of the reclassification option for materials with flash points at or above 100 °F, thereby expanding the number and volume of materials that would require neither human nor instrument monitoring. Like ATA, HMAC recommends that we consider a limited exception to the attendance requirement for deliveries of home heating oil. In a clarification of its comments, PMAA said that it would support a narrowing of the NPRM proposal, so that the exception from attendance requirements would apply only to deliveries of home heating oil in conformance with its petition for rulemaking.

We agree with commenters that combustible liquids should not be excepted completely from attendance requirements during loading and unloading operations because such an exception could adversely affect safety. At the same time, however, we believe that the relatively low risk presented by combustible liquids in transportation

argues for a more flexible attendance regulation than that currently required by § 177.834(i). Accordingly, in this final rule we are revising § 173.150(f)(3)(viii) to replace the reference to § 177.834 with § 177.834(j) and § 177.837(d). We are adding a new paragraph (d) to § 177.837 to authorize operators of cargo tank motor vehicles unloading combustible liquids to monitor the unloading operation from a distance of up to 150 feet from the cargo tank and 25 feet from the delivery hose. The operator must observe the cargo tank and the receiving tank at least once every five minutes during unloading operations that take more than five minutes to complete. This is consistent with commenters' recommendations that the HMR include an attendance exception similar to that currently provided for cargo tank motor vehicles unloading liquefied petroleum gas and anhydrous ammonia in metered delivery service.

Section 173.166

Paragraph (c) is being revised for consistency with the changes being adopted in §§ 171.11 and 171.12 to except shippers of Division 2.2 air bag modules and inflators or seat-belt pretensioners from entering the EX (applicable explosives approval) number on shipping papers.

In the NPRM, RSPA proposed to revise the introductory text in paragraph (e) to clarify that all airbag modules and inflators and seat belt pretensioners, including those in Division 2.2 that are transported under UN3353, must be packaged in UN outer packagings meeting the Packing Group III performance level. HMAC and another commenter expressed their objection to the proposal to require Packing Group III level packagings for devices under UN3353, stating the change would substantially increase cost to industry. Additionally, the latter commenter stated that RSPA does not currently require UN performance-oriented outer packagings for these devices. Upon further consideration, RSPA believes the use of outer UN packagings meeting the Packing Group III performance level should not be required at this time for the Division 2.2 devices. The UN Committee of Experts on the Transport of Dangerous Goods is considering a proposal to classify air bag inflators, air bag modules and seat-belt pretensioners into class 1 or 9. Therefore, RSPA is withholding further action pending the outcome of the UN proposal. We are revising the introductory text in paragraph (e) to clarify that the Class 9 devices must be in outer UN packagings

meeting the Packing Group III performance level, as proposed.

We are adding a new paragraph (d)(3) to authorize an air bag module or a seat belt pretensioner that has been removed from a motor vehicle that was manufactured as required for use in the United States to be offered for transportation in commerce without marking the EX number or product code on the shipping paper, as required by current paragraph (c). Instead, the word "Recycled" is entered immediately after the basic description prescribed in § 172.202. This change will facilitate transportation of these devices for recycling and eliminate the need for exemption DOT-E 12189 granted to the Automotive Recyclers Association and several other grantees.

Section 173.242

In paragraph (c)(1), a reference to obsolete § 178.253-4 is removed and replaced with the specific portable tank venting requirements that were contained in that section.

Section 173.247

Paragraph (g)(1)(iii)(C) is revised to clarify the pressure relief device requirements for bulk packagings transported by rail. The previous regulatory text may have been misunderstood as requiring the use of a combination pressure relief device, such as a reclosing pressure relief device (a safety valve) incorporating a rupture disc on the upstream side. The paragraph is revised to clarify the requirement for a nonreclosing pressure relief device that incorporates a rupture disc conforming to the requirements of § 179.15.

Section 173.306

Paragraph (h)(2) is revised to clarify that shipping papers are required for a Class 2 material that has been reclassified as a consumer commodity if it also meets the definition for "marine pollutant." This change provides consistency with corresponding HMR limited quantity provisions.

Section 173.307

Paragraph (a)(4) is revised to except from the HMR refrigerating machines, including dehumidifiers, air conditioners and their components, containing up to 12 kg (25 pounds) or less of a non-flammable, non-toxic gas; 12 L (3 gallons) or less of ammonia solution (UN2672); 12 kg (25 pounds) of flammable non-toxic gas, except for air transportation; and 20 kg (44 pounds) or less of a Group A1 refrigerant specified in ANSI/ASHRAE Standard 15, except for air and vessel transportation. In

addition, for air transportation consistent with Special Provision A103 of the ICAO Technical Instructions, an exception is provided for refrigerating machines containing 100 g (4 ounces) or less of a flammable, non-toxic liquefied gas. This paragraph is also revised for clarity and to reference both International System of Units (SI) and customary units.

Part 174

Section 174.26

The section heading is revised by removing the phrase "of placarded cars." This change clarifies that the prescribed shipping paper requirements apply to any person who accepts hazardous materials for transportation by rail.

