

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

[Docket No. HM-215B; Amdt No. 171-149]

RIN 2137-AC82

**Harmonization With the United Nations
Recommendations, International
Maritime Dangerous Goods Code, and
International Civil Aviation
Organization's Technical Instructions****AGENCY:** Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule updates references in the Hazardous Materials Regulations to include the most recent amendments to international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), these amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and aircraft when these international regulations become effective.

DATES: *Effective date:* The effective date of these amendments is June 1, 1997.

Compliance date: Because of international standards which become effective on January 1, 1997, RSPA is authorizing immediate voluntary compliance. However, persons voluntarily complying with these regulations should be aware that petitions for reconsideration may be received and, as a result of RSPA's evaluation of those petitions, the amendments adopted in this final rule could be subject to further revision.

Incorporation by reference. The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of June 1, 1997.

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

SUPPLEMENTARY INFORMATION:**I. Background**

The UN Recommendations are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the Committee of Experts and are distributed to nations throughout the world. They serve as the basis for national, regional, and international modal regulations (specifically the IMDG Code, issued by the International Maritime Organization (IMO), and the International Civil Aviation Organization (ICAO) Technical Instructions, issued by the ICAO Dangerous Goods Panel).

On October 25, 1996, RSPA published a notice of proposed rulemaking under Docket HM-215B [61 FR 55364] to amend the HMR to incorporate provisions adopted in the ninth revised edition of the UN Recommendations, the 1997-98 ICAO Technical Instructions, and Amendment 28 to the IMDG Code. The notice contained proposals which would more fully align the HMR with international air and sea transport requirements which become effective on January 1, 1997. Other proposed changes in the NPRM were based on feedback from the regulated industry and RSPA initiatives. RSPA limited the comment period to 30 days and stated its intent to develop and issue a final rule to coincide with the January 1, 1997 effective date for international air and sea transport requirements. Commenters to the NPRM were very supportive of RSPA's efforts to align the HMR with international standards and urged RSPA to adopt regulations to incorporate the most recent editions of the ICAO Technical Instructions and IMDG Code by January 1, 1997. However, due to an unanticipated delay in publication of the NPRM and a variety of complex issues raised by commenters, RSPA recognizes the impossibility of issuing one final rule by January 1, 1997, that adequately addresses all concerns expressed by commenters. Therefore, RSPA is issuing this final rule to incorporate the latest versions of the ICAO Technical Instructions and IMDG Code to allow voluntary compliance with international standards on January 1, 1997. All other changes to the HMR proposed in the NPRM will be addressed in a subsequent final rule under HM-215B.

In this final rule, RSPA is amending § 171.7 to recognize Amendment 28 to the IMDG Code, which has recently been published by the International Maritime Organization (IMO). This

amendment promulgates numerous miscellaneous changes to the IMDG Code and addresses such matters as classification, labeling, packaging, and documentation. IMO has established January 1, 1997, as the implementation date for these amendments. In § 171.12, the HMR authorize shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations.

This rule also incorporates by reference the 1997-1998 edition of the ICAO Technical Instructions, which becomes effective on January 1, 1997, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation. The offering, acceptance and transportation of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, is authorized in § 171.11 as fully equivalent to the HMR (with certain exceptions) if in conformance with the ICAO Technical Instructions.

This final rule serves as a competent authority approval by authorizing a six-month period for use of either Amendment 27 or Amendment 28 of the IMDG Code and either the 1995-96 or 1997-98 ICAO Technical Instructions. Voluntary compliance with new IMDG Code and ICAO requirements is authorized as of January 1, 1997, but regulated entities may comply with the old requirements until June 1, 1997.

II. Rulemaking Analyses and Notices**A. Executive Order 12866 and DOT
Regulatory Policies and Procedures**

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

The economic impact of this final rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal

hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items (1), (2), (3), and (5) above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the “substantively the same” standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be June 16, 1997 under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule incorporates by reference the 1997–98 ICAO Technical Instructions and Amendment 28 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will not be at an economic disadvantage by being forced to comply with a dual system of regulation. Therefore, I certify that this final rule will not have a

significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. 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 in 49 CFR Part 171

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

In consideration of the foregoing, 49 CFR Chapter I is 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]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under International Civil Aviation Organization (ICAO), for the entry Technical Instructions for the Safe Transport of Dangerous Goods by Air, the date “1995–1996” is revised to read “1997–1998”.

b. Under International Maritime Organization (IMO), the entry “International Maritime Dangerous Goods (IMDG) Code” is amended by removing the wording “1990 Consolidated Edition, as amended by Amendment 27 (1994)” and adding in its place “1994 Consolidated Edition, as amended by Amendment 28 (1996)”.

Issued in Washington, DC on December 9, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

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Federal Railroad Administration

49 CFR 214

[FRA Docket No. RSOR 13, Notice No. 9]

RIN 2130–AA86

Roadway Worker Protection

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing rules for the protection of railroad employees working on or near railroad tracks. This regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities for providing on track safety, as well as employees' rights and responsibilities related thereto; well defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad would be subject to review and approval by FRA.

DATES: *Effective Dates:* This rule is effective January 15, 1997.

Compliance Dates: Each railroad must notify the FRA not less than 30 days before their respective date for compliance. Each railroad must be in compliance with this rule no later than the date specified in the following schedule: For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, March 15, 1997; For each Class II railroad, April 15, 1997; For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, May 15, 1997; For each railroad commencing operations after the pertinent date specified in this paragraph, the date on which operations commence.

FOR FURTHER INFORMATION CONTACT:

Gordon A. Davids, P.E., Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–632–3340); Phil Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–632–3307); or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh