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**49 CFR Parts 171, 172, and 173
Hazardous Materials: Miscellaneous
Changes to the Hazard Communication
Requirements; Final Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, and 173**

[RSPA-03-15327 (Docket No. HM-206B)]

RIN 2137-AD28

Hazardous Materials: Miscellaneous Changes to the Hazard Communication Requirements**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to improve hazard communication for hazardous materials transported in commerce. Revisions adopted in this final rule include: permitting the use of the Pantone Formula, an industry guide for colors, for hazard warning labels and placards; expanding the use of labels specified in the Compressed Gas Association Pamphlet C-7 on cylinders used to transport Division 2.1, 2.2, or 2.3 gases to all modes of transportation; requiring a NON-ODORIZED marking on certain cylinders, portable tanks, cargo tanks, and tank cars and multi unit tank car tanks containing unodorized liquefied petroleum gas; and allowing a FUMIGANT marking to be removed from a transport vehicle or freight container before the lading is unloaded if the vehicle has undergone sufficient aeration. Taken together, the revisions in this final rule will enhance hazard communication for the safe handling of hazardous materials in transportation and the prompt identification of hazardous materials involved in transportation incidents.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-8553.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2005.

Voluntary Compliance Date: RSPA is authorizing voluntary compliance with the amendments adopted in this final rule beginning December 6, 2004.

SUPPLEMENTARY INFORMATION:**List of Topics**

- I. Background
- II. Provisions Adopted in this Final Rule
- III. Comments Made to the NPRM
- IV. Marking Requirements
 - A. NON-ODORIZED marking on cylinders, portable tanks, cargo tanks, and tank cars containing liquefied petroleum gas

- B. Type B Organic peroxide identification number marking
- C. Fumigant marking
- V. Materials Poisonous by Inhalation (PIH)
 - A. Revision of PIH label and placard and transition provisions
 - B. Hydrogen fluoride, anhydrous, and similar materials
 - C. Residues (when PIH subsidiary)
- VI. Other Requirements for Labels and Placards
 - A. Color standards for labels and placards
 - B. ASTM D4956-01a (red and white) for retro reflective colors
 - C. Organic Peroxide Subsidiary FLAMMABLE LIQUID Label
 - D. Cylinder markings in accordance with CGA Pamphlet C-7
 - E. Placarding exception for Class 9 materials (domestic)
 - F. Residues of Class 9 (miscellaneous) hazardous substances, when less than RQ remains
 - G. Footnote to Table 1 (placards)—editorial correction
- VII. Training and Emergency Response Information
 - A. Emergency response telephone number requirements
 - B. Clarification of the emergency response information and training requirements for Combustible liquids
- VIII. Security Plans Applicable to Select Agents
- IX. Regulatory Analyses and Notices
 - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - B. Executive Order 13132
 - C. Executive Order 13175
 - D. Regulatory Flexibility Act
 - E. Paperwork Reduction Act
 - F. Regulatory Identification Number (RIN)
 - G. Unfunded Mandates Reform Act
 - H. Environmental Assessment

I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) include a wide variety of hazard identification and communication requirements for hazardous materials transportation. Generally, the HMR require packages of hazardous materials to be marked with the shipping name and identification number of the material contained in the package, and to display hazard warning labels. Placards and other markings must be affixed to a transport vehicle or bulk packaging containing hazardous materials. Hazardous materials must be described on a shipping paper that accompanies the shipment. The shipping paper or an associated document must contain emergency response information and the shipping paper must include an emergency response telephone number that is monitored at all times the material is in transportation. This telephone number is used by emergency responders to obtain detailed, product-specific information that includes guidance for the initial actions to be taken in the

event of an incident. These requirements are designed, in part, to provide fire and emergency response personnel, transport workers, and the public with information in the event of a transportation incident involving the hazardous materials. The hazard communication and emergency response information requirements are set forth in subparts C through G of part 172 of the HMR. The hazard communication system in the HMR is generally consistent with international standards for hazardous materials transportation.

On June 11, 2003, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM; 68 FR 34880) proposing a number of changes to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. The NPRM was based on several petitions for rulemaking, requests for clarification, and RSPA initiatives, and included clarifications and improvements to the shipping paper, identification number and other marking, labeling and placarding, and emergency response telephone number requirements.

