

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0578.)

#### **§ 17.905 Medical records.**

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)

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## **DEPARTMENT OF TRANSPORTATION**

### **Research and Special Programs Administration**

#### **49 CFR Part 171**

[RSPA Docket No. 02-13658 (HM-215E)]

RIN 2137-AD41

### **Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Incorporation by Reference**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations (HMR) by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). This action is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft and vessel after these international standards become effective. The other changes proposed in the notice of proposed rulemaking (NPRM) under this docket will be addressed in a separate rule.

**DATES:** *Effective date:* The effective date of these amendments is January 8, 2003.

*Voluntary compliance date:* Compliance with the regulations, as amended herein, is authorized as of January 1, 2003.

*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 January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366-8553, or Shane Kelley, International Standards, telephone (202) 366-0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 3, 2002, RSPA published a notice of proposed rulemaking (NPRM) under Docket Number RSPA-2002-13658 (HM-215E), 67 FR 72034, that proposed changes to more fully align the HMR with international standards. Proposed changes were to update the incorporations by reference of three international standards and to solicit comments by January 2, 2003. The standards are Amendment 31 to the IMDG Code, the 2003-2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations. We received no comments opposing the incorporation of these updated standards. We are issuing this final rule adopting only the incorporation by reference materials to allow their use beginning January 1, 2003, the effective date of the international standards. Our intent is to prevent disruption for persons transporting hazardous materials in international commerce.

##### **Discussion of Standards and Amendments**

Amendment 31 to the IMDG Code, which was recently published by the International Maritime Organization (IMO), contains miscellaneous changes to the IMDG Code concerning classification, labeling, packaging, and documentation. The IMO has established January 1, 2003, as the implementation date for these amendments and is authorizing a one-year transition period, until January 1, 2004, for compliance with the new requirement. Amendments 30 and 31 are authorized for use until January 1, 2004, at which time all shipments must conform to Amendment 31. With certain exceptions, we authorize in § 171.12 of the HMR, shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. At least 150 countries, with combined merchant fleets accounting for more

than 98% of the world's gross tonnage, use the IMDG Code as a basis for regulating vessel transport of hazardous materials.

The 2003-2004 edition of the ICAO Technical Instructions is effective January 1, 2003. The revised edition incorporates numerous miscellaneous changes concerning classification, labeling, packaging and documentation. In § 171.11 of the HMR, we authorize the offering, accepting and transporting of hazardous materials by air when prepared in conformance with the ICAO Technical Instructions and by motor vehicle both before and after air transportation, with certain exceptions. Virtually all shipments of hazardous materials transported internationally by aircraft are transported in accordance with the ICAO Technical Instructions, as well as the majority of the domestic shipments. The ICAO Technical Instructions are updated every two years.

The twelfth revised edition of the UN Recommendations is also effective January 1, 2003. The UN Recommendations are not regulations but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for the IMDG Code and the ICAO Technical Instructions.

Uniform national and international hazardous materials transportation regulations enhance transportation safety and facilitate trade of hazardous materials. International carriers engaged in the transportation of hazardous materials by air generally elect to comply with the ICAO Technical Instructions, while vessel operators generally elect to comply with the IMDG Code. In so doing, these carriers are able to train their hazmat employees in a single set of hazardous materials transportation requirements, thereby minimizing the possibility of improperly transporting a shipment of hazardous materials because of differences in domestic regulations. Authorizing the use of the updated editions of international standards will facilitate the international transportation of hazardous materials by aircraft and vessel by ensuring a basic consistency between the HMR and the international regulations.

Based on the above discussion, we are revising § 171.7, to incorporate by reference Amendment 31 to the IMDG Code, the 2003-2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations.

### Sequence of Optional Shipping Paper Description in the NPRM

The December 3, 2002 NPRM contains an error in § 172.203(b), pertaining to the proposed optional sequence of information for the basic description on shipping papers. We intended that the proposed description be identical to that specified in the UN Recommendations, *ie.*, identification (ID) number, proper shipping name, hazard class, subsidiary hazard, and packing group. A correct example would be "UN2744, Cyclobutyl chloroformate, 6.1, (8.3), PG II." The proposed rule incorrectly specified the order of sequence as ID number, hazard class, subsidiary hazard, proper shipping name, and packing group.

### 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]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors and training companies.

Adoption of the amendments in this final rule should result in minimal cost savings by easing the regulatory compliance burden for shippers engaged in domestic and international commerce by aircraft and vessel. Although preparation of a regulatory impact analysis or regulatory evaluation is not warranted because these amendments do not impose mandatory additional requirements, a preliminary regulatory evaluation addressing the December 3, 2002 NPRM is available for review in Docket Number RSPA-2002-13658.

#### B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship

between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

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

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials 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 materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5), above, and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. Without adoption of the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be April 8, 2003.

#### C. Executive Order 13175

This final rule was analyzed in accordance with the principles and

criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with, and authorizing the use of, international standards contained in the 2003-2004 ICAO Technical Instructions and Amendment 31 to the IMDG Code. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities such as chemical users and suppliers. The total net increase in costs to small businesses in implementing this rulemaking is minimal. We believe that any costs associated with adoption of these amendments will be outweighed by the benefits. This final rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. By adopting the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, will have continued access to foreign markets and will not be at an economic disadvantage by being forced to comply with a dual system of regulations. Consistency with international requirements also will result in enhanced safety. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### E. Paperwork Reduction Act

There are no information collection requirements in this final rule.

#### F. Regulation Identifier Number (RIN)

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

*G. Unfunded Mandates Reform Act*

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

*H. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We analyzed the effects of these amendments, as well as other proposals, on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with the amendments being adopted in this final rule. For interested parties, an environmental assessment is available in the public docket.

*I. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**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.

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

a. Under the entry "International Civil Aviation Organization (ICAO)", the existing entry is revised;

b. Under the entry "International Maritime Organization (IMO)", the entry "International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 29 (1998) (English edition)" is removed and one entry is added in its place; and

c. Under the entry "United Nations", the entry "UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999)" is revised.

The revisions and addition read as follows:

**§ 171.7 Reference material.**

(a) \* \* \*

(3) *Table of material incorporated by reference.* \* \* \*

Source and name of material	49 CFR reference
International Civil Aviation Organization (ICAO):	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), DOC 9284-AN/905, 2003-2004 Edition, including Erratum.	171.11; 172.202; 172.401; 172.512; 172.602
International Maritime Organization (IMO):	
International Maritime Dangerous Goods (IMDG Code), 2002 Edition, including Amendment 31-02 (English Edition).	171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30
United Nations:	
UN Recommendations on the Transport of Dangerous Goods, Twelfth Revised Edition (2001).	172.202; 172.401; 172.502; 173.24

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Issued in Washington, DC on January 3, 2003 under authority delegated in 49 CFR part 1.

**Ellen G. Engleman,**  
*Administrator, Research and Special Programs Administration.*

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