Section 174.50

As set forth in § 174.50, the Federal Railroad Administration (FRA) has authority to approve for movement a tank car not conforming to the HMR. Since the adoption of the provision, FRA has issued approximately 400 movement approvals for tank cars that no longer conform to the regulations, for reasons such as leaking fittings, accident damage and exceeding the gross rail load. RSPA is expanding FRA's approval authority from tank cars to all rail cars. This change allows FRA to grant approval for the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law, but may safely be moved to a repair location. This change also eliminates the need to obtain an exemption for such movements.

Part 175

Section 175.25

Paragraph (a)(2)(ii) is revised to authorize lettering of at least 4 mm (.16 inch) in height, based on RSPA's initiative. Currently, the height requirement is 6 mm (0.2 inch) minimum for some of the information required on the notification to air passengers of hazardous materials restrictions. One commenter stated that with today's attention on enforcement and monitoring of regulations, RSPA should not be requiring smaller lettering on signs. RSPA believes that the smaller lettering does not significantly impact readability and encourages the use of space on signs for other information such as conveying the message by using graphics. This revision is, therefore, adopted as proposed.

Section 175.30

In the NPRM, we proposed to broaden an exception in paragraph (d)(1) for inspecting packages of consumer commodities packaged in a freight container to include consumer commodities that are palletized or overpacked. Because of certain safety concerns, we believe this matter needs further review. We intend to review the exception for inspection of consumer commodities in a freight container and do not believe that this relaxation of air transportation requirements is appropriate at this time. Therefore, this proposal is not adopted.

Part 177

Section 177.834

In paragraph (i)(3), we are adding the new exception from attendance requirements for combustible liquids by referencing § 177.837(d), as stated in the preamble discussion to § 173.150.

Section 177.837

We are adding a new paragraph (d) to authorize an exception from the attendance requirements in § 177.834(i) for operators of cargo tanks in combustible liquid service. This exception is consistent with commenters' recommendation that we provide an exception for combustible liquids similar to the exception currently provided for unloading operations involving liquefied petroleum gas and anhydrous ammonia in metered delivery service.

Section 177.848

Paragraph (c) is revised to clarify that the prohibition against loading or storing cyanides or cyanide mixtures with acids applies only if hydrogen cyanide is generated when the materials come into contact with each other.

Part 178

Section 178.3

RSPA is amending the introductory text to paragraph (a) to clarify that the specification markings on a UN standard packaging must be marked on a non-removable component of a packaging. One commenter suggested that, if this proposal is adopted, regulators and field enforcement agents may believe that placing a specification marking on a removable component of a packaging is prohibited. RSPA does not agree. Section 178.503(b) permits duplicate markings on a removable component of a packaging.

Section 178.345–13

In paragraph (a), a reference to obsolete §§ 178.346–13(a), 178.347–13(a), and 178.348–13(a) is removed.

Section 178.603

RSPA is revising paragraph (f)(5) to allow a slight discharge from a closure of any type of packaging if it ceases immediately after impact and there is no further leakage. Previously, this allowance applied only to drums, jerricans or bags. This change aligns the criteria for passing the drop test with international regulations.

Section 178.605

RSPA is revising the last sentence in paragraph (d)(1) to correctly reference the maximum filling limits in § 173.24a (d).

Section 178.703

RSPA is revising § 178.703(a)(1)(ii) to correctly reference all of paragraph (a) of § 178.702, and not merely paragraphs (a)(1) and (2), for the code number used to designate an IBC design type.

Section 178.815

Paragraph (c)(4)(iii) is added to authorize dynamic compression testing for IBCs in the same manner as is currently authorized for non-bulk packagings. RSPA believes that the dynamic compression test is an equivalent test method and that allowing more flexibility in the stacking test requirements will provide a cost savings to the regulated industry.

Part 179

Section 179.100–20

RSPA is removing the water capacity entry in the table that sets forth the stamped markings for DOT-105A100W tank cars. RSPA believes this requirement is redundant. Section 179.22 requires a tank car to be marked in accordance with Appendix C of the Association of American Railroads (AAR) Tank Car Manual. Section C3.03 of the AAR Manual already requires marking the water capacity, in gallons and liters, on the side of the tank car. The removal of this entry has no effect on safety.

Part 180

Section 180.417

RSPA is revising paragraph (a)(2) to allow a cargo tank owner to retain the vehicle certification report and related papers at a company's principal place of business or at the location where the vehicle is housed or maintained, without obtaining prior approval from the Federal Motor Carrier Safety

Administration. This change offers motor carriers greater flexibility in the location where these documents are retained.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

B. Executive Order 13132

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

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

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents related to hazardous materials 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, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (i), (ii), (iii), and (v) above

and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to update, clarify and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be 90 days from the date of publication in the **Federal Register**.