Emergency responders must know how to react appropriately in emergency situations in order to coordinate response actions that will protect human life and property. The changes to the hazard communication requirements adopted in this final rule will result in better response by, and protection of, emergency response personnel, fire or police personnel, and the general public. In addition, some of the changes adopted in this final rule will provide the regulated industry with additional flexibility to meet hazard communication requirements, thus reducing compliance burdens. Taken together, the amendments adopted in this final rule will help shippers and carriers to ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

II. Summary of Regulatory Changes

In this final rule, we are adopting the following revisions to the HMR:

- Permitting the use of Pantone® Formula, an industry guide for colors, for hazard warning labels and placards.
- Expanding the use of labels specified in the Compressed Gas Association Pamphlet C-7 on cylinders used to transport Division 2.1, 2.2, or 2.3 gases to all modes of transportation.

- Requiring a NON-ODORIZED marking on certain packages containing unodorized liquefied petroleum gas.
- Allowing a FUMIGANT marking to be removed from a transport vehicle or freight container before the lading is unloaded provided the vehicle or freight container has undergone sufficient aeration.
- Clarifying that beeper or other types of call-back systems do not meet the requirements in § 172.604 for emergency response telephone numbers.
- Clarifying that international shipments of Class 9 materials may utilize the placarding exception for Class 9 materials while the shipment is being transported in the United States.
- Clarifying that a return shipment of a package that contains less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation and transported with markings and placards in place.
- Clarifying emergency response information and training requirements for combustible liquids.

We are not adopting provisions proposed in the NPRM concerning the design of poison-by-inhalation labels and placards, the use of retro reflective materials for certain placards, marking requirement for shipments of temperature-controlled Type B organic peroxides, and the organic peroxide subsidiary FLAMMABLE LIQUID label.

III. Comments Made to the NPRM

RSPA received approximately 19 written comments to the NPRM from trade associations, including the American Chemistry Council, Compressed Gas Association, National Propane Gas Association, National Pest Management Association, American Society of Safety Engineers, American Petroleum Institute, Association of American Railroads, American Trucking Associations, The Conference on Safe Transportation of Hazardous Articles, Inc., Commercial Vehicle Safety Alliance, and the International Vessel Operators Hazardous Materials Association, Inc.; chemical manufacturers; shippers and carriers of hazardous materials; and The Georgia Department of Motor Vehicle Safety. Overall the commenters support the regulatory amendments, clarifications, and transitional provisions in the NPRM because the actions will clarify several confusing regulations, assist shippers and carriers with hazardous materials compliance, and enhance hazard communication and emergency response. Several commenters raised concerns about certain provisions in the proposals. Relevant portions of these

comments are discussed in detail in the following sections of this preamble.

IV. Marking Requirements

A. NON-ODORIZED Marking on Certain Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gases (§ 172.301; 172.326; 172.328; and 172.330)

Liquefied petroleum gases include butane, isobutane, propane, propylene (propene) butylenes (butenes), and any mixtures of these hydrocarbons. These gases are flammable, colorless, noncorrosive, and nontoxic. They are easily liquefied under pressure at ambient temperature, and are shipped and stored as liquids. They are largely used in gaseous and liquid form as fuels in many diverse applications. The gases are also denoted by the terms LP-Gas or LPG.

In the NPRM, we proposed to require a NON-ODORIZED marking on certain cylinders, portable tanks, cargo tanks, and tank cars and multi unit tank car tanks containing Liquefied petroleum gas (LPG). There is a requirement in § 173.315(b)(1) for LPG to be odorized in portable tanks and cargo tanks, unless odorization would be harmful to any further processing of the LPG. However, there are no odorization requirements in the HMR for LPG in cylinders or tank cars, nor in communicating the lack of odorization of LPG during transportation. Between 1978 and 1980, we received several petitions requesting updating of the LPG odorization requirements contained in the HMR; these petitioners requested that the HMR require LPG to be odorized in transportation or the lack of odorization to be visually communicated. In a July 1978 Report to Congress on Liquefied Energy Gases, the General Accounting Office of the Comptroller General of the United States (GAO) recommended that vehicles transporting LPG display a sign indicating whether or not the LPG being transported was odorized.

There currently is no requirement in the HMR for shippers to provide an indication as to whether the LPG being transported is odorized. The proposal stemmed from our concern that the lack of a warning that the material contained in the package was not odorized could cause emergency responders to make inappropriate decisions in mitigating an accident, potentially jeopardizing their safety or the public safety. Of the nine comments received on this issue, only one commenter opposes the NON-ODORIZED marking provisions.

