

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 176, 177, 178, and 180****[Docket HM-222B; Amdt. Nos. 171-145, 172-149, 173-253, 176-40, 177-87, 178-116, and 180-9]****RIN 2137-AC76****Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is amending the Hazardous Materials Regulations (HMR) based on its review of the HMR and on written and oral comments received from the public concerning regulatory reform. The intended effect of this rulemaking is to reduce unnecessary regulatory burdens on industry and make the regulations shorter and easier to use without compromising public safety. In particular, RSPA is reducing the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers. This action is in response to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

**DATES:** *Effective date.* October 1, 1996.*Compliance date.* Immediate compliance is authorized.*Incorporation by reference.* The incorporation by reference of a publication listed in this amendment is approved by the Director of the Federal Register as of October 1, 1996.**FOR FURTHER INFORMATION CONTACT:** John A. Gale, (202) 366-8553; Office of Hazardous Materials Standards, or Karin V. Christian, (202) 366-4400, Office of the Chief Counsel, RSPA, Department of Transportation, Washington, DC 20590-0001.**SUPPLEMENTARY INFORMATION:****I. Background**

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) and associated procedural rules (49 CFR Parts 106 and 107).

The President also directed that front line regulators " \* \* \* get out of Washington and create grassroots partnerships" with people affected by agency regulations. On April 4, 1995, RSPA published in the Federal Register (60 FR 17049) a notice announcing seven public meetings and requesting comments on its hazardous materials safety program. RSPA requested comments on ways to improve the HMR and the kind and quality of services its customers want. RSPA received over 50 written comments in response to the notice. On July 28, 1995, RSPA published a second notice (60 FR 38888) announcing five more public meetings that were held between September 1995 and January 1996.

On February 20, 1996, RSPA published a Notice of Proposed Rulemaking (NPRM) (61 FR 6478) under Docket HM-222B that proposed to amend various sections of the HMR based on agency initiative and on written and oral comments received from the public on regulatory reform. In particular, RSPA proposed to reduce the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers.

**II. Summary of Amendments**

RSPA received approximately 90 comments to the NPRM. Most of the comments supported the proposals and requested that RSPA adopt them as soon as possible. The commenters, including many small businesses, stated that they would benefit directly from the adoption of the proposal in Docket HM-222B without any reduction of safety. Several commenters commended RSPA's commitment to effecting meaningful regulatory reform. Some commenters, however, did raise concerns about the impact on safety if these proposals were adopted. Commenters also raised issues that were beyond the scope of the proposed rule; however, these issues may be considered in future rulemakings.

RSPA believes that the amendments adopted in this final rule strike a balance between safety and costs imposed on the regulated community. RSPA does not believe that the result of the amendments in this final rule will be a decrease in safety to the public or the environment.

**Part 171**

Section 171.16. In the NPRM, RSPA proposed, except for materials transported by aircraft, to except limited quantities of Packing Group II and III materials from the incident reporting requirements in § 171.16. RSPA stated in the NPRM that continued reporting of

certain incidents involving limited quantities would be of minimal value when weighed against the burden on the carriers required to prepare incident reports.

RSPA received a number of comments on the proposal to revise the incident reporting requirements. Most of the commenters supported the proposal and cited the cost savings to the regulated community without any decrease in safety. Some commenters did not agree with the proposal and stated that large numbers of limited quantity packages could cause a serious incident to occur. Others requested that the proposal be modified to except only that material which can be controlled in the immediate release area. RSPA believes that the continued reporting of incidents involving these materials is of minimal value when weighed against the burden placed on carriers who are required to prepare and submit incident reports. In addition, if a large number of limited quantity packages causes a serious incident to occur that meets a criterion in § 171.15, a written report is still required. Therefore, RSPA is adopting this amendment as proposed.

**Part 172**

Section 172.101. As proposed, RSPA is amending the § 172.101 Table for the entries "Cartridges for weapons, blank, or Cartridges, small arms, blank, UN 0014"; "Cartridges for weapons, inert projectile, or Cartridges, small arms, UN0012"; "Cartridges, power device, UN0323"; and "Cartridges, small arms", in Column (7), by removing the reference "112". Also for these entries, in Column (8A) of the § 172.101 Table, the word "None" or "230", as appropriate, is removed and replaced with "63". The provisions to reclass an explosive as an ORM-D material, currently contained in Special Provision 112 and in § 173.230(b), are relocated to § 173.63(b) to minimize confusion.

RSPA is also amending, as proposed, Column (7) of the § 172.101 Table for the entry "Ethanol or Ethyl alcohol or Ethanol solutions or Ethyl alcohol solutions" by adding Special Provision "24" to allow ethanol the same packing group criteria as alcoholic beverages.

In this final rule, RSPA is also making some minor changes to the headings of some of the columns of the Hazardous Materials Table. The headings for columns (8), (8B) and (8C) are revised to read "Packaging (§ 173.\*\*\*)", "Nonbulk", and "Bulk", respectively. The headings for column (9A), (10), (10A) and (10B) are revised to read "Passenger aircraft/rail", "Vessel; Stowage", "Location", and "Other", respectively. These changes will make

the headings more descriptive of the referenced requirements therein and will also decrease the size of the Hazardous Materials Table.

Section 172.102. As proposed, RSPA is removing Special Provision 112.

Section 172.201. As proposed, RSPA is amending § 172.201(d) by adding a cross-reference to § 172.604(c).

Sections 171.11, 172.203 and 172.324. Currently, all constituents in a mixture or solution that meet the definition of "hazardous substance" in § 171.8 must be identified on shipping papers and package markings. In the NPRM, RSPA proposed to require that at least two hazardous substances be identified on shipping papers and package markings for hazardous materials containing two or more hazardous substances. This proposal is consistent with the technical name requirements in § 172.203(k).

RSPA received several comments in support of this proposed change. Commenters stated these changes would facilitate overall compliance. Some commenters who supported the proposal requested that RSPA provide guidance on which hazardous substances should be identified. A commenter opposed to the change stated that the Environmental Protection Agency (EPA) requires that persons who have custody of hazardous substances report the release of every constituent hazardous substance for these materials.