C. Executive Order 13084

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

D. Regulatory Flexibility Act

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 that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule would amend miscellaneous provisions in the HMR, generally to clarify those provisions and to relax requirements that are overly burdensome. The changes in this rule are generally intended to provide relief to shippers, carriers, and packaging manufacturers, some of whom are small entities (e.g., governmental jurisdictions and not-for-profit organizations). The costs and benefits associated with this 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 rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of

Management and Budget (OMB) control number. This final rule does not propose any new information collection burdens. The information collection associated with the proposal to provide for nonconforming railcars under § 174.50 is currently being reported under the information collection for exemption applications under § 107.105. Information collection requirements contained in § 174.50 have been approved by the OMB under control number 2137–0559.

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 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

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 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

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

49 CFR Part 177

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

49 CFR Part 178

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

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

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

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

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

§ 107.105 [Amended]

2. In § 107.105, in paragraph (a)(2), the wording “mailing addresses” is removed and the wording “mailing addresses, e-mail address optional” is added in its place.

§ 107.107 [Amended]

2a. In § 107.107, in paragraph (b)(3), the wording “mailing addresses” is removed and the wording “mailing addresses, e-mail address optional” is added in its place.

§ 107.109 [Amended]

2b. In § 107.109, in paragraph (a)(3), the wording “mailing addresses” is removed and the wording “mailing addresses, e-mail address optional” is added in its place.

§ 107.705 [Amended]

2c. In § 107.705, in paragraph (a)(4), the wording “street, mailing address” is removed and the wording “street and mailing addresses, e-mail address optional” is added in its place.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

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

§ 171.7 [Amended]

4. In § 171.7, paragraph (a)(3), in the table of material incorporated by reference, in the entry “ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX” remove the wording “of 1992 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Addenda through December 31, 1993” and add the wording “of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code” in its place.

5. In § 171.8, the definitions of “Aerosol,” “EX number” and “Placarded car” are revised to read as follows:

§ 171.8 Definitions and abbreviations.

Aerosol means any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

EX number means a number preceded by the prefix “EX”, assigned by the Associate Administrator for Hazardous Materials Safety, to an item that has been evaluated under the provisions of § 173.56 of this subchapter.

Placarded car means a rail car which is placarded in accordance with the requirements of part 172 of this subchapter.

6. In § 171.11, paragraph (d)(5) is revised and a sentence is added at the end of paragraph (d)(14) to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

(d) * * *

(5) Except for a Division 2.2 air bag, air bag module, or seat-belt pretensioner, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

(14) * * * In addition, an aerosol must be in a metal packaging if the packaging exceeds 7.22 cubic inches.

7. In § 171.12, a sentence is added at the end of paragraph (a) and a new paragraph (b)(19) is added to read as follows:

§ 171.12 Imports and export shipments.

(a) * * * All shipping paper information required under paragraph (b) or (d) of this section must be in English.

(b) * * *

(19) Except for Division 2.2, the shipping paper description for an air bag, air bag module, or seat-belt pretensioner must conform to the requirements of § 173.166(c) of this subchapter.

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

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

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

9. In § 172.101, paragraphs (b)(2), (b)(6), and (c)(8) are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

(b) * * *

(2) The letter “A” denotes a material that is subject to the requirements of this subchapter only when offered or intended for transportation by aircraft, unless the material is a hazardous substance or a hazardous waste. A shipping description entry preceded by an “A” may be used to describe a material for other modes of transportation provided all applicable requirements for the entry are met.

(6) The letter “W” denotes a material that is subject to the requirements of this subchapter only when offered or intended for transportation by vessel, unless the material is a hazardous substance or a hazardous waste. A shipping description entry preceded by a “W” may be used to describe a material for other modes of transportation provided all applicable requirements for the entry are met.

(c) * * *

(8) Use of the word “liquid” or “solid”. The word “liquid” or “solid”

may be added to a proper shipping name when a hazardous material specifically listed by name may, due to differing physical states, be a liquid or solid. When the packaging specified in Column 8 is inappropriate for the physical state of the material, the table provided in paragraph (i)(4) of this section should be used to determine the appropriate packaging section.

* * * * *

§ 172.101 [Amended]

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

a. For the entry “Air, compressed”, Special Provision “78” is added in Column 7.

b. For the entry, “Polychlorinated biphenyls, liquid, UN2315” in Column 1 Symbols “A, W” are removed and Special Provision “, 140” is added in Column 7 in numerical order.

c. For the entry, “Polychlorinated biphenyls, solid, UN2315” in Column 1 Symbols “A, W” are removed and

Special Provision “, 140” is added in Column 7 in numerical order.

d. For the entry, “Rare gases and oxygen mixtures, compressed”, Special Provision “79” is added in Column 7.

e. For the entry, “Sodium chlorate, aqueous solution”, PG II, Special Provision “B6,” is removed in column 7.

f. By removing and adding, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols & Hazardous materials descriptions and proper shipping names		Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Loca-tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
[REMOVE:]													
Chemical kits or First aid kits (containing hazardous materials). ...	*	*	*	*	*	*	*	*	*	*	*	*	*
1-Chloro-3-bromopropane	9	UN3316	.....	9	15	None	None	None	10 kg	10 kg	A	.....	.....
1-Chloro-3-bromopropane	6.1	UN2688	III	6.1	T2	153	203	241	60 L	220 L	A	.....	.....
[ADD:]													
1-Bromo-3-chloropropane	6.1	UN2688	III	6.1	T2	153	203	241	60 L	220 L	A	.....	.....
Chemical kits	9	UN3316	.....	9	15	None	None	None	10 kg	10 kg	A	.....	.....
First aid kits	9	UN3316	.....	9	15	None	None	None	10 kg	10 kg	A	.....	.....
Fumigated transport vehicle or freight container see § 173.9	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
*	*	*	*	*	*	*	*	*	*	*	*	*	*

11. In addition, in § 1A172.101, in the Hazardous Materials Table, for the

following Column (2) entries, remove the old entry in Column (10B) and add

the new entry in Column (10B) as set forth below:

Column (2) entry	Column (4) entry	PG	Column (10B) old entry	Column (10B) new entry
Chloroacetone, stabilized	UN1695	I	20, 40, 95	21, 40, 100
Compressed gas, toxic, flammable, n.o.s. <i>Inhalation hazard Zone A</i>	UN1953	.....	40, 95	40
Cupriethylenediamine solution	UN1761	II	95 .....	.....
Cyclohexyl isocyanate	UN2488	I	20, 40, 95	40
3,5-Dichloro-2,4,6-trifluoropyridine	NA9264	I	40, 95	40
Ethyl phosphonothioic dichloride, anhydrous	NA2927	I	20, 40, 95	40
Ethyl phosphorodichloridate	NA2927	I	20, 40, 95	40
Hydrofluoric acid and Sulfuric acid mixtures	UN1786	I	40, 95	40
Lead dioxide	UN1872	III	34 .....	.....
Methyldichloroarsine	NA1556	I	40, 95	40
Oxidizing liquid, corrosive, n.o.s.	UN3098	I, II, III	34, 56, 58, 69, 106	13, 56, 58, 69, 106
Oxidizing liquid, toxic, n.o.s.	UN3099	I, II, III	56, 58, 95, 106	56, 58, 69, 106
Oxidizing solid, corrosive, n.o.s.	UN3085	I, II, III	13, 34, 56, 58, 69, 106.	13, 56, 58, 69, 106
Oxidizing solid, toxic, n.o.s.	UN3087	I, II, III	56, 58, 69, 95, 106	56, 58, 69, 106
Phenyl isocyanate	UN2487	I	20, 40, 95	40
Polychlorinated biphenyls, liquid	UN2315	II	34	95
Polychlorinated biphenyls, solid	UN2315	II	34	95
Polyhalogenated biphenyls, liquid <i>or</i> Polyhalogenated terphenyls liq-uid.	UN3151	II	34	95
Polyhalogenated biphenyls, solid <i>or</i> Polyhalogenated terphenyls, solid.	UN3152	II	34	95
Potassium hydrogendifluoride, <i>solution</i>	UN1811	II	26, 40, 95	25, 26, 40
Radioactive material, low specific activity, n.o.s. <i>or</i> Radioactive material, LSA, n.o.s.	UN2912	.....	.....	95
Radioactive material, special form, n.o.s.	UN2974	.....	.....	95

Column (2) entry	Column (4) entry	PG	Column (10B) old entry	Column (10B) new entry
Radioactive material, surface contaminated object or Radioactive material, SCO.	UN2913	.....	.....	95
Sodium hydrosulfide, solution	NA2922	II	40, 95	26
Thorium metal, pyrophoric	UN2975	.....	.....	95
Thorium nitrate, solid	UN2976	.....	.....	95
Toxic liquids, corrosive, organic, n.o.s., <i>Inhalation hazard, Packing Group I, Zone A.</i>	UN2927	I	20, 40, 95	40
Toxic liquids, corrosive, organic, n.o.s., <i>Inhalation hazard, Packing Group I, Zone B.</i>	UN2927	I	20, 40, 95	40
Toxic liquids, flammable, organic, n.o.s., <i>Inhalation hazard, Packing Group I, Zone A.</i>	UN2929	I	20, 40, 95	40
Toxic liquids, flammable, organic, n.o.s., <i>Inhalation hazard, Packing Group I, Zone B.</i>	UN2929	I	20, 40, 95	40
Toxic, liquids, organic, n.o.s. <i>Inhalation hazard, Packing Group I, Zone A.</i>	UN2810	I	20, 40, 95	40
Toxic, liquids, organic, n.o.s. <i>Inhalation hazard, Packing Group I, Zone B.</i>	UN2810	I	20, 40, 95	40
Uranium hexafluoride, fissile (<i>with more than 1 percent U-235</i>)	UN2977	.....	.....	95
Uranium metal, pyrophoric	UN2979	.....	.....	95
Uranyl nitrate hexahydrate solution	UN2980	.....	.....	95
Uranyl nitrate, solid	UN2981	.....	.....	95

Appendix A to § 172.101 [Amended]

11a. In Appendix A to § 172.101, paragraph 3. is amended by removing the wording “§ 172.101(c)(8)” and adding the wording “§ 172.101(c)”.