The Association of American Railroads (AAR), the American Society of Safety Engineers (ASSE), the

Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA), the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA), Compressed Gas Association (CGA), Diversified CPC International (Diversified), Matheson Tri Gas (Matheson), and Praxair support RSPA taking action to require shippers to indicate when they are shipping non-odorized propane. The AAR agrees that the concern that emergency response personnel may overlook the possibility of a leak of non-odorized propane because of an expectation that any leak would have a detectable odor is well founded, since most shipments of propane contain an odorant. The ASSE states that the current lack of this additional hazard warning information could trigger inappropriate decisions by emergency responders, threatening their safety and that of the public community during incident control. In addition, VOHMA, CGA, and COSTHA state that shipping paper entries should also include the entry "Non-Odorized" so that carriers as well as emergency responders will be aware of and benefit from this additional information if an incident occurs involving unodorized LPG. AAR notes that, because markings may be obscured or damaged in a derailment or accident, adding a notation to shipping papers will help ensure that emergency responders will be informed if a shipment of unodorized propane is involved in an accident.

We agree with commenters that a shipping paper entry would provide additional information for carriers and emergency responders about the nature of the material being transported. However, such a revision to the HMR would impose additional costs on shippers and transporters; moreover, this revision was not proposed in the NPRM. Therefore, we are not making this change in the final rule. Shippers may include on shipping papers the information that a shipment is not odorized if they so choose.

Matheson Tri Gas asks for clarification as to whether the requirement for marking LPG as odorized pertains to LP-Gas mixtures. In addition, Matheson and Diversified CPC International, Inc. (Diversified) request that the marking "NOT ODORIZED" be permitted in place of or in addition to the proposed NON-ODORIZED marking. Diversified states that many of its cargo tanks are already marked as NOT ODORIZED in accordance with NFPA 58 LPG standard which requires all ASME storage containers (National Fire Protection Association's NFPA 58 Liquefied Petroleum Gas Code, Section 2.2.6.5)

that contain unodorized LPG products to be marked "NOT-ODORIZED". The marking NON-ODORIZED will apply to LPG and LP-Gas mixtures described as "Liquefied Petroleum Gas" or "Petroleum Gases, Liquefied" or Butane, Isobutane, Propane, Propylene (Propene) Butylene (Butenes) that, when mixed with other constituents, retain the LPG shipping name(s) and are not described using an "n.o.s." description. Because the marking "NOT ODOORIZED" is already required under the NFPA 58 LPG Code for storage purposes, for purposes of transportation in commerce, either "NON-ODORIZED" or "NOT ODOORIZED" is an acceptable marking to communicate that the LPG is being shipped unodorized.

The American Petroleum Institute (API) opposes the NON-ODORIZED marking provision on tank cars transporting LPG. API expresses concern with the logistics of tracking the tank cars and scheduling the stenciling, inspecting the cars to make sure they are properly stenciled, and the potential for creating errors and inconsistencies between the bills of lading, the markings, and the placards. API also states that remarking the cars may be dangerous to the personnel who are climbing up and down ladders to re-stencil the cars every year. One API member estimates that stenciling changes would occur approximately 5,800 times per year at a cost of approximately \$80 per car (\$30.00 per car for stenciling + \$47 per car to affix = \$80) for a total of \$464,000 annually to comply with the proposed requirement. API suggests that the NON-ODORIZED marking should not be applicable to tank cars.

We do not agree with the API comment. We agree with petitioners and with GAO that, because transport workers and emergency response personnel rely on an odor to indicate the presence of LPG, emergency response and transport workers could make inappropriate decisions during an incident unless information concerning odorization is available, potentially jeopardizing their safety or the public safety. We note concerning the comments on stenciling that neither the NPRM nor this final rule specify the type of marking that must be used to comply with the requirement. Shippers may use non-permanent marks, such as pressure-sensitive vinyl or adhesive-backed labels, that would obviate the need to re-stencil railcars to indicate the presence of a non-odorized shipment. The annual cost of this marking, using pressure-sensitive vinyl labels that have a 5- to 7-year life expectancy, is minimal.

To address the concerns expressed by API, in this final rule, we are adopting a provision to permit the NON-ODORIZED marking to be used on rail tank cars that transport both unodorized and odorized LPG. The NON-ODORIZED marking will alert emergency responders that the tank may contain unodorized LPG; in the event the LPG in the tank is, in fact, odorized, emergency responders will know to take appropriate actions even though the tank car indicates that the contents may not be odorized. Accordingly, we are amending §§ 172.203, 172.301, 172.326, 172.328, and 172.330 to require the NON-ODORIZED or NOT ODOORIZED marking on a vehicle or, unless excepted, a container containing LPG that does not contain an odorant. In this final rule, the compliance date for the new marking requirement is October 1, 2006.

