

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 175, 177, 178 and 180****[Docket No. RSPA-97-2905 (HM-166Y)]****RIN 2137-AC41****Transportation of Hazardous Materials; Miscellaneous Amendments****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to make miscellaneous amendments to the Hazardous Materials Regulations (HMR) based on petitions for rulemaking and RSPA initiative. These proposed amendments are intended to update, clarify or provide relief from certain regulatory requirements.

DATES: Comments must be received by November 24, 1997.

ADDRESSES: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590-0001. Comments should identify the docket number, RSPA-97-2905 (HM-166Y) and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted by E-mail to rules@rspa.dot.gov. The Dockets Office is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, 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 notice of proposed rulemaking (NPRM) is designed primarily to reduce regulatory burdens 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 NPRM also is 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agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform.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 also proposing to eliminate, revise, clarify and relax certain other regulatory requirements.

The following is a section-by-section summary of the proposed changes under this notice of proposed rulemaking.

Section-by-Section Review**Part 171****Section 171.7**

The Association of American Railroads (AAR) (P-1315) requested that RSPA update the incorporation by reference of the AAR manual, "AAR Manual of Standards and Recommended Practices, Section C-Part III, Specifications for Tank Cars, Specification M-1002," from the 1992 edition to the 1996 edition. RSPA and the Federal Railroad Administration have reviewed the reference requirements in the 1996 manual and have determined that there are no substantive changes. Therefore, RSPA proposes to incorporate the 1996 edition by reference into the HMR.

Section 171.8

RSPA proposes to add a definition for "self-defense spray" to correspond with the proposed new entry, "Self-defense sprays, non-pressurized, *containing not more than 2 percent tear gas substances*," Class 9. (See § 172.101.) RSPA specifically solicits comments on the use and scope of the word "animal" when defining a self-defense spray as having an irritating or incapacitating effect on a person or animal.

RSPA proposes to revise the definition of "Marine pollutant" by adding a reference to § 171.4, containing the marine pollutant requirements, to facilitate its location by readers. This proposal responds to a petitioner (P-1256) who stated that the exceptions contained in § 171.4 are often overlooked.

Section 171.18

Section 171.18 would be removed and reserved in order to delete an obsolete section concerning registrations filed with the Bureau of Explosives.

Section 171.19

RSPA proposes to revise § 171.19 to terminate all remaining Bureau of Explosives (BOE) approvals, other than those made under approval provisions in Part 179. Since 1979, approvals,

authorizations and registrations issued by the BOE have continued in effect as if issued by the Associate Administrator for Hazardous Materials Safety. Over the years, the regulations on which these BOE approvals were based have been revised or eliminated. The majority of these BOE approvals have been converted to approvals issued by the Associate Administrator for Hazardous Materials Safety (AAHMS). RSPA believes that the remaining BOE approvals are obsolete and proposes to terminate them. Any person holding a BOE approval who is affected by this termination may file a request for issuance of a new approval by the AAHMS.

Part 172**Section 172.101**

RSPA proposes to add two new entries to the Hazardous Materials Table (HMT) and to amend two current entries.

To clarify that both the aerosol and non-aerosol self-defense sprays are subject to the regulations, RSPA proposes to add two new entries, "*Self-defense sprays, aerosol containing not more than 2% tear gas substances, see Aerosols*" and "*Self-defense sprays, non-pressurized, containing not more than 2 percent tear gas substances*" to the HMT. The Federal Aviation Administration (FAA) has encountered numerous problems with airline passengers attempting to carry on their persons self-defense sprays, such as mace and pepper spray, having an irritating or incapacitating effect. The Federal Aviation Regulations (14 CFR 107.21 and 108.11) prohibit the possession of "deadly or dangerous weapons" on one's person or in carry-on baggage aboard aircraft. "Deadly or dangerous weapons" include disabling or incapacitating items such as tear gas, mace, pepper spray and similar chemicals and gases. The spray from these devices is released from either an aerosol or a pump. The aerosol type sprays are to be transported as aerosols. The HMT currently includes the entry, "*Tear gas devices, with not more than 2 percent tear gas substances, by mass*," which references the entry for aerosols. RSPA is aware of misunderstanding as to how these materials are classed and described under the HMR. Both definitions for Class 6 and Class 9 address irritating materials, but do not specify criteria. Also, there is no specific entry for devices that are not aerosols. In cases where the substance contained in a device does not meet the criteria of any of Classes 1 through 8,

there has been uncertainty as to whether they are subject to the regulations.