11b. In addition, in Appendix A to § 172.101, in Table 1, Hazardous Substances Other Than Radionuclides, the following entry is added in appropriate alphabetical order to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIO-NUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
* * * * *	
Acrolein	1(0.454)
* * * * *	
* * * * *	

12. In § 172.102, in paragraph (c)(1), Special Provisions 78, 79 and 140 are added in numerical order; in paragraph (c)(5), Special Provision N10 is amended by adding a sentence at the end and Special Provision N20 is added to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

78 This entry may not be used to describe compressed air which contains more than 23.5 percent oxygen. An oxidizer label is not required for any oxygen concentration of 23.5 percent or less.

79 This entry may not be used for mixtures that meet the definition for oxidizing gas.

* * * * *

140 This material is regulated only when it meets the defining criteria for a hazardous substance or a marine pollutant. In addition, the column 5 reference is modified to read “III” on those occasions when this material is offered for transportation or transported by highway or rail.

* * * * *

(5) * * *

Code/Special Provisions

* * * * *

N10 * * * The approval number (e.g., T- * * *) must be marked on each outer package and on the shipping paper.

* * * * *

N20 A 5M1 multi-wall paper bag is authorized if transported in a closed transport vehicle.

* * * * *

§ 172.201 [Amended]

13. In § 172.201, paragraph (a)(1)(ii) is amended by revising the reference “§ 172.202(a)(1) and (2), and (3)), or” to read “§ 172.202(a)(1), (2), (3), and (4)), or”.

14. In § 172.204, in paragraph (c)(1), in the certification, the word “packed” is removed and the word “packaged” is added in its place and a note is added following the certification to read as follows:

§ 172.204 Shipper's certification.

* * * * *

(c) * * *

(1) * * *

Note to Paragraph (c)(1): In the certification, the word “packed” may be used instead of the word “packaged” until October 1, 2010.

* * * * *

15. In § 172.332, paragraph (a) is revised to read as follows:

§ 172.332 Identification number markings.

(a) *General.* When required by § 172.301, § 172.302, § 172.313, § 172.326, § 172.328, § 172.330, or § 172.331, identification number markings must be displayed on orange panels or placards as specified in this section, or on white square-on-point configurations as prescribed in § 172.336(b).

* * * * *

§ 172.336 [Amended]

16. In § 172.336, in paragraph (b) introductory text, the first sentence is amended by removing the wording “For hazardous materials in hazard classes for which hazard warning placards are not specified, identification” and replacing it with the word “Identification”.

17. In § 172.504, paragraph (e), Table 2 is amended by revising the entry for category 9, and paragraph (f)(8) is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

Table 2

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
<p>9 Class 9 (see § 172.504(f)(9)) 172.560</p>		

(f) * * *

(8) For domestic transportation, a POISON INHALATION HAZARD placard is not required on a transport vehicle or freight container that is already placarded with the POISON GAS placard.

* * * * *

18. In § 172.516, the first sentence of paragraph (a) is revised to read as follows:

§ 172.516 Visibility and display of placards.

(a) Each placard on a motor vehicle and each placard on a rail car must be clearly visible from the direction it faces, except from the direction of another transport vehicle or rail car to which the motor vehicle or rail car is coupled. * * *

* * * * *

19. In § 172.519, paragraph (b)(3) is revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(b) * * *

(3) For other than Class 7 or the DANGEROUS placard, text indicating a hazard (for example, "FLAMMABLE") is not required. Text may be omitted from the OXYGEN placard only if the specific identification number is displayed on the placard.

* * * * *

20. In § 172.604, paragraph (c)(2) is revised to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(c) * * *

(2) Materials properly described under the following shipping names:

Battery powered equipment
Battery powered vehicle
Carbon dioxide, solid
Castor bean
Castor flake
Castor meal
Castor pomace
Consumer commodity
Dry ice
Engines, internal combustion
Fish meal, stabilized

Fish scrap, stabilized
Refrigerating machine
Wheelchair, electric

§ 172.704 [Amended]

21. In § 172.704, paragraph (b) is amended by adding the wording "or 1910.1200" immediately after the wording "1910.120".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

22. 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.

§ 173.4 [Amended]

23. In § 173.4 the following changes are made:

a. In paragraph (a)(1)(i), the wording "Hazard Zone A or B" is added after "Division 6.1, Packing Group I," and before "materials".

b. In paragraph (a)(1)(ii), the wording "Hazard Zone A or B" is added after "Division 6.1, Packing Group I," and before "materials".

c. In paragraph (a)(1)(iii), the wording "classified as Division 6.1, Packing Group I; and" is removed and the wording "meeting the definition of a Division 6.1, Packing Group I, Hazard Zone A or B material; and" is added in its place.

d. A note is added following paragraph (a)(6)(ii) to read as follows:

§ 173.4 Small quantity exceptions.