RSPA does not believe that requiring only two constituent hazardous substances to be identified on shipping papers and package markings will cause persons to be in violation of the EPA's reporting requirements in 40 CFR 302.6. However, in response to the comments, RSPA is not adopting the rule as proposed but is modifying the proposal to require identification of those hazardous substances with the lowest reportable quantities (RQ). For release of mixtures or solutions, including hazardous wastes, where the amount of the mixture or solution is unknown, a person is required under 40 CFR 302.6, to report to the National Response Center (NRC) when the amount of the mixture or solution equals or exceeds the lowest RQ. Therefore, if the two materials with the lowest RQs are identified, a carrier will have sufficient information to satisfy the reporting requirements of the EPA under 40 CFR 302.6. In addition, RSPA is revising § 171.11(d)(1) to be consistent with the changes in §§ 172.203 and 172.324.

RSPA also proposed to remove paragraph (e)(3) to eliminate the requirement to include the statement "RESIDUE: Last Contained \* \* \*" on shipping papers for a shipping description of packages containing only

the residue of a hazardous substance. Many commenters misunderstood the proposal as also removing the requirement to enter the statement "RESIDUE: Last Contained \* \* \*" before the shipping description for a tank car which contains the residue of a hazardous substance. This is not the case. The shipping description for a tank car that contains the residue of a hazardous material, including a hazardous substance, is required by § 172.203(e)(2) to be prefaced with the statement "RESIDUE: Last Contained \* \* \*". The removal of § 172.203(e)(3) eliminates the requirement to preface the shipping description of a residue of a hazardous substance in a package other than a tank car (e.g., drum or cargo tank) with the statement "RESIDUE: Last Contained \* \* \*".

Section 172.316. Based on a comment received under Docket HM-222, RSPA proposed to modify § 172.316 to allow the CLASS 9 label in place of the ORM-D marking on packages of consumer commodities. RSPA received only two comments on this proposal, both opposing it. One of the comments was submitted by the commenter who had suggested the revision. Since the commenter originally requesting the revision believes the change would cause unnecessary confusion and would require the retraining of numerous employees with minimal benefit, RSPA is not adopting the proposal to allow the CLASS 9 label in place of the ORM-D marking.

Section 172.402. As proposed, RSPA is revising § 172.402 by adding an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. These Class 7 materials conform to all requirements in § 173.4, except for their specific activity level, which exceeds permissible limits for a limited quantity radioactive material.

Section 172.500. As proposed, RSPA is amending this section by adding a new paragraph (b)(4) to clarify that small quantities of hazardous materials prepared in accordance with § 173.13 are excepted from the placarding requirements of Subpart F of Part 172.

Section 172.600. As proposed, RSPA is excepting all ORM-D material from the emergency response information and telephone number requirements of Subpart G of Part 172, even when offered for transportation or transported by aircraft.

Section 172.604. Based on its own initiative and petitions for rulemaking, and because of the belief that the costs to implement these requirements

outweigh the benefits, RSPA proposed to except the following materials from emergency response telephone number requirements: (1) Liquid petroleum distillate fuels (e.g., gasoline, propane, and diesel fuel); (2) limited quantities of hazardous materials; and (3) materials described under the shipping names "Engines, internal combustion"; "Battery powered equipment"; "Battery powered vehicle"; "Wheelchair, electric"; "Carbon dioxide, solid"; "Dry ice"; "Fish meal, stabilized"; "Fish scrap, stabilized"; "Castor bean"; "Castor meal"; "Castor flake"; "Castor pomace"; and "Refrigerating machine".

RSPA received numerous comments opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. Commenters opposing the proposed exception included: emergency responders, petroleum transporters, trade associations, State and local agencies, environmental contractors and consultants, and a railroad association. These commenters stated that the benefits of retaining the 24-hour telephone number for liquid petroleum distillate fuels outweigh the costs. Commenters stated that the 24-hour telephone number enables emergency responders to immediately contact the parties involved to arrange for clean-up of a spill. A commenter stated that information on the composition of a particular gasoline may be available only from the shipper through the emergency response telephone number. Other commenters stated that many gasolines contain ethyl alcohol, methyl alcohol or other oxygenating components that traditional firefighting foams are considerably less effective on than are alcohol foams. Commenters also stated that many small fire departments have never handled a major spill involving large volumes of gasoline or propane. The commenters stated that responders need every resource available to them in the event of a hazardous materials spill.

RSPA received several comments from businesses and trade organizations in favor of the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. The commenters agreed with RSPA's statement in the NPRM that emergency responders routinely handle incidents involving liquid petroleum distillate fuels and that it is questionable whether the 24-hour emergency response telephone number could provide emergency responders with any additional information of value beyond that which is required to be carried in the vehicle.

RSPA received few comments on the proposal to except limited quantities, and other miscellaneous materials, from the 24-hour telephone number requirement. Those in favor of the proposal cited the high costs associated with providing an emergency response telephone number against the minimal hazards associated with such small quantities of material. One commenter stated that the exception for the emergency response telephone number for hazardous materials in limited quantities will provide the regulated community with significant relief while not sacrificing safety. Those opposing the proposal stated that since limited quantities of materials are already excepted from other hazard communication requirements, e.g., labeling, that emergency responders are already hampered when responding to an incident involving these materials and that excepting them from the emergency response telephone number would only create more problems for responders.

RSPA believes that providing emergency response information to emergency responders is an important aspect of its hazardous materials safety program. Emergency response information enhances communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents. The intent of the NPRM was to relax the emergency response information requirements for those materials where the costs to maintain the information were believed to outweigh the benefits derived from providing the information. Based on the comments received opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement, RSPA has decided not to adopt the proposed exception for liquid petroleum distillate fuels. Commenters stated that the costs to maintain the 24-hour emergency response telephone number for liquid petroleum distillate fuels do not outweigh the benefits and, therefore, the requirement should be retained. As expressed by one commenter, a propane distributor who would have directly benefited from the exception, the cost to maintain a 24-hour emergency telephone number is minimal and the cost poses no real financial burden, especially considering the safety of emergency response personnel, the public, and the environment.