RSPA regards self-defense sprays which do not meet toxicity criteria for Class 6 as meeting the criterion for Class 9 given in § 173.140 (i.e., they could cause extreme annoyance or discomfort to a flight crew member so as to prevent the correct performance of assigned duties) and is adding an entry in the HMT to regulate them for transportation by aircraft only.

Consistent with the entry for "Tear gas devices, with not more than 2 percent tear gas substances, by mass," RSPA proposes to add a new entry "*Self-defense sprays, aerosol containing not more than 2% tear gas substances,*" which will refer to aerosols. RSPA also proposes to add a new entry "Self-defense sprays, non-pressurized, containing not more than 2 percent tear gas substances," Class 9, which would be assigned the identification number NA3334. This number corresponds to a newly created UN entry, UN3334, "Aviation regulated liquid, n.o.s." which RSPA will propose for inclusion in the HMR in a later proposal to implement changes introduced in the tenth revised edition of the UN Recommendations. Related changes are proposed to § 171.8 to add a definition for self-defense sprays and to § 175.10 to clarify that these items are not allowed to be carried in the passenger compartment of an aircraft and provide for carriage of a device by a passenger in checked baggage.

RSPA proposes to amend the entry, "Detonators, non-electric for blasting," UN0455 in Column (8A), by correcting the erroneous reference "none" for packaging exceptions to read "63(f), 63(g)."

RSPA proposes to amend the entry "Trifluoroacetyl chloride" by adding Special Provision "B7" to Column (7). Multi-unit tank car tanks, containing "Trifluoroacetyl chloride," are authorized to be fitted with fusible plugs in accordance with § 179.300–15. A petitioner (P–1254), stating that it is the primary supplier and shipper of "Trifluoroacetyl chloride" in the United States, requested that the entry be amended by adding, in Column (7), Special Provision B7. Special Provision B7 prohibits the use of pressure relief devices on multi-unit tank car tanks and requires openings for relief devices to be plugged or blank flanged. The petitioner stated that past experience has shown that fusible plugs used on cylinders in "Trifluoroacetyl chloride" service are more likely to corrode or to be mishandled when compared to solid steel plugs. In addition, the petitioner stated that packagings used to contain

other similar poisonous by inhalation hazardous materials do not allow the use of fusible plugs and that the use of pressure relief devices on cylinders containing "Trifluoroacetyl chloride" is prohibited. RSPA believes the petitioner's request has merit and proposes to amend the entry "Trifluoroacetyl chloride," in Column (7), by adding "B7" to ensure the safe transportation of this material in multi-unit tank car tanks.

Section 173.32c

RSPA proposes to revise paragraph (j) to allow monolithic solid materials to be loaded into IM portable tanks to a filling density of less than 80 percent by volume. Paragraph (j) currently specifies that an IM portable tank, or compartment thereof, having a volume greater than 7,500 liters may not be loaded to a filling density less than 80 percent by volume. This provision was intended to cover liquid and flowable solid hazardous materials in order to minimize the risk of accidents resulting from the sloshing and shifting of the center of gravity. A monolithic solid material which conforms to the tank geometry, such that the sloshing and shifting of the center of gravity is not possible, can be safely transported in an IM portable tank at a filling density of less than 80 percent by volume.