(a) * * *

(6) * * *

(ii) * * *

Note to Paragraph (a)(6): Each of the tests in paragraph (a)(6) of this section may be performed on a different but identical package; i.e., all tests need not be performed on the same package.

* * * * *

24–25. In § 173. 5, paragraph (a) introductory text is revised to read as follows:

§ 173.5 Agricultural operations.

(a) For other than a Class 2 material, the transportation of an agricultural

product over local roads between fields of the same farm is excepted from the requirements of this subchapter. A Class 2 material transported over local roads between fields of the same farm is excepted from subparts G and H of part 172 of this subchapter. In either instance, transportation of the hazardous material is subject to the following conditions:

* * * * *

26. In § 173.7, a new paragraph (e) is added to read as follows:

§ 173.7 U.S. Government material.

* * * * *

(e) Class 1 (explosive) materials owned by the Department of Defense and packaged prior to January 1, 1990, in accordance with the requirements of this subchapter in effect at that time, are excepted from the marking and labeling requirements of part 172 of this subchapter and the packaging and package marking requirements of part 178 of this subchapter provided the packagings have maintained their integrity and the explosive material is declared as "government-owned goods packaged prior to January 1, 1990" on the shipping papers.

27. In § 173.12, paragraph (b)(3) is revised to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) * * *

(3) *Prohibited materials.* The following materials may not be packaged or described under the provisions of this paragraph (b): a material poisonous by inhalation, a Division 6.1 Packing Group I material, a Division 4.2 Packing Group I material, chloric acid and oleum (fuming sulfuric acid).

* * * * *

§ 173.13 [Amended]

28. In § 173.13, paragraph (a) is amended by adding the parenthetical phrase "(except for the CARGO AIRCRAFT ONLY label)" after the word "labeling" in the first sentence.

29. In § 173.32, paragraph (e)(3) is revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(e) * * *

(3) *Marking.* The date of the most recent periodic retest must be marked on the portable tank, on or near the metal certification plate. Marking must be in accordance with § 178.3 of this subchapter, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that specification (e.g., DOT Specification 57 portable tanks).

* * * * *

30. In § 173.60, a new paragraph (b)(14) is added, to read as follows:

§ 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(14) Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged provided that a negative result was obtained in Test Series 4 of the UN Manual of Tests and Criteria on an unpackaged article. When such articles have propelling charges or are self-propelled, their ignition systems shall be protected against stimuli encountered during normal conditions of transport. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling, storage or launching devices in such a way that they will not become loose during normal conditions of transport and are in accordance with DOD-approved procedures.

31. In § 173.61, paragraph (a) is revised to read as follows:

§ 173.61 Mixed packaging requirements.

(a) An explosive may not be packed in the same outside packaging with any other material that could, under normal conditions of transportation, adversely affect the explosive or its packaging unless packaged by DOD or DOE in accordance with § 173.7(a).

* * * * *

§ 173.62 [Amended]

32. In § 173.62, paragraph (d) is removed.

33. In § 173.150, in paragraph (f)(3)(iv), the word "Placarding" is removed and the wording "For bulk packagings only, placarding" is added in its place and paragraph (f)(3)(viii) is revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(f) Combustible liquids. * * *

(3) * * *

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, 177.834(j), and 177.837(d) of this subchapter.

* * * * *

34. In § 173.166, a sentence is added at the end of paragraph (c), a new paragraph (d)(3) is added, and paragraph (e) introductory text is revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(c) * * * This paragraph (c) does not apply to a device classed as Division 2.2.

(d) * * *

(3) Shipments for recycling. When offered for domestic transportation by highway or cargo aircraft only, a serviceable air bag module or seat-belt pretensioner that has been removed from a motor vehicle and manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(e) *Packagings.* The following packagings at the Packing

Group III performance level are authorized for Class 9 devices:

* * * * *

35. In § 173.242, paragraphs (c)(1) and (c)(2) are revised and paragraph (c)(3) is added to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(c) * * *

(1) *Minimum design pressure.* Each tank must have a minimum design pressure of 62 kPa (9 psig);

(2) *Pressure relief devices.* Each tank must be equipped with at least one pressure relief device, such as a spring-loaded valve or fusible plug, conforming to the following:

(i) Each pressure relief device must communicate with the vapor space of

the tank when the tank is in a normal transportation attitude. Shutoff valves may not be installed between the tank opening and any pressure relief device. Pressure relief devices must be mounted, shielded, or drained to prevent the accumulation of any material that could impair the operation or discharge capability of the device;

(ii) Frangible devices are not authorized;

(iii) No pressure relief device may open at less than 34.4 kPa (5 psig);

(iv) If a fusible device is used for relieving pressure, the device must have a minimum area of 1.25 square inches. The device must function at a temperature between 104 °C. and 149 °C. (220 °F. and 300 °F.) and at a pressure less than the design test pressure of the tank, unless this latter function is accomplished by a separate device; and