With regard to the proposed exception for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials, RSPA continues to believe that the costs

to maintain a 24-hour emergency response telephone number outweigh the benefits of providing the information for millions of small shipments. However, RSPA believes that the impact on air transportation safety of excepting "Mercury contained in manufactured articles" from the 24-hour emergency response telephone number requirement requires further study. Therefore, except for "Mercury contained in manufactured articles", RSPA is adopting an exception from the emergency response telephone number requirements of § 172.604 for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials.

Based on its own initiative, RSPA proposed to clarify that more than one emergency response telephone number with different hours of operation may be used to satisfy the requirements of § 172.604. RSPA received numerous comments both in support of and against the proposed clarification. RSPA believes that the issues raised by the commenters need further review and will finalize its decision on this proposal in a future rulemaking. Therefore, in the interim, multiple emergency response phone numbers are authorized on a shipping paper if the requirements of § 172.604 are met.

Sections 172.702 and 172.704. RSPA stated in the notice of public meetings under Docket HM-222 (60 FR 17049) that it would consider extending the requirement for recurrent training from every two years to every three or four years. RSPA received numerous written and oral comments in support of decreasing the frequency specified to retrain hazmat employees in accordance with Subpart H of Part 172. In the NPRM, RSPA proposed to decrease the frequency of recurrent hazmat training from two years to three years. RSPA stated that this frequency is consistent with other training programs, such as the training required under the Transportation of Dangerous Goods Regulations issued by the government of Canada.

RSPA received numerous comments in support of this proposal and many comments in opposition. Commenters supporting the proposal included: shippers, carriers, safety and trade associations, oil and petrochemical companies and associations, a railroad association. Some commenters requested that RSPA extend the training to every four years. The commenters stated that the amendment would significantly reduce costs to the regulated community without any decrease in safety. Commenters who supported the proposal to extend the

training frequency requirements to every three years stated that the change would allow hazmat employers to provide for more cost-effective training of hazmat employees, since training times could be better coordinated to accommodate employee work schedules and varying business cycles. Some commenters who supported the proposal stated that extending the training frequency is consistent with other regulatory requirements (e.g., Canadian regulations). One commenter noted that, although international regulations require training on a two-year cycle, inclusion of the phrase "at least" enables persons involved in international transportation to comply with both requirements without any conflict or confusion. Commenters also stated that if RSPA adopts a change to the training frequency requirements, then a corresponding change to the recordkeeping requirements is also necessary.

Those commenters who opposed the proposed change in training frequency included: trade and service associations, training and consulting organizations, shippers and carriers, and emergency response organizations. These commenters stated that the proposal to increase the training frequency would have a detrimental impact on safety. Some commenters also stated that the proposal will diminish the apparent importance of the DOT program in the eyes of employees and supervisors.

RSPA believes that one of the most important regulatory requirements in the HMR is its training requirement. Proper training increases a hazmat employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials. An effective training program reduces hazardous materials incidents resulting from human error and mitigates the effects of incidents when they occur. The importance of RSPA's training requirements is not diminished by a decrease in the frequency of training from two to three years. However, RSPA is not adopting commenter suggestions to extend the training frequency to every four years. The adoption of a three-year interval for training frequency strikes a balance between an effective training program and the costs that are imposed on the regulated community. Therefore, RSPA is revising the training frequency for hazmat employees from every two years to every three years. In addition, as requested by commenters, RSPA is adjusting the recordkeeping requirements for training records to specify that training records be retained for three years.

In the preamble to the NPRM, RSPA stated: "Except as provided in § 172.704(c), hazmat employees must be trained whenever their hazmat functions change or the requirements are revised, regardless of the minimally required training frequency." A number of commenters were concerned with this statement because they did not see any corresponding proposed change to the HMR. Some commenters also expressed concern with the statement that hazmat employees must be retrained every time a change to the HMR is adopted because it could require retraining several times a year.

Section 172.702 (Subpart H) states that any person who performs a function subject to the HMR may not perform that function unless trained in accordance with the requirements prescribed in the subpart. In addition, a hazmat employer must insure that each hazmat employee is thoroughly instructed in the requirements that apply to functions performed by that employee. If a new regulation is adopted, or an existing regulation is changed, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function specific requirements without regard to the timing of the three year training cycle. It is not necessary to completely retrain the employee sooner than the required three year cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. For example, if a new requirement is added to the shipping paper requirements, a hazmat employee must be instructed regarding the new requirement prior to performance of a function affected by the new or revised rule. It is not necessary to test the hazmat employee, or retain records of the instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle. In order to clarify the training requirements of the HMR, RSPA is revising § 172.702(b) to state that an employee must be instructed in the requirements of the HMR that apply to each function performed by the employee without a reference to the requirements of subpart H (e.g., the training, testing and recordkeeping requirements of § 172.704). This amendment makes it clear that RSPA does not intend that millions of detailed records be created and retained and associated testing be conducted each time a hazmat employee is instructed in regard to a change in the regulations within the three year cycle. Consistent

with this amendment, RSPA is also revising § 172.704(d) to clarify that only records of the training required by § 172.704, and not the subpart, are required to be maintained. In addition, as proposed, RSPA is adding a reference in § 172.702(b) to the exception provided in § 172.704 for employees employed less than 90-days.

RSPA proposed to revise § 172.704(c) to clarify its position concerning the "direct" supervision of a hazmat employee who has not received initial training. RSPA is adopting the amendment, as proposed in the NPRM, to add the word "direct" preceding the word "supervision" in § 172.704(c)(1). RSPA requires that the person providing direct supervision must be able to instruct the employee on how to properly perform the hazmat function, must observe performance of the hazmat function, and must be able to take immediate corrective actions in regard to any function not performed in conformance with the HMR.