Section 173.40

Paragraph (d)(1) would be revised to clarify that a box, used to provide protection for the cylinder and, unless the cylinder has a protective collar or neck ring, protection to the valve against accidental functioning and damage, must be made of wood, fiberboard or plastic rather than made to a specific UN standard. This proposed change would be consistent with similar provisions in § 173.301 (g)(2) and (k) that permits a nonspecification box to be used for protection of the cylinder or valve.

Section 173.56

RSPA proposes to add new paragraphs (b)(1) (i) and (ii) to authorize a person approved by the Associate Administrator for Hazardous Materials Safety (AAHMS) to examine and make recommendations on the classification of explosives. The proposed paragraphs set out the criteria that a person must meet and demonstrate to qualify for approval to examine explosives and make recommendations to RSPA regarding appropriate shipping descriptions, divisions and compatibility groups. A person applying for this approval and a person who has obtained such an approval must meet all

the criteria in paragraphs (b) (i) and (ii) and the provisions in Subpart H of Part 107. The person applying for this approval must demonstrate that the applicant is a resident of the United States; does not manufacture explosives; is not controlled by, or financially dependent upon, any entity that manufactures or markets explosives; does not perform any type of work in the explosives industry other than testing for determination of hazard class or performance; and is or employs a person who will sign examination and test reports and make recommendations for classifications to the AAHMS and who has at least ten years experience in the examination, testing and evaluation of explosives. To demonstrate compliance with each of these criteria, appropriate documentation must be submitted to the AAHMS. RSPA requests comments on all of the criteria, and in particular, the requirement for ten years' experience.

RSPA also proposes to revise paragraph (i) by removing wording including the phrase "following examination in accordance with paragraph (h) of this section." This proposed change will facilitate the classification of a material or device without prior examination when adequate data is available.

Section 173.156

Paragraph (b)(1) grants an exception from the marking requirements in § 172.316 for ORM–D materials when unitized in cages, carts, boxes or similar overpacks and when certain other conditions are met. As § 172.316 primarily addresses the required format to display the ORM–D marking, a number of inquiries have been directed to RSPA requesting guidance as to whether the exception in § 173.156(b)(1) provides relief from the requirement to mark the proper shipping name, also. RSPA does not require the proper shipping name or other markings on packages specified in Subpart D of Part 172 to appear on cages, carts, boxes or similar overpacks containing ORM–D materials that are offered for transportation or transported according to § 173.156(b)(1). To remove that ambiguity, RSPA proposes to revise § 173.156(b)(1) by specifically stating that the marking requirements of Subpart D of Part 172 do not apply.

Section 173.308

RSPA proposes to revise paragraph (b), which contains an exception from the requirements of Parts 172 and 177, for transporting up to 1,500 cigarette lighters on one motor vehicle by highway. The revision would clarify

that only the hazard communication requirements in Subparts C through G and the training requirements in Subpart H are excepted with respect to Part 172. RSPA has received several inquiries as to whether Special Provision N10 applies if Part 172 is excepted. The provisions set forth in Special Provision N10 apply. As stated in § 172.102(a)(2), if a special provision imposes limitations or requirements in addition to the packaging provisions referenced in Column 8 of the § 172.101 Table (e.g., § 173.308), packagings must conform to the requirements of the special provision. RSPA also is proposing to require that the outer packaging be marked with the required proper shipping name in the § 172.101 Hazardous Materials Table or with the words "CIGARETTE LIGHTERS" and the total number of devices contained in the package. This marking will more effectively communicate the presence of these hazardous materials during transport and will provide a carrier with the information necessary to determine if the exceptions from Part 172 (hazard communication and training requirements) and Part 177 requirements apply.

Section 173.469

In paragraph (a)(4)(i), the value of 1.3×10^{-24} would be amended to read 1.3×10^{-4} in order to correct a printing error.