B. Type B Organic Peroxide Identification Number Marking (§ 172.336)

A Division 5.2 placard is required for (1) any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled material, and (2) for other organic peroxides when 1,001 pounds or more are on a transport vehicle. In the NPRM, we proposed to require an identification number to be displayed on each bulk packaging, unit load device, freight container, transport vehicle, or rail car containing any quantity of an organic peroxide when the material transported is a temperature-controlled organic peroxide subject to placarding under Table 1 of § 172.504(e).

Of the four comments received on this issue, only one commenter supports the proposal. The American Society of Safety Engineers (ASSE) agrees that it would be beneficial to require display of the identification number on bulk packages, freight containers, vehicles and rail cars to indicate that the organic peroxide is temperature controlled. ASSE says that including an identification number will increase the likelihood that appropriate actions will be taken to ensure safety, even if shipping papers for the cargo are not readily available in an emergency situation.

The commenters opposed to this provision believe that the current requirement to placard any amount of "5.2, Organic peroxide, Type B, liquid or solid, temperature-controlled" material conveys the warning to emergency personnel that the material must be temperature controlled, and clearly identifies the organic peroxides requiring special response needs based

on temperature controls. The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) suggests that an emergency responder responding to an incident involving a Class 5.2 placard should always assume that the cargo should be protected from a rise in temperature since virtually all organic peroxides may undergo exothermal release of oxygen or instability and many are flammable. COSTHA further states that such an identification number display will cause confusion, particularly in international commerce. COSTHA notes that under international codes the display of an identification number for a Class 5.2 material is required only for a bulk packaging or a shipment of 4000 kg or more loaded at one location with no other hazardous materials in the container or transport unit. COSTHA asserts that seeing the identification number displayed as proposed might lead to an erroneous conclusion and improper response. The American Trucking Associations (ATA) opposes this provision because temperature-controlled organic peroxides represent a small percentage of the cargo transported by motor carriers. Drivers are thus not likely to see this material with any regularity. In ATA's view, this lack of familiarity will make the proposed requirement difficult to comply with; moreover, according to ATA, motor carriers may choose not to accept these materials for transportation. ATA is further concerned that it will be difficult to train drivers to distinguish between organic peroxides that do not require the identification marking and those that do.

We have reconsidered this proposal in light of the comments we received. We agree that the placard currently required for Type B, organic peroxide shipments and the required shipping paper entry that indicates that the material is temperature-controlled and provides the emergency temperature should be sufficient in most situations to alert emergency responders to the hazard associated with the material in the event of an incident that results in loss of temperature control. We also agree that the requirement as proposed could cause confusion for international shipments. We note, in addition, that there are other types of hazardous materials that require temperature controls during transportation; we may need to consider a more general marking requirement for all such materials than was proposed in the NPRM. Therefore, we are not adopting the proposal in this

final rule. However, we may address this issue in a future rulemaking.

C. Fumigant Marking (§ 173.9)

A rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, is a "package" containing a hazardous material, unless the transport vehicle or freight container has been sufficiently aerated so that it does not pose an unreasonable risk to health and safety. If the contents of a transport vehicle or freight container have been treated with any material or are undergoing fumigation, the transport vehicle and freight container must be marked in accordance with § 173.9(c). The requirements apply to fumigation with any material, including unlisted fumigants, and in all modes of transportation. This marking provides warning to shippers, carriers, law enforcement agencies, and, in particular, transport workers that they may be exposed to a fumigating agent when they open a transport unit. The NPRM proposed to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated load is unloaded or has undergone sufficient aeration to remove the hazard posed by the fumigant. The proposed revision permits aeration or ventilation of the vehicle or container without unloading.

Three comments were received to the NPRM regarding the fumigation proposals. All three commenters support the proposal. Two commenters suggest that, in order to clarify when a fumigated transport vehicle or freight container is no longer deemed to present a hazard to those entering the vehicle or container, we adopt language that reflects the text of the current UN Model Regulations and the IMDG Code. We agree; therefore, in this final rule, the word "or" replaces the word "and" in the current paragraph (e)(1), and paragraph (e)(2) is revised for consistency with the text of the current UN Model Regulations and the IMDG Code. This revision will allow removal of the FUMIGANT marking following aeration or ventilation of the vehicle or container sufficient to eliminate the fumigant hazard, and also makes the requirements consistent with international standards.

The National Pest Management Association (NPMA) expresses concern about application of the FUMIGANT marking requirement to ready-to-use liquid formulations or "foggers," such as ant and roach repellants. NPMA said RSPA is encouraging fumigators to

improperly mark packages, an action that may unnecessarily delay emergency workers' response to an accident. This comment is beyond the scope of this rulemaking.

V. Materials Poisonous by Inhalation (PIH)

A. Revision of PIH Label and Placard and Transition Periods (§§ 172.332; 172.416; 172.429; 172.540 and 172.555)

In a final rule published January 8, 1997 (62 FR 1217), we adopted new labels and placards for both liquids (Division 6.1) and gases (Division 2.3) that are materials poisonous by inhalation (PIH) to enhance their identification when transported in commerce. The dark background for the skull-and-crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The PIH label and placard also improved hazard communication by creating an instantly recognizable difference between PIH materials and other poisons.

However, as published in the **Federal Register**, the graphics shown in the January 8, 1997 final rule and amendments adopted in a July 22, 1997 final rule were inaccurate. On the PIH label and placard, we inadvertently specified a smaller skull-and-crossbones symbol in the upper black diamond than currently shown on the POISON label and placard. To correct this oversight, we proposed in the NPRM to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull-and-crossbones symbol at the top of the labels and placards to conform, pictorially, in size with the symbol on the POISON label and placard used for poisons other than those that are PIH materials. Increasing the size of the symbol will make the upper black diamond on the PIH placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Because of the enlarged upper black diamond above the horizontal center line and, proportionally, the skull-and-crossbones symbol at the top of the PIH placards, identification number markings displayed on the new PIH placards may cause overlapping of the lower point of the upper black diamond and impinge on space used for identification number display on such placards. To allow space for the identification number, we proposed allowing the lower point of the upper black diamond to impinge on space used to display an identification

number marking on a PIH placard. An extensive transition period was also proposed to allow those persons who had begun, prior to October 1, 1999 and October 1, 2001, respectively, to use and maintain a supply of the PIH labels and placards with smaller size symbols to continue to use them in transportation.

We received approximately 10 comments on these proposals. Most commenters supported the proposed changes, but questioned the timing of the proposals in light of security concerns and non-uniformity with the international standards. The following comment from PRAXAIR is typical:

While supportive of the need to communicate the special hazards posed by materials classified as Poison Inhalation Hazard materials, PRAXAIR questions the necessity for the proposed increases in the size of PIH labels. Since October 1, 2001, RSPA has required and Praxair complied with the requirements to use a PIH label and placard for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials. DOT has gone to considerable length to create unique labels and placards. The pictograms for PIH materials are unique and their size does not, in our judgment, need to be increased in order to improve their ability to communicate hazards. Furthermore, these labels and placards are unique to the transportation system in the USA and have not been adopted by the international transportation community. These labels and placards have become recognized by the emergency response community in the USA. PRAXAIR believes that the current labels and placards are distinctive and that an increase in the size of the upper quadrant of labels and placards is unnecessary because these labels are unique. The need to change a system for international shipment of PIH materials seems premature.

We agree. Therefore, we are not adopting the NPRM proposals concerning the PIH labels and placards in this final rule.

We note concerning the transportation of PIH materials that RSPA and the Transportation Security Administration are examining the need for enhanced security requirements for the rail transportation of hazardous materials that pose a toxic inhalation hazard. In a notice published August 16, 2004 (69 FR 50987), the two agencies are seeking comments on the feasibility of initiating specific security enhancements and the potential costs and benefits of doing so. Security measures being considered include improvements to security plans, modification of methods used to identify shipments and communicate hazards, enhanced requirements for temporary storage, strengthened tank car integrity, and implementation of tracking and communication systems.

B. Hydrogen Fluoride, Anhydrous, and Similar Materials (§§ 172.400 and 172.504)

In the HM-206 final rule (62 FR 1217; January 8, 1997), certain materials that meet the definition of a PIH material, such as hydrogen fluoride, anhydrous, were not specifically addressed in the provisions for labeling and placarding PIH materials in Division 6.1. To correct this oversight, in the NPRM we proposed to revise §§ 172.400 and 172.504 to require an inhalation hazard label or placard for materials that meet the definition of a PIH material in § 171.8. We received one comment supporting the action to correct this oversight. The proposal in the NPRM is adopted without change in this final rule.

C. Placarding Requirement for Residues (When PIH Subsidiary)

In accordance with § 173.29(c), a non-bulk packaging containing only a residue of a hazardous material covered by placarding Table 2 of § 172.504 of the HMR need not be included in determining the applicability of the placarding requirements in subpart F of part 172 and is not subject to shipping paper requirements when collected and transported by a contract or private carrier for reconditioning, remanufacture or reuse. However, the exception in § 173.29(c) was not intended to apply to the residue of a material shipped in non-bulk packagings that has a subsidiary PIH hazard that would require the transport vehicle to be placarded in accordance with the subsidiary placarding requirements in § 172.505(a). Therefore, in the NPRM, we proposed to revise paragraph (c) of § 173.29 to clarify that the exception to placarding and shipping papers do not apply to a non-bulk packaging containing the residue of a material poisonous by inhalation. Two comments were received supporting this clarification. The proposal is adopted without change in this final rule.