#### *Part 173*

Section 173.4. As proposed, RSPA is revising the HMR to permit Division 4.2 and 4.3 materials and hazardous materials identified in paragraph (a)(11) to be shipped under the small quantity provisions. RSPA is also adding a new paragraph (c) to allow small quantities of certain categories of hazardous materials not authorized under this exception to be shipped in accordance with this section if specifically approved by the Associate Administrator for Hazardous Materials Safety. RSPA is also revising the marking requirements in paragraph (a)(10). These changes to § 173.4 are intended to ease burdens on industry and facilitate international transportation of hazardous materials in very small quantities. RSPA received several comments in support of these amendments. One commenter requested that RSPA continue to authorize the previously required marking. RSPA agrees and has modified the amendment to authorize the previously required marking for an additional five years.

Section 173.13. In the NPRM, RSPA proposed to add a new § 173.13 that incorporates, for highway and rail transport only, the provisions of DOT exemptions E-7891 and E-9168 into the HMR. These exemptions, and others commonly referred to as the "poison pack" exemptions, allow small quantities of hazardous materials in special packagings of high integrity to be transported without their primary or subsidiary labels. In addition, RSPA proposed to except these materials from

the placarding and segregation requirements of the HMR.

RSPA received several comments on this issue in support of adopting these exemptions into the HMR, but the commenters also requested further clarification. Two commenters noted that one of the inner packagings required by the exemptions was not included in the proposed new section. Commenters also requested that the section be broadened to include air transport and materials poisonous by inhalation, as presently authorized in the exemptions. Commenters also requested that the term "rigid can" be clarified and that all affected exemptions be identified.

Commenters who opposed adoption of this new section were concerned about the loss of controls that are provided under an exemption. In addition, commenters were concerned that there would be no clear identification on the package that the package is being offered for transportation or transported under the provisions of § 173.13.

RSPA believes that the safety record of the "poison pack" exemption packagings over the years has shown that they are acceptable for inclusion in the HMR. However, several points of clarification and revision to the proposal are necessary. First, RSPA is extending the application of § 173.13 to permit transportation by cargo aircraft. RSPA will continue to monitor the transportation of these packages with materials poisonous by inhalation and by passenger carrying aircraft under the terms of the exemption, and therefore, is not extending the application of the new section to cover these operations. These operations can continue under the applicable exemptions. RSPA is also requiring another level of inner packaging to be consistent with the exemptions. In order to clarify the term "rigid can", RSPA is changing the term to "metal can."

RSPA agrees with commenters who were concerned that packages prepared in accordance with § 173.13 would not be readily identifiable in transportation. Therefore, RSPA is adopting in this final rule a marking requirement similar to that required for small quantities prepared in accordance with § 173.4. Packages prepared in accordance with § 173.13 must be marked, in association with the proper shipping name, with the following statement: "This package conforms to 49 CFR 173.13."

One commenter was concerned that no specific exception from the segregation requirements was proposed in the section, as is provided in the exemptions. RSPA notes that the

segregation requirements of the HMR are based on package labels. Therefore, materials that are excepted from the labeling requirements of the HMR are also excepted from the segregation requirements of the HMR. For clarification, RSPA is revising §§ 172.500 and 173.13 to note that packages conforming to the requirements in § 173.13 are excepted from the placarding requirements of the HMR.

Commenters requested that RSPA identify all of the exemptions potentially affected by the adoption of § 173.13. Those exemptions are DOT E-7891, 7909, 8249, 9168, 10672, 10755, 10891, 10962, and 10977.

Section 173.21. In the NPRM, RSPA proposed to incorporate into § 173.21 the provisions of a competent authority approval for temperature-controlled shipments. RSPA received several comments in support of the proposal, but commenters also requested changes to the section. One commenter noted that no specific reference to cargo tanks or portable tanks was made in the proposed section and questioned whether they were included. Section 173.21(f)(3) does not authorize packagings, but provides methods of stabilization that are authorized by the Associate Administrator for Hazardous Materials Safety. Therefore, cargo tanks or portable tanks are not excluded from the provisions of § 173.21(f)(3).

Several commenters requested that § 173.21(f)(3)(i)(B), which requires the temperature of the material to be measured and entered on a written record at the time the material is filled, only apply to bulk packagings and not to all packagings. The commenters stated that measuring and recording the temperature of every small, individual package as it is filled is an unnecessary burden that would do nothing to enhance transportation safety. RSPA believes that measuring and recording the temperature of the packaging prior to transport is an important part of the approved stabilization process. However, RSPA is revising § 173.21(f)(3)(i)(B) to require determination of the temperature of the package, by appropriate means, at the time it is loaded into the transport vehicle, not when the package is filled. This should eliminate the unnecessary measurement of packages that are in storage and not in transportation.

Section 173.32a. As proposed, RSPA is removing the requirement that an approval agency submit an approval certificate to the Associate Administrator for Hazardous Materials Safety.

Section 173.155. RSPA is amending this section as proposed.

Section 173.171. Sections 173.171 and 177.838(g) prescribe requirements for smokeless powder for small arms. However, § 177.838(g) provides additional relief by allowing inside packages of smokeless powder to be overpacked in UN 4G boxes, provided the net weight of smokeless powder in any one box does not exceed 7.26 kg (16 pounds). This provision is not contained in § 173.171. Therefore, as proposed, RSPA is removing the § 177.838(g) provisions pertaining to classification and packaging, and adding the provision concerning smokeless powder in overpacks to § 173.171. In addition, as proposed, RSPA is broadening the exception for reclassification of smokeless powder to Division 4.1 to include transportation by vessel and cargo aircraft. RSPA received two comments on this proposal. One commenter agreed with the proposal but requested that there be no limit on the amount of material authorized per transport vehicle. In the NPRM, RSPA proposed to extend the application of an existing section, i.e., § 173.171, to other modes of transport, but the amount of material authorized per transport vehicle was not proposed for amendment. RSPA believes that the § 173.171 100-pound limitation on smokeless powder, reclassified as a Division 4.1 material, per transport vehicle is necessary to retain the level of safety that has been maintained for the last several years in the highway and rail modes. One of the major arguments submitted in support of the original regulatory provision was that the 100-pound limit would preclude a major conflagration should these materials become involved in cargo fires. Therefore, RSPA has not adopted the commenter's request to eliminate the 100-pound weight limitation. Another commenter objected to RSPA extending this reclassification to transportation by aircraft because of its potential explosive hazards. This provision is consistent with an exemption (DOT E-9997) that was issued in 1988. Based on the successful experience under this exemption, RSPA believes there is no basis for the suggestion that the reclassification of smokeless powder for small arms to Division 4.1, under special testing and approval procedures would provide an unacceptable level of safety in air transportation. Therefore, RSPA is extending the applicability of § 173.171 to transportation by cargo aircraft.