Part 175

Section 175.10

RSPA proposes to amend this section by revising paragraph (a)(4) to clarify that all types of self-defense sprays are prohibited from being transported by air in a passenger compartment, either on one's person or in carry-on baggage. However, one self-defense device, not exceeding 118 ml (4 fluid ounces) per passenger, would be allowed in checked baggage, provided the device incorporates a positive means to prevent accidental discharge. Also see earlier preamble discussion to §§ 171.8 and 172.101. This revision also would clarify that the quantity limits in paragraphs (a)(4)(i) and (a)(4)(ii) apply to both medicinal and toilet articles and to Division 2.2 aerosols for sporting or home use.

Section 175.25

Paragraph (a) requires that aircraft operators display notices warning passengers against carrying undeclared hazardous materials aboard aircraft, in their luggage or on their persons. The notice wording, in paragraph (a)(1), contains obsolete information on the

statutory citation and the penalties. To reflect codification of the Federal hazardous material transportation law under 49 U.S.C. 5101–5127, RSPA proposes to revise the citation "(49 U.S.C. 1809)" to read "(49 U.S.C. 5124)". In addition, current paragraph (a)(1) states that each notice must state, "A violation can result in penalties of up to \$25,000 and five years' imprisonment (49 U.S.C. 1809)." In 1990, Congress amended the Federal hazardous materials transportation law to increase criminal penalties from \$25,000 to penalties provided by Title 18 of the United States Code. Title 18 provides for fines of \$250,000 for individuals and \$500,000 for companies. RSPA believes that the cost to change the notices each time the penalty amount is increased is unnecessarily burdensome for aircraft operators. Therefore, RSPA proposes to amend the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) would be added to allow aircraft operators to display existing notices containing the obsolete language until January 1, 2002.

RSPA proposes, also, to lower the quantity limit for medicinal and toilet articles carried in a passenger's luggage from 75 ounces to 70 ounces, consistent with the exception provided in § 175.10(a)(4)(i).

Section 175.26

This section requires each person who engages in the acceptance or transport of cargo for transportation by aircraft to display a notice, to persons offering such cargo, of the applicable requirements for hazardous materials aboard aircraft. RSPA proposes to amend the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) would be added to allow each person who accepts or transports cargo for transportation by aircraft to display existing notices containing the obsolete language until January 1, 2002.

Part 177

Section 177.834

RSPA proposes to permit an IM portable tank to be unloaded while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345–11 and the IM portable tank is attended during the unloading, as currently required for cargo tank motor

vehicles under § 177.834(i). The last sentence in paragraph (h) would be revised to permit the unloading of an IM portable tank without being removed from the motor vehicle. A new paragraph (o) would contain the tank outlet requirement and require compliance with the attendance requirements in paragraph (i). Section 171.8 defines a portable tank as a "bulk packaging (except a cylinder having a water capacity of 1,000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means * * *". Thus, portable tanks are not intended to be filled or emptied while attached to a transport vehicle or a ship during transportation. This is in contrast with the definition of a cargo tank which states "* * * which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle." Because of the size and weight of many fully loaded IM portable tanks, there are increasing demands to unload these portable tanks while they remain on the transport vehicle with the power unit attached. RSPA believes that requiring consignees to have hoisting equipment at their unloading facilities and requiring a fully loaded portable tank to be removed from the vehicle is more burdensome and less safe than allowing the tank to remain on the vehicle during unloading.

Section 177.848

Based on a Federal Highway Administration initiative, in the paragraph (f) Compatibility Table for Class 1 (Explosive) Materials, the entry "4" for compatibility groups B and D suggests that all items in groups B and D may be transported together. Groups B and D are not compatible. However, a domestic exception (4) is allowed for Detonators when they are transported in accordance with restrictions in § 177.835(g). To avoid the possibility of incompatible explosives being transported together, RSPA proposes to clarify the restriction by replacing the entry "4" with the entry "X₍₄₎".

Part 178

Section 178.65

Paragraph (i)(2)(viii)(A) is revised to update the citation "49 U.S.C. 1809" to read "49 U.S.C. 5124."

Sections 178.352 through 178.364

Several specification packaging requirements for radioactive materials

contain obsolete section references. RSPA proposes to update these section references.