(v) No relief device may be used which would release flammable vapors under normal conditions of transportation (temperature up to and including 54 °C. (130 °F.)); and

(3) *Venting capacity.* The minimum venting capacity for pressure activated vents must be 6,000 cubic feet of free air per hour (measured at 101.3 kPa (14.7 psi) and 15.6 °C. (60 °F.)) at not more than 34.4 kPa (5 psi). The total emergency venting capacity (cu. ft./hr.) of each portable tank must be at least that determined from the following table:

Total surface area square feet ^{1,2}	Cubic feet free air per hour
20	15,800
30	23,700
40	31,600
50	39,500
60	47,400
70	55,300
80	63,300
90	71,200
100	79,100
120	94,900
140	110,700
160	126,500

¹ Interpolate for intermediate sizes.

² Surface area excludes area of legs.

* * * * *

36. In § 173.247, paragraph (g)(1)(iii)(C) is revised to read as follows:

§ 173.247 Bulk packaging for certain elevated temperature materials (Class 9) and certain flammable elevated temperature materials (Class 3).

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(C) For transportation by rail, a nonreclosing pressure relief device

incorporating a rupture disc conforming to the requirements of § 179.15 of this subchapter.

* * * *

§ 173.306 [Amended]

37. In § 173.306, in paragraph (h)(2), the wording “hazardous substance or hazardous waste” is removed and the wording “hazardous substance, a hazardous waste, or a marine pollutant” is added in its place.

38. In § 173.307, paragraph (a)(4) is revised to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(4) Refrigerating machines, including dehumidifiers and air conditioners, and components thereof, such as precharged tubing containing:

(i) 12 kg (25 pounds) or less of a non-flammable, non-toxic gas;

(ii) 12 L (3 gallons) or less of ammonia solution (UN2672);

(iii) Except when offered or transported by air, 12 kg (25 pounds) or less of a flammable, non-toxic gas;

(iv) Except when offered or transported by air or vessel, 20 kg (44 pounds) or less of a Group A1 refrigerant specified in ANSI/ASHRAE Standard 15; or

(v) 100 g (4 ounces) or less of a flammable, non-toxic liquefied gas.

* * * *

PART 174—CARRIAGE BY RAIL

39. The authority citation for part 174 continues to read as follows:

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

40. In § 174.26, the section heading is revised to read as follows:

§ 174.26 Notice to train crews.

* * * *

41. Section 174.50 is revised to read as follows:

§ 174.50 Nonconforming or leaking packages.

A leaking non-bulk package may not be forwarded until repaired, reconditioned, or overpacked in accordance with § 173.3 of this subchapter. Except as otherwise provided in this section, a bulk packaging that no longer conforms to this subchapter may not be forwarded by rail unless repaired or approved for movement by the Associate Administrator for Safety, Federal Railroad Administration. Notification and approval must be in writing, or through telephonic or electronic means, with subsequent written confirmation

provided within two weeks. For the applicable address and telephone number, see § 107.117(d)(4) of this chapter. A leaking bulk package containing a hazardous material may be moved without repair or approval only so far as necessary to reduce or to eliminate an immediate threat or harm to human health or to the environment when it is determined its movement would provide greater safety than allowing the package to remain in place. In the case of a liquid leak, measures must be taken to prevent the spread of liquid.

PART 175—AGE BY AIRCRAFT

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

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

§ 175.25 [Amended]

43. In § 175.25, paragraph (a)(2)(ii), the wording “6.0 mm (0.2 inch)” is removed and the wording “4.0 mm (0.16 inch)” is added in its place.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

44–45. The authority citation for part 177 continues to read as follows:

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

46. In § 177.834, paragraph (i)(3) is revised to read as follows:

§ 177.834 General requirements.

* * * *

(i) *Attendance requirements.* * * *

(3) Except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), a qualified person “attends” the loading or unloading of a cargo tank if, throughout the process, he is alert and is within 7.62 meters (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation.

* * * *

47. In § 177.837, paragraph (d) is added to read as follows:

§ 177.837 Class 3 (flammable liquid) materials.

* * * *

(d) *Unloading combustible liquids.* For a cargo tank unloading a material meeting the definition for combustible liquid in § 173.150(f) of this subchapter, the qualified person attending the unloading operation must remain within 45.72 meters (150 feet) of the

cargo tank and 7.62 meters (25 feet) of the delivery hose and must observe both the cargo tank and the receiving container at least once every five minutes during unloading operations that take more than five minutes to complete.

48. In § 177.848, paragraph (c) is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * *

(c) In addition to the provisions of paragraph (d) of this section, cyanides or cyanide mixtures may not be loaded or stored with acids if a mixture of the materials would generate hydrogen cyanide.

* * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

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

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

§ 178.3 [Amended]

50. In § 178.3, in paragraph (a) introductory text, the wording “on a non-removable component of the packaging” is added immediately following the word “marked”.