Section 173.220. RSPA is amending this section as proposed.

Section 173.230. RSPA is amending this section as proposed.

Section 173.435. In § 173.435, RSPA is amending the Table of A<sub>1</sub> and A<sub>2</sub> values by adding an entry for MFP (mixed fission products). This entry was inadvertently left off the table under Docket HM-169A (61 FR 20747).

#### Part 176

Section 176.104. RSPA is amending this section as proposed.

#### Part 177

Section 177.801. RSPA is amending this section as proposed.

Section 177.818. RSPA is removing this section as proposed.

Section 177.821. RSPA is removing this section as proposed.

Section 177.822. RSPA is removing this section as proposed.

Sections 177.824, 177.834, and 180.407. In the NPRM, RSPA proposed to remove §§ 177.824 and 177.834(j) because they duplicate other HMR provisions. RSPA proposed removing § 177.834(b) because RSPA is not aware of any hazardous material that is transported on pole trailers. RSPA also proposed to add a new § 177.834(j) consolidating the provisions of §§ 177.837(d), 177.839(d), and 177.841(d) that require manholes and valves on cargo tanks to be closed prior to transportation.

RSPA received several comments in support of these proposals. One commenter requested that RSPA not delete § 177.824 because it would eliminate the responsibility of a motor carrier who is transporting another party's cargo tank from satisfying the inspection and retesting requirements of Part 180. RSPA agrees with the commenter; however, rather than retaining § 177.824, RSPA is removing it and revising § 180.407 to make it clear that a cargo tank may not be transported unless it conforms to the retest requirements of Part 180. Otherwise, RSPA is adopting these amendments as proposed.

Section 177.835. RSPA is removing paragraphs (k), (l), and (m) as proposed.

Section 177.838. RSPA is amending this section as proposed.

Section 177.839. In the NPRM, RSPA proposed to revise paragraph (a) by limiting the applicability of the paragraph to nitric acid in concentrations of 50 percent or greater. In addition, RSPA proposed removing the paragraph (a) restriction on stacking containers of nitric acid higher than two tiers and all of paragraph (b) because they are outdated and unnecessary. RSPA received one comment that supported the proposed amendments to

§ 177.839 but requested clarification of the term "other material" as used in the section. The term "other material" refers to any other kind of material, including nonhazardous materials. Therefore, RSPA has adopted the amendments as proposed.

Section 177.841. As proposed, RSPA is amending § 177.841, consistent with § 175.630, to authorize the transport of foodstuffs and poisons in the same motor vehicle when loaded into separate closed unit load devices. In addition, RSPA is removing the provision allowing use of the container identified as package "4000" in the National Motor Freight Classification 100-1, for the transport of foodstuffs and poisons on the same motor vehicle. RSPA believes that this container has not been used for some time and, therefore, reference to it is unnecessary. RSPA received several comments in support of this proposal. In addition, one commenter requested that RSPA authorize any Division 6.1 material, except materials poisonous by inhalation, to be transported with food grade material provided both materials are appropriately packaged in performance-oriented containers. RSPA believes this request to be beyond the scope of this rulemaking and has not adopted this commenter's request.

Section 177.848. RSPA is amending this section as proposed.

#### Part 178

Section 178.315. In the NPRM, RSPA proposed removing the Specification MC200 requirements from the HMR because RSPA believes that this container is no longer utilized in hazardous materials service. RSPA received one comment on this proposal stating that the commenter was unaware of any person using the DOT Specification MC200. Therefore, as proposed, RSPA is removing the Specification MC200 requirements from the HMR.

### III. Regulatory Analyses and Notices

#### *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 was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is so minimal that the preparation of a regulatory evaluation is not warranted.

#### *Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101-5127) contains an express preemption provision 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 pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;
- (iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That 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. This final rule clarifies and provides relief from certain regulations governing the transportation of hazardous materials. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

#### *Regulatory Flexibility Act*

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on persons subject to the HMR.

#### *Paperwork Reduction Act*

Information collection requirements subject to approval by the Office of Management and Budget (OMB) are addressed in this final rule in § 171.16 for incident reporting (OMB control number 2137-0039) and subpart C of part 172 and § 172.604 for shipping

papers (OMB control number 2137-0034). Provisions in this final rule will result in minor reduction in information collection burdens under both approvals. RSPA is requesting reinstatement and revision of OMB control number 2137-0039 from OMB and will display, through publication in the Federal Register, the control number when it is approved by OMB. Public comment on this request was invited through publication of a Federal Register notice on March 5, 1996 (61 FR 8706). OMB control number 2173-0034 is currently approved and the change in burden is not sufficient to warrant revision of the approval. Under the Paperwork Reduction Act of 1995, no person generally is required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

#### *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.

#### List of Subjects

##### *49 CFR Part 171*

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

##### *49 CFR Part 172*

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

##### *49 CFR Part 173*

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

##### *49 CFR Part 176*

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

##### *49 CFR Part 177*

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

**49 CFR Part 178**

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

**49 CFR Part 180**

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

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 176, 177, 178, and 180 are amended as follows:

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

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

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

**§ 171.7 [Amended]**

1a. In § 171.7(a)(3), in the table, the entry “International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 27 (1994) (English edition)”, in column 2, the reference “173.21;” is added in appropriate numerical order.