VI. Other Requirements for Labels and Placards

A. Color Standards for Labels and Placards (§§ 171.7, 172.407 and 172.519)

The NPRM contained a proposal for use of Pantone® Matching System (PMS) colors as an alternative to the specifications for colors in the Tables in Appendix A of part 172 of the HMR. The proposed alternative color standards for labels and placards conform generally to the same standards prescribed in the TDG Regulations, which are colors conforming to the

Pantone® Color Formula Guide published by Pantone Incorporated (Pantone®). The colors that make up the PMS are derived from 14 base colors. Ink manufacturers license the formulation from Pantone® and printers mix of the 14 ink colors make up the entire spectrum of PMS. This provision is primarily intended to voluntarily permit the use of certain Pantone® Color Formula Guide colors for identification number and other markings and hazard warning labels and placards as an alternative to the Munsell notations, by referencing certain Pantone® Color Formula Guide numbers as a convenience to users, not as a requirement.

We received two comments, both in support of this provision. Monsanto Company (Monsanto) supports RSPA's efforts since Pantone® is the printing color standard. Monsanto recommends that a delta "E" value be added to color deviation from the Pantone® standard color, and that most color definitions include an "error" tolerance value, especially when they refer to using color measuring instruments or a spectrophotometer because Pantone® books vary based upon age and environmental conditions. Further, Monsanto recommends that the DOT colors be defined within the "Cyan-Magenta-Yellow-Black (CMYK)" color space or tolerance set to include colors reproduced using the process colors. CMYK is a color model in which all colors are described as a mixture of these four process colors. CMYK is the standard color model used in offset printing for full-color documents, and because such printing uses inks of these four basic colors, it is often called four-color printing.

In this final rule, the Pantone® Matching System is a voluntary alternative to the Munsell Notations, and the Pantone® Formula Guide colors are specified and do not allow for deviations or tolerances (ranges of color). It is our understanding that the specified DOT colors do not render well when emulated using CMYK color space. A spectrophotometer or other instrumentation would be required to ensure a proper match with the DOT color standards. The use of CMYK colors for hazard warning labels and placards and other markings was not proposed in the NPRM, and is beyond the scope of this rulemaking. At this time, we have not determined whether or not CMYK colors would be an acceptable alternative to the use of the Munsell Notations. The commenter may wish to submit a petition for rulemaking requesting a change to the regulations in accordance with §§ 106.95 and 106.100.

In this final rule, we are revising §§ 172.407 and 172.519, specifications for labels and placards, to provide an alternative means of achieving reasonable conformance to color standards for hazard warning labels and placards, and identification number and other markings.

B. ASTM D4956-95 (Red and White) For Reflective Colors (§§ 171.7, 172.407 and 172.519)

In accordance with the provisions in § 172.519(a)(3), reflective materials may be used on a placard if the prescribed colors, strengths, and durability are maintained. In the NPRM, we proposed to adopt an alternate color standard for labels and placards constructed of retro reflective materials. We focused on retro reflective red and white reflective colors that conform to Type V sheeting in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control. We did not propose other colors in ASTM D 4956 because we believed they poorly match the current and proposed color standards for labels and placards. This standard is referenced in the conspicuity systems prescribed under the Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment specified in 49 CFR 571.108.

We received two comments on our proposal. 3-M Traffic Control Division (3-M) supports the proposal, stating that the use of retro reflective materials can greatly increase the visibility of placards when viewed by a first responder in the dark, and Type V materials are most often used as white and red conspicuity treatments to improve the visibility of trucks at night. Further, the color of retro reflective signing governed by the Federal Highway Administration is based on the same Munsell System and Color Tolerance Charts currently referenced by RSPA. However, 3-M notes that Type V materials are intended only for nighttime use. Because placards are viewed under both daytime and nighttime conditions, 3-M suggests language that would allow placards to be made from durable materials used for rigid highway signs. 3-M also recommends that placards made from Type VII, VIII, or IX sheeting would be comparable in nighttime brightness to Type V and provide daytime luminance sufficient for signing purposes in the daytime.