Part 180

Section 180.405

The regulations at § 173.33(b)(1), in effect prior to December 31, 1990, read: "A cargo tank of the specification listed in Column 1 may be used when authorized in this part, provided the tank construction began before the date in Column 2." This provision applied to MC 300, 301, 302, 303, 304, 305, 310, 311 and 330 cargo tank motor vehicles. RSPA proposes to revise paragraph (c)(1) to recognize that the date marked on these older cargo tanks was the date initial construction began rather than the date construction was completed. This proposed wording also is consistent with the wording in paragraph (b) of this section.

In addition, paragraph (f) would be revised to allow the continued use of a cargo tank equipped with a self-closing system before September 1, 1993, but remarked and certified after that date.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed 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 proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. This determination may be revised as a result of public comment.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These 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 those 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.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (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. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects.

C. Regulatory Flexibility Act

This proposed rule would amend miscellaneous provisions in the HMR, generally to clarify those provisions and to relax requirements that are overly burdensome. The proposed 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 proposed 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 proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

D. 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 OMB control number. This NPRM does not propose any new information collection burdens. Information collection

requirements addressing the approval of explosives in § 173.56 are currently approved under OMB approval number 2137-0557. This approval expires July 31, 1999.

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.

F. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$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 171

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

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

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

49 CFR Part 175

Hazardous materials transportation, Air 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, Motor vehicle safety, 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 chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

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

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

§ 171.7 [Amended]

2. In the § 171.7(a)(3) Table, under “Association of American Railroads”, for the entry “AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002”, the date “September 1992” would be revised to read “January 1996”.

3. In § 171.8, the following definition is added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Self-defense spray means an aerosol or non-pressurized device containing a material:

- (1) Intended to have an irritating or incapacitating effect on a person or animal, but not more than 2 percent by mass, of a tear gas substance; and
- (2) Meeting no hazard criteria other than § 173.132(a)(2) or § 173.140(a) of this subchapter and, for an aerosol, Division 2.1 or 2.2.

* * * * *

§ 171.8 [Amended]

4. In addition, in § 171.8, for the definition “Marine pollutant”, in the first sentence, the wording “this subchapter and,” would be removed and “this subchapter (also see § 171.4) and,” would be added in its place.

§ 171.18 [Removed and Reserved]

5. Section 171.18 would be removed and reserved.

6. Section 171.19 would be revised to read as follows:

§ 171.19 Approvals or authorizations issued by the Bureau of Explosives.

Effective [90 days from the effective date of the Final Rule], all approvals or authorizations issued by the Bureau of Explosives (BOE), other than as authorized in part 179 of this subchapter, are no longer valid.

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

7. The authority citation for part 172 would continue to read as follows:

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

8. In § 172.101, the Hazardous Materials Table would be amended by adding the following entries, in appropriate alphabetical order, 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 (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*		*		*	*		
	x[ADD]. Self-defense sprays, aerosol, containing not more than 2% tear gas substances, see Aerosols, etc.												
+AD	Self-defense sprays, non-pressurized, containing not more than 2% tear gas substances.	9	NA3334	III	9		155	203	None	No limit	No limit		
		*	*		*	*		*		*	*		

§ 172.101 [Amended]

9. In addition, in § 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the entry, “Detonators, non-electric for *blasting*”, UN0455, in Column (8A), the reference “none” would be revised to read “63(f), 63(g)”.

b. For the entry “Trifluoroacetyl chloride”, in Column (7), Special Provision “B7,” would be added immediately following “2,”.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 would continue to read as follows:

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

11. In § 173.32c, paragraph (j) would be revised to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(j) An IM portable tank or compartment thereof, having a volume greater than 7,500 liters, may not be loaded with hazardous material liquid or nonmonolithic solids to a filling density less than 80 percent by volume.

* * * * *

§ 173.40 [Amended]

12. In § 173.40, in paragraph (d)(1), in the first sentence, the wording “4C1, 4D, 4F, 4G, 4H1 or 4H2 box” is removed and “wood, fiberboard or plastic box” is added in its place.