1b. In § 171.11, paragraph (d)(1) is revised to read as follows:

**§ 171.11 Use of ICAO Technical Instructions.**

\* \* \* \* \*

(d) \* \* \*

(1) For a material that meets the definition of a hazardous substance as defined in this subchapter, the shipping paper and package markings must conform to the provisions in § 172.203(c) and 172.324, respectively, of this subchapter.

\* \* \* \* \*

2. In § 171.16, paragraph (c) is revised, paragraph (d)(2) is amended by removing the word “nor” at the end of the paragraph, paragraph (d)(3) is redesignated as paragraph (d)(4), and a new paragraph (d)(3) is added to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

\* \* \* \* \*

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

(i) Consumer commodity.

(ii) Battery, *electric storage*, wet, filled with acid *or* alkali.

(iii) Paint and paint related material when shipped in a packaging of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) \* \* \*

(3) Except for consumer commodities, materials in Packing Group I; or

\* \* \* \* \*

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

3. 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]**

4. In the § 172.101 Hazardous Materials Table, the following amendments are made:

a. The headings for columns (8), (8B), (8C), (9A), (10), (10A), and (10B) are revised to read “Packaging (§ 173. \* \* \*)”, “Nonbulk”, “Bulk”, “Passenger aircraft/rail”, “Vessel Stowage”, “Location”, and “Other”, respectively.

b. For the entries “Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014”, “Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012”, “Cartridges, power device, UN0323”, and “Cartridges, small arms”, in Column (7), special provision “112” is removed.

c. For the entries “Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014”, “Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012”, and “Cartridges, power device, UN0323”, in Column (8A), the word “None” is revised to read “63”.

d. For the entry “Cartridges, small arms”, in Column (8A), the number “230” is revised to read “63”.

e. For the entry “Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions”, in Column (7), the number “24,” is added immediately preceding “T1”, in Packing Group II, and the number “24,” is added immediately preceding “B1” in Packing Group III.

f. For the entry “Smokeless powder for small arms (*100 pounds or less*), NA3178”, in Column (9B), the word “Forbidden” is revised to read “7.3 kg”.

**§ 172.102 [Amended]**

5. In § 172.102, in paragraph (c)(1), special provision “112” is removed.

6. In § 172.201, paragraph (d) is revised to read as follows:

**§ 172.201 General entries.**

\* \* \* \* \*

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number, as prescribed in subpart G of this part.

7. In § 172.203, paragraph (c)(1) is revised to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(c) *Hazardous substances.* (1) Except for Class 7 (radioactive) materials described in accordance with paragraph (d) of this section, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be entered in parentheses in association with the basic description. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

\* \* \* \* \*

**§ 172.203 [Amended]**

8. In addition, in § 172.203, the following amendments are made:

a. In paragraph (e)(2), the phrase “and paragraph (e)(3) of this section” is removed.

b. Paragraph (e)(3) is removed.

9. In § 172.324, paragraph (a) is revised to read as follows:

**§ 172.324 Hazardous substances in non-bulk packagings.**

\* \* \* \* \*

(a) Except for packages of radioactive material labeled in accordance with § 172.403, if the proper shipping name of a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

\* \* \* \* \*

10. In § 172.402, paragraph (d) is revised to read as follows:

**§ 172.402 Additional labeling requirements.**

\* \* \* \*

(d) *Class 7 (Radioactive) Materials.* Except as otherwise provided in this paragraph, each package containing a Class 7 material that also meets the definition of one or more additional hazard classes must be labeled as a Class 7 material as required by § 172.403 of this subpart and for each additional hazard. A subsidiary hazard label is not required on a package containing a Class 7 material that conforms to criteria specified in § 173.4 of this subchapter, except § 173.4(a)(1)(iv) of this subchapter.

\* \* \* \*

11. In § 172.500, paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(6), respectively, and a new paragraph (b)(4) is added to read as follows:

**§ 172.500 Applicability of placarding requirements.**

\* \* \* \*

(b) \* \* \*  
(4) Hazardous materials prepared in accordance with § 173.13 of this subchapter;

\* \* \* \*

12. In § 172.600, paragraph (d) is revised to read as follows:

**§ 172.600 Applicability and general requirements.**

\* \* \* \*

(d) *Exceptions.* The requirements of this subpart do not apply to hazardous material which is excepted from the shipping paper requirements of this subchapter or a material properly classified as an ORM-D.

13. In § 172.604, new paragraph (c) is added to read as follows:

**§ 172.604 Emergency response telephone number.**

\* \* \* \*

(c) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; and

(2) Materials properly described under the shipping names “Engines, internal combustion”, “Battery powered equipment”, “Battery powered vehicle”, “Wheelchair, electric”, “Carbon dioxide, solid”, “Dry ice”, “Fish meal, stabilized”, “Fish scrap, stabilized”, “Castor bean”, “Castor meal”, “Castor flake”, “Castor pomace”, or “Refrigerating machine”.

14. In § 172.702, paragraph (b) is revised to read as follows:

**§ 172.702 Applicability and responsibility for training and testing.**

\* \* \* \*

(b) Except as provided in § 172.704(c)(1), a hazmat employee who performs any function subject to the requirements of this subchapter may not perform that function unless instructed in the requirements of this subchapter that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.

\* \* \* \*

15. In § 172.704, paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (d) are revised to read as follows:

**§ 172.704 Training requirements.**

\* \* \* \*

(c) \* \* \* (1) *Initial training.* A new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided—

(i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

(ii) The training is completed within 90 days after employment or a change in job function.

(2) *Recurrent training.* A hazmat employee shall receive the training required by this subpart at least once every three years.