Based in part on the 3-M comment and on our own evaluation of the standards for retro reflective materials, we have decided not to adopt the NPRM proposal in this final rule. We will continue to evaluate retro reflective materials to ascertain their suitability

for use on placards and may address this issue in a future rulemaking.

C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label (§ 172.402)

Under the HMR, the additional labeling requirements in § 172.402 require each package containing a hazardous material to be labeled with both primary and subsidiary hazard warning labels. In accordance with § 172.402(a)(2), a package containing a Division 5.2 (organic peroxide) material that also meets the definition of a Class 3 (flammable liquid) material must be labeled ORGANIC PEROXIDE and FLAMMABLE LIQUID, except for Class 3 material in Packing Group III (see exception in § 172.402(a)(2)). Paragraph 5.2.2.1.10 of the UN Model Regulations specifies that a subsidiary FLAMMABLE LIQUID label is not required on such a package because the ORGANIC PEROXIDE label is understood to convey the inherently flammable nature of organic peroxides. In the NPRM, we proposed to grant an exception from subsidiary labeling for a Division 5.2 (organic peroxide) material that exhibits a Class 3 (flammable liquid) subsidiary hazard, for consistency with the UN Model Regulations.

We received two comments in support of the proposal. However, we are not adopting the proposed exception at this time. The UN is currently considering introduction of a new Division 5.2 label to better differentiate between the Division 5.1 and 5.2 labels. A proposal to this effect has been submitted to the UN Committee of Experts. We will address labeling issues related to Division 5.2 materials after the UN has finalized action on modified labeling requirements for organic peroxides, in order to maintain consistency and harmonization with the UN.

D. Cylinder Markings in Accordance With CGA Pamphlet C-7 (§ 172.400a)

Currently, the HMR allow the use of "neckring" markings, instead of labels, on cylinders containing certain compressed gases (*i.e.*, Division 2.1 or Division 2.2) carried by private or contract motor carriers if certain conditions as prescribed in § 172.400a(a)(1) are met. In the NPRM, for consistency with provisions in the UN Model Regulations and Canadian and European regulations, we proposed revising the requirement in § 172.400a(a)(1) to broaden this labeling exception to apply to all modes of transportation (air, water, rail, or highway), and to expand the exception to include gases in Division 2.3.

Specifically, this change will permit the use of the markings specified in Compressed Gas Association (CGA) Pamphlet C-7, "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A," to satisfy the labeling of cylinders containing gases shipped in accordance with the exception in § 172.400a.

We received five comments on this issue. All are generally supportive of the proposed revision, except that two of the commenters oppose expanding the exception to include Division 2.3 (poison gas) gases. These commenters state that any material with either a primary or subsidiary hazard of Division 2.3 should be required to bear the full-sized toxic or poison gas label, and note that neckring markings are often abraded, torn, and faded from frequent use and handling of the cylinders to which they are attached. We do not agree. Cylinder neckring markings are less subject to abrasions than cylinder body labels and are less likely to loosen and fall off. Further, the smaller neckring markings affixed to the shoulder of cylinders are more visible when cylinders are grouped together than when the information is on a hazard warning label affixed to the cylinder wall. Experience shows that this alternative marking, currently authorized for cylinders carried by private and contract carriers, clearly communicates the degree of hazard associated with Class 2 gases offered for transportation in commerce. The neckring marking will also not detract from a common carrier's ability to segregate and stow cylinders since cylinders shipped individually must be moved individually by employees who are close enough to read the smaller neckring marking and hazard warning label. In addition, the proper shipping name and identification number of the hazardous material are marked adjacent to the smaller neckring marking and hazard warning label, which makes identification of the products easier.

We believe such markings will be comparably effective in communicating the hazard of the material being shipped. Safety will not be reduced because shipping papers and placards on the transport vehicles provide hazard warning information that can be used in the event of an emergency. Paragraph 5.2.2.2.1.2 of the UN Model Regulations specifies that cylinders for Class 2 may, on account of their shape, orientation and securing mechanisms for transport, bear labels representative of those specified in this section, which have been reduced in size, according to ISO 7225 "Gas cylinders—Precautionary

labels," for display on the non-cylindrical part (shoulder) of such cylinders. Thus, this change will enhance international harmonization with the Canadian and European standards, which authorize labels that have been reduced in size (*e.g.*, neckring labels) for display on the non-cylindrical part of the cylinders.

Accordingly, in this final rule, § 172.400a(a)(1) is revised to allow labels authorized in CGA Pamphlet C-7, Appendix A, for Division 2.1, 2.2, or 2.3 gases. We are rewording the provisions to clarify that a Dewar flask is authorized only for atmospheric gases under the conditions prescribed in § 173.320. Because we are expanding use of the marking on cylinders and Dewars for poisonous materials and in all modes of transportation and cylinders of Division 2.3 gases, we are removing paragraphs (a)(1)(i) and (ii).