§ 178.345–13 [Amended]

51. In § 178.345–13, in paragraph (a), the wording “and §§ 178.346–13(a), 178.347–13(a) or 178.348–13(a), as applicable” is removed.

52. In § 178.603, paragraph (f)(5) is revised to read as follows:

§ 178.603 Drop test.

* * * *

(f) * * *

(5) Any discharge from a closure is slight and ceases immediately after impact with no further leakage; and

* * * *

§ 178.605 [Amended]

53. In § 178.605, in paragraph (d)(1), in the last sentence, the reference “§ 173.24a (b)(3)” is revised to read “§ 173.24a (d)”.

§ 178.703 [Amended]

54. In § 178.703, in paragraph (a)(1)(ii), the wording “(1) and (2)” is removed.

55. In § 178.815, the following changes are made:

a. In paragraph (c)(4)(i), immediately following the semicolon the word “or” is removed.

b. In paragraph (c)(4)(ii), at the end of the sentence the period is removed and the wording “; or” is added in its place.

c. A new paragraph (c)(4)(iii) is added to read as follows:

§ 178.815 Stacking test.

* * * * *

(c) * * *

(4) * * *

(iii) The packaging may be tested using a dynamic compression testing machine. The test must be conducted at room temperature on an empty, unsealed packaging. The test sample must be centered on the bottom platen of the testing machine. The top platen must be lowered until it comes in contact with the test sample. Compression must be applied end to end. The speed of the compression tester must be one-half inch plus or minus one-fourth inch per minute. An initial preload of 50 pounds must be applied to ensure a definite contact between the test sample and the platens. The distance between the platens at this time must be recorded as zero deformation. The force “A” to then be applied must be calculated using the applicable formula:

Liquids: $A = (n - 1) [w + (s \times v \times 8.3 \times .98)] \times 1.5;$

or

Solids: $A = (n - 1) [w + (s \times v \times 8.3 \times .95)] \times 1.5$

Where:

A = applied load in pounds.

n = minimum number of containers that, when stacked, reach a height of 3 m.

s = specific gravity of lading.

w = maximum weight of one empty container in pounds.

v = actual capacity of container (rated capacity + outage) in gallons.

And:

8.3 corresponds to the weight in pounds of 1.0 gallon of water.

1.5 is a compensation factor that converts the static load of the stacking test into a load suitable for dynamic compression testing.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

56. The authority citation for part 179 continues to read as follows:

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

§ 179.100–20 [Amended]

57. In § 179.100–20, in the table in paragraph (a), the entry for “Water capacity” is removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

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

59. In § 180.417, paragraph (a)(2) is revised to read as follows:

§ 180.417 Reporting and record retention requirements.

(a) * * *

(2) Each motor carrier who uses a specification cargo tank motor vehicle must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized by paragraph (a)(3)(i) or (ii) of this section and retain the documents as specified in this paragraph (a)(2). A motor carrier who is not the owner of a cargo tank motor vehicle must also retain a copy of the vehicle certification report for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. The information required by this section must be maintained at the company's principal place of business or at the location where the vehicle is housed or maintained. The provisions of this section do not apply to a motor carrier who leases a cargo tank for less than 30 days.

* * * * *

Issued in Washington, D.C. on August 4, 2000, under authority delegated in 49 CFR part 1.

John P. Murray,

Acting Deputy Administrator, Research and Special Programs Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 080700C]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2000 Summer Flounder, Scup and Black Sea Bass Commercial Quotas

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

ACTION: Commercial quota adjustment for 2000.

SUMMARY: NMFS issues a listing of additional adjustments to the 2000 commercial summer flounder, scup, and black sea bass quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which specifies that summer flounder landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. Similarly, for scup and black sea bass, the FMP specifies that landings in excess of a quota for a given quota period (scup) or quarter (black sea bass) be deducted from the same quota period or quarter in the following year. The intent of this action is to continue the rate of rebuilding of summer flounder, scup and black sea bass in 2000 as described in the FMP's objectives, while also taking into account 1999 overages of state, period or quarterly quotas.

DATES: Effective August 18, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fisheries Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a document in the **Federal Register** on May 24, 2000 (65 FR 33486), announcing final specifications and preliminary adjustments to the 2000 summer flounder, scup and black sea bass commercial quotas. Additional adjustment is necessary through this notification due to the receipt of late 1999 landings data. The adjustment in this notification may not be final. Additional data including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers could be received from the states that would further alter the quotas.

Summer Flounder

The 1999 quota, preliminary 1999 landings, and the resulting 1999 overages for all states for summer flounder are given in table 1. The following states recorded landings of summer flounder different from those reported in the May 24, 2000, **Federal Register**: MA—+219 lb (99 kg), CT—+13,172 lb (5,975 kg), NY—+10,616 lb (4,815 kg), NJ—+19,780 lb (8,972 kg), DE—59 lb (27 kg), MD—+35,492 lb (16,099 kg), and VA—+65,279 lb (29,610 kg).