\* \* \* \*

(d) *Recordkeeping.* A record of current training, inclusive of the preceding three years, in accordance with this section shall be created and retained by each hazmat employer for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include:

\* \* \* \*

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

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

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

17. In § 173.4, the section heading is revised, paragraph (a)(11) is removed, paragraph (a) introductory text, paragraphs (a)(9) and (a)(10) are revised, and a new paragraph (c) is added to read as follows:

**§ 173.4 Small quantity exceptions.**

(a) Small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III),

Division 4.3 (PG II and III), Division 5.1, Division 5.2, Division 6.1, Class 7, Class 8, and Class 9 materials that also meet the definition of one or more of these hazard classes, are not subject to any other requirements of this subchapter when—

\* \* \* \*

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement “This package conforms to 49 CFR 173.4” or, alternatively, until October 1, 2001, with the statement “This package conforms to the conditions and limitations specified in 49 CFR 173.4.”

\* \* \* \*

(c) Packages which contain a Class 2, Division 4.2 (PG I), or Division 4.3 (PG I) material conforming to paragraphs (a)(1) through (a)(10) of this section may be offered for transportation or transported if specifically approved by the Associate Administrator for Hazardous Materials Safety.

18. Section 173.13 is added to Subpart A to read as follows:

**§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.**

(a) A Class 3, 8 or 9, or Division 4.1, 4.2, 4.3, 5.1, or 6.1 material is excepted from the labeling and placarding requirements of this subchapter if prepared for transportation in accordance with the requirements of this section. A material that meets the definition of a material poisonous by inhalation may not be offered for transportation or transported under provisions of this section.

(b) A hazardous material conforming to requirements of this section may be transported by motor vehicle, rail car, or cargo-only aircraft. Only hazardous materials permitted to be transported aboard a cargo-only aircraft by column (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized for transport aboard cargo-only aircraft pursuant to the provisions of this section.

(c) A hazardous material permitted by paragraph (a) of this section must be packaged as follows:

(1) For liquids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging with a maximum capacity not exceeding 1.2 liters. Sufficient outage must be provided such that the inner packaging will not become liquid full at 55 °C (130 °F). The net quantity (measured at 20 °C

(68 °F) of liquid in any inner packaging may not exceed one liter.

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging, and placed in a snugly fitting, metal can.

(iii) The metal can must be securely closed. For liquids that are in Division 4.2 or 4.3, the metal can must be hermetically sealed. For Division 4.2 materials in Packing Group I, the metal can must be tested in accordance with part 178 of this subchapter at the Packing Group I performance level.

(iv) The metal can must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(v) The intermediate packaging must be placed inside a securely closed, outer packaging conforming to § 173.201.

(vi) Not more than four intermediate packagings are permitted in an outer packaging.

(2) For solids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging. The net quantity of material in any inner packaging may not exceed 2.85 kg (6.25 pounds).

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iii) The barrier bag and its contents must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iv) The intermediate packaging must be placed inside an outer packaging conforming to § 173.211.

(v) Not more than four intermediate packagings are permitted in an outer packaging.

(d) The outside of the package must be marked, in association with the proper shipping name, with the statement: "This package conforms to 49 CFR 173.13."

19. In § 173.21, paragraph (f)(3) is revised to read as follows:

**§ 173.21 Forbidden materials and packages.**

\* \* \* \* \*

(f) \* \* \*

(3) Refrigeration may be used as a means of stabilization only when approved by the Associate Administrator for Hazardous Materials Safety. For status of approvals previously issued by the Bureau of Explosives, see § 171.19 of this subchapter. Methods of stabilization

approved by the Associate Administrator for Hazardous Materials Safety are as follows:

(i) For highway transportation:

(A) A material meeting the criteria of this paragraph (f) may be transported only in a transport vehicle, freight container, or motor vehicle equipped with a mechanical refrigeration unit, or loaded with a consumable refrigerant, capable of maintaining the inside temperature of the hazardous material at or below the control temperature required for the material during transportation.

(B) Each package containing a material meeting the criteria of this paragraph (f) must be loaded and maintained at or below the control temperature required for the material. The temperature of the material must be determined by appropriate means and entered on a written record at the time the packaging is loaded.

(C) The vehicle operator shall monitor the inside temperature of the transport vehicle, freight container, or motor vehicle and enter that temperature on a written record at the time the package is loaded and thereafter at intervals not exceeding two hours. Alternatively, a transport vehicle, freight container, or motor vehicle may be equipped with a visible or audible warning device that activates when the inside temperature of the transport vehicle, freight container, or motor vehicle exceeds the control temperature required for the material. The warning device must be readily visible or audible, as appropriate, from the vehicle operator's seat in the vehicle.

(D) The carrier shall advise the vehicle operator of the emergency temperature for the material, and provide the vehicle operator with written procedures that must be followed to assure maintenance of the control temperature inside the transport vehicle, freight container, or motor vehicle. The written procedures must include instructions for the vehicle operator on actions to take if the inside temperature exceeds the control temperature and approaches or reaches the emergency temperature for the material. In addition, the written temperature-control procedures must identify enroute points where the consumable refrigerant may be procured, or where repairs to, or replacement of, the mechanical refrigeration unit may be accomplished.

(E) The vehicle operator shall maintain the written temperature-control procedures, and the written record of temperature measurements specified in paragraph (f)(3)(i)(C) of this section, if applicable, in the same

manner as specified in § 177.817 of this subchapter for shipping papers.

(F) If the control temperature is maintained by use of a consumable refrigerant (e.g., dry ice or liquid nitrogen), the quantity of consumable refrigerant must be sufficient to maintain the control temperature for twice the average transit time under normal conditions of transportation.

(G) A material that has a control temperature of 40 °C (104 °F) or higher may be transported by common carrier. A material that has a control temperature below 40 °C (104 °F) must be transported by a private or contract carrier.

(ii) For transportation by vessel, shipments are authorized in accordance with the control-temperature requirements of Section 21 of the General Introduction of the International Maritime Dangerous Goods Code (IMDG Code).