13. In § 173.56, paragraph (b)(1) would be revised to read as follows:

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

* * * *

(b) * * *

(1) Except for explosives made by or under the direction or supervision of the Departments of Defense or Energy, a new explosive must:

(i) Be examined and assigned a recommended shipping description, division and compatibility group, based on the tests and criteria prescribed in §§ 173.52, 173.57 and 173.58, by a person who—

(A) Is a resident of the United States;

(B) Has (directly or through an employee) at least ten years of experience in the examination, testing and evaluation of explosives;

(C) Does not manufacture or market explosives, and is not controlled by or financially dependent on any entity that manufactures or markets explosives, and whose work with respect to explosives is limited to examination, testing and evaluation; and

(D) Is approved by the Associate Administrator for Hazardous Materials Safety under the provisions of subpart H of part 107 of this chapter.

(ii) Receive a written approval and EX-number from the Associate Administrator for Hazardous Materials Safety. A person requesting approval of a new explosive must submit to the Associate Administrator for Hazardous Materials Safety a report of examination and assignment of recommended shipping description, division, and compatibility group prepared in accordance with paragraph (b)(1)(i) of this section.

* * * *

§ 173.56 [Amended]

14. In addition, in § 173.56, in paragraph (i), the wording “, following examination in accordance with paragraph (b) of this section, revise its” would be removed and the wording “make a” would be added in its place.

15. In § 173.156, paragraph (b)(1) introductory text would be revised to read as follows:

§ 173.156 Exceptions for ORM materials.

* * * *

(b) * * *

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of Part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for materials classed as ORM-D when—

* * * *

16. In § 173.308, paragraph (b) would be revised to read as follows:

§ 173.308 Cigarette lighter or other similar device charged with fuel.

* * * *

(b) When no more than 1,500 devices covered by this section are transported in one motor vehicle by highway, the requirements of subparts C through H of part 172, and part 177 of this subchapter do not apply. However, each person who offers for transportation or transports the devices or prepares the devices for shipment must be informed of the requirements of this section. The outer packaging, as specified in Special Provision N10 of § 172.102(c)(5) of this subchapter, must be plainly and durably marked with the required proper shipping name specified in § 172.101 of this subchapter or the words “CIGARETTE LIGHTERS” and the number of devices contained in the package.

* * * *

§ 173.469 [Amended]

17. In § 173.469(a)(4)(i), in the second sentence, the mathematical expression “ (1.3×10^{-24}) ” would be removed and “ (1.3×10^{-4}) ” would be added in its place.

PART 175—CARRIAGE BY AIRCRAFT

18. The authority citation for part 175 would continue to read as follows:

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

19. In § 175.10, paragraph (a)(4) would be revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) When carried by a passenger or crew member for personal use, the following materials that, in the aggregate, do not exceed 2kg (4.4 pounds) by mass or 2 liters (68 fluid ounces) by volume and where the capacity of each container does not exceed 0.5kg (1.1 pounds) by mass or 470 ml (16 fluid ounces) by volume are subject to the following conditions:

(i) Non-radioactive medicinal and toilet articles (including aerosols), may be carried in checked or carry-on baggage

(ii) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 ml (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only

(iii) Other aerosols in Division 2.2 with no subsidiary risk may be carried in checked baggage only.

* * * *

20. In § 175.25, in paragraph (a)(1), the second and fifth full paragraphs of the notice would be revised and a new paragraph (a)(4) would be added to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

(a) * * *

(1) * * *

A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124).

* * * *

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

* * * *

(4) Notwithstanding the requirements of paragraph (a)(1) of this section, a notice with the wording “A violation can result in penalties of up to \$25,000 and five years imprisonment. (49 U.S.C. 1809)” may be used until December 31, 2001.

* * * *

21. In § 175.26, paragraph (a)(2) is revised and a new paragraph (a)(4) is added to read as follows:

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) * * *

(2) A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124).