E. Placarding Exception for Class 9 Materials (Domestic) (§ 172.504)

In the NPRM, we proposed to clarify that the Class 9 placarding exception in § 172.504(f)(9) applies to international shipments of Class 9 materials while moving in the United States. For those portions of transportation that occur within the borders of the United States, a shipment in international transportation is eligible for the same placarding exceptions that apply to transportation that is domestic only.

We received three comments on this issue: two opposed, and one in support of the clarification. Air Products, Inc. supports the proposal because the clarification will minimize misunderstanding. The Conference on Safe Transportation of Hazardous Articles, Inc. (COSTHA) and the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA) oppose the clarification. COSTHA states that extending the exception to international shipments in cargo transport units will result in confusion and non-compliance. COSTHA is concerned that the amendment to § 172.504(f)(9) would not prevent an intermodal carrier from removing the CLASS 9 placards and thus place the container in non-compliance when it arrives at the port. COSTHA suggests that requiring the placard to be displayed throughout transportation in accordance with the IMDG Code will reinforce a shipper's responsibility for providing and affixing placards at the beginning of transportation and for intermodal carriers to maintain the placards until the shipment reaches the port. VOHMA states that in order to avoid inconsistency between §§ 171.12,

172.504, and 172.506, the language at § 172.504(f)(9) should not be amended and that the current exception be limited to domestic shipments only.

We do not agree. This action is being taken to clarify and incorporate into the HMR our longstanding determinations concerning the intent and use of the CLASS 9 placard when the shipment is passing through the United States and destined for a foreign country, such as Canada. For these purposes, we have previously defined “domestic transportation” to include not only transportation exclusively within the United States, but also that domestic portion of international transportation (such as Class 9 shipments to or from Canada by highway and rail), that occurs between places within the United States. We do not agree that application of the Class 9 placarding exception to shipments passing through the United States will cause confusion and non-compliance nor do we agree that the exception will cause intermodal carriers to remove Class 9 placards on international shipments prior to the shipment’s arrival at the port. The exception permits the Class 9 placard to be displayed throughout transportation in accordance with the IMDG Code requirements. The proposal in the NPRM is adopted without change in this final rule.

F. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains (§§ 172.514 and 173.29)

A Class 9 hazardous substance is subject to the HMR only because of the presence of a reportable quantity (RQ) in one package. An empty packaging containing the residue of a Class 9 hazardous substance below its RQ is not subject to the HMR, including shipping paper requirements. In the NPRM, we proposed to revise § 172.514(b) to allow markings and placards, if any, to remain on a packaging, such as a returning rail car, that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

We received three comments on this issue, all supporting the revision. Therefore, in this final rule, we are clarifying that a packaging, such as a tank car, containing less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation as a regulated material if the residue of this material is offered for transportation with all applicable hazard warning marks, placards and shipping papers. Accordingly, § 172.514(b) is revised and § 173.29(h) is added to allow the markings and

placards, if any, to remain on a returning rail car that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

G. Footnote to Table 1 (Placards)—Editorial Correction (§ 172.504(e))

In this final rule, an editorial revision is made in § 172.504(e), Table 1, to correct citations in Footnote 1, pertaining to placarding for certain shipments of radioactive materials. The footnote is corrected to read as follows: “RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(4) and (5) or (c) of this subchapter.” (See Docket HM–230, Final Rule; 69 FR 3676; January 26, 2004.)

VII. Training and Emergency Response Information

A. Emergency Response Telephone Number Requirements (§ 172.604)

The HMR require a person offering a hazardous material for transportation to provide an emergency response telephone number (including the area code or international access code) on the shipping paper for use in the event of an emergency involving the material. The emergency response telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the hazardous material being shipped. As an alternative, the number may be of a person who has “immediate access” to a person who possesses such information. The emergency response telephone number must be monitored at all times for as long as the hazardous material is being transported, including during storage incidental to the movement of the hazardous material. Storage that is incidental to movement generally is storage that occurs between the time a hazardous material is offered for transportation and the time it reaches its destination and is delivered to the consignee. In the NPRM, we proposed to clarify the emergency response telephone number requirements to specify that call-back systems (e.g., beepers, answering machines, etc.) are not acceptable under the HMR.

We received five comments, four in support of the clarification in § 172.604, and one opposed. Typical of those supporting the proposal is the American Chemistry Council (ACC):

ACC has long