\* \* \* \* \*

20. In § 173.32a, paragraph (c) is revised to read as follows:

**§ 173.32a Approval of Specification IM portable tanks.**

\* \* \* \* \*

(c) *Disposition of approval certificates.* A copy of each approval certificate must be retained by the approval agency and by the owner of each IM portable tank.

\* \* \* \* \*

**§ 173.155 [Amended]**

21. In § 173.155, in paragraph (b)(1), the wording "4.0 L (1 gallon)" is revised to read "5.0 L (1.3 gallons)".

22. In § 173.171, at the end of paragraph (a) the semicolon is removed and a period is added in its place, the introductory text and paragraph (b) are revised and a new paragraph (d) is added to read as follows:

**§ 173.171 Smokeless powder for small arms.**

Smokeless powder for small arms which has been classed in Division 1.3 may be reclassified in Division 4.1, for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

\* \* \* \* \*

(b) The total quantity of smokeless powder may not exceed 45.4 kg (100 pounds) net mass in:

- (1) One rail car, motor vehicle, or cargo-only aircraft; or
- (2) One freight container on a vessel, not to exceed four freight containers per vessel.

\* \* \* \* \*

(d) Inside packages that have been examined and approved by the

Associate Administrator for Hazardous Materials Safety may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

23. In § 173.220, paragraph (g)(2) is revised to read as follows:

**§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.**

\* \* \* \* \*

(g) \* \* \*

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling, and placarding, respectively) of part 172 or § 172.604 (emergency response telephone number) of this subchapter for transportation by vessel or aircraft.

**§ 173.63 [Amended]**

**§ 173.230 [Removed]**

24. Paragraph (b) of § 173.230 is redesignated as paragraph (b) of § 173.63 and § 173.230 is removed.

24a. In § 173.435, in the Table of A<sub>1</sub> and A<sub>2</sub> values for radionuclides, the following entry is added, in appropriate alphabetical order, to read as follows:

**§ 173.435 Table of A<sub>1</sub> and A<sub>2</sub> values for radionuclides.**

\* \* \* \* \*

Symbol of radionuclide	Element and atomic No.	A <sub>1</sub> (TBq)	A <sub>1</sub> (Ci)	A <sub>2</sub> (TBq)	A <sub>2</sub> (Ci)	Specific activity	
						(TBq/g)	(Ci/g)
MFP		(see § 173.433)		(see § 173.433)			

**PART 176—CARRIAGE BY VESSEL**

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

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

26. In § 176.104, the first sentence of paragraph (i) is revised to read as follows:

**§ 176.104 Loading and unloading Class 1 (explosive) materials.**

\* \* \* \* \*

(i) A landing mat must be used when a draft of nonpalletized Division 1.1 or 1.2 (Class A and B explosive materials) is deposited on deck. \* \* \*

\* \* \* \* \*

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

27. The authority citation for part 177 continues to read as follows:

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

28. Section 177.801 is revised to read as follows:

**§ 177.801 Unacceptable hazardous materials shipments.**

No person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of this subchapter.

**§§ 177.818, 177.821, 177.822, and 177.824 [Removed]**

29. Sections 177.818, 177.821, 177.822, and 177.824 are removed.

30. In § 177.834, paragraph (b) is removed and reserved, and paragraph (j) is revised to read as follows:

**§ 177.834 General requirements.**

\* \* \* \* \*

(j) *Manholes and valves closed.* A person may not drive a cargo tank and a motor carrier may not permit a person to drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

(1) All manhole closures are closed and secured; and

(2) All valves and other closures in liquid discharge systems are closed and free of leaks.

\* \* \* \* \*

**§ 177.835 [Amended]**

31. In § 177.835, paragraphs (k), (l), and (m) are removed.

**§ 177.837 [Amended]**

32. In § 177.837, paragraph (d) is removed.

33. In § 177.838, paragraph (g) is revised to read as follows:

**§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyroforic liquid) materials.**

\* \* \* \* \*

(g) A motor vehicle may only contain 45.4 kg (100 pounds) or less net mass of material described as “Smokeless powder for small arms, Division 4.1”.

\* \* \* \* \*

34. Section 177.839 is revised to read as follows:

**§ 177.839 Class 8 (corrosive) materials.**

(See also § 177.834(a) through (j).)

(a) *Nitric acid.* No packaging of nitric acid of 50 percent or greater concentration may be loaded above any packaging containing any other kind of material.

(b) *Storage batteries.* All storage batteries containing any electrolyte must

be so loaded, if loaded with other lading, that all such batteries will be protected against other lading falling onto or against them, and adequate means must be provided in all cases for the protection and insulation of battery terminals against short circuits.

35. In § 177.841, paragraph (d) is removed and reserved, and paragraph (e)(1) is revised to read as follows:

**§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.**

\* \* \* \* \*

(e) \* \* \*

(1) Bearing a POISON label in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

(i) Overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) Loaded into a closed unit load device and the foodstuffs, feed, or other edible material are loaded into another closed unit load device;

\* \* \* \* \*

**§ 177.848 [Amended]**

36. In § 177.848, paragraph (e)(5), is amended by removing the phrase “ammonium nitrate fertilizer” and adding in its place the phrase “ammonium nitrate (UN 1942) and ammonium nitrate fertilizer”.

**PART 178—SPECIFICATIONS FOR PACKAGINGS**

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

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

**§§ 178.315, 178.315-1, 178.315-2, 178.315-3, 178.315-4, 178.315-5 [Removed]**

38. Sections 178.315, 178.315-1, 178.315-2, 178.315-3, 178.315-4, and 178.315-5 are removed.

**PART 180—CONTINUING  
QUALIFICATION AND MAINTENANCE  
OF PACKAGINGS**

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

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

**§ 180.407 [Amended]**

40. In § 180.407, in paragraph (a)(1), the words “filled and offered for

shipment” are removed and “filled and offered for transportation or transported” are added in their place.

Issued in Washington, DC, on May 17, 1996, under authority delegated in 49 CFR Part 1.

Rose McMurray,

*Acting Deputy Administrator, Research and Special Programs Administration.*

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