* * * *

(4) Notwithstanding the requirements of paragraph (a)(2) of this section, a notice with the wording “A violation can result in penalties of up to \$25,000 and five years imprisonment (49 U.S.C. 1809)” may be used until December 31, 2001.”

* * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

22. The authority citation for part 177 would continue to read as follows:

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

§ 177.834 [Amended]

23. In § 177.834, in paragraph (h), in the next to the last sentence, the wording “cargo tank” would be removed and the wording “cargo tank or IM portable tank” would be added in its place and a new paragraph (o) would be added to read as follows:

§ 177.834 General requirements.

* * * *

(o) *Unloading of IM portable tanks.*
An IM portable tank may be unloaded

while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345-11 of this subchapter and the tank is attended by a qualified person during the unloading in accordance with the requirements in paragraph (i) of this section.

§ 177.848 [Amended]

24. In § 177.848, in paragraph (f) in the Compatibility Table for Class 1 (Explosive) Materials, for compatibility group B, under the column headed "D" and for compatibility group D, under the column headed "B", the entry "4" would be removed and "X₍₄₎" would be added in both places.

PART 178—SPECIFICATIONS FOR PACKAGINGS

25. The authority citation for part 178 would continue to read as follows:

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

§ 178.352-4 [Amended]

26. In § 178.352-4, at the end of the section, the section reference "§ 178.103(3)(c)(1)" would be revised to read "§ 178.352-3(c)(1)".

§ 178.354-2 [Amended]

27. In § 178.354-2, in the first sentence of paragraph (a), the section reference "§ 178.104-5" would be revised to read "§ 178.354-5".

§ 178.354-3 [Amended]

28. In § 178.354-3, in paragraph (c) introductory text, the section reference "§ 178.104-3(a)(1)" would be revised to read "paragraph (a)(1) of this section".

§ 178.354-5 [Amended]

29. In § 178.354-5, in paragraph (a), the wording "§ 173.24 of this chapter" would be revised to read "§ 178.3".

§ 178.356-4 [Amended]

30. In § 178.356-4, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

§ 178.358-3 [Amended]

31. In § 178.358-3, the following changes would be made:

a. In paragraph (b)(6), the section reference "§ 178.121-5(c)" would be revised to read "§ 178.358-5(c)".

b. In paragraph (c), the section reference "§ 178.121-5(b)" would be revised to read "§ 178.358-5".

§ 178.358-5 [Amended]

32. In § 178.358-5, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

§ 178.360-2 [Amended]

33. In § 178.360-2, the section reference "§ 178.34-4" would be revised to read "§ 178.360-4".

§ 178.362-3 [Amended]

34. In § 178.362-3, in paragraph (b), the section reference "§ 178.104-4" would be revised to read "178.354-4".

§ 178.364-5 [Amended]

35. In § 178.364-5, in paragraph (a), the wording "§ 173.24 of this subchapter" would be revised to read "§ 178.3".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

36. The authority citation for part 180 would continue to read as follows:

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

37. In § 180.405, paragraph (c)(1) would be revised, paragraph (f)(7) would be redesignated as paragraph (f)(8) and new paragraph (f)(7) would be added to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(c) * * *

(1) A cargo tank made to a specification listed in Column 1 of Table 1 or Table 2 of this paragraph (c)(1) may be used when authorized in this part, provided—

(i) The cargo tank initial construction began on or before the date listed in Table 1, Column 2, as follows:

TABLE 1

Column 1	Column 2
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.

(ii) The cargo tank was marked or certified before the date listed in Table 2, Column 2, as follows:

TABLE 2

Column 1	Column 2
MC 306, MC 307, MC 312	Sept. 1, 1995.

* * * * *

(f) * * *

(7) A cargo tank remarked and certified in conformance with this paragraph (f) is excepted from the provisions of paragraph (c) of this section.

* * * * *

Issued in Washington, DC on September 16, 1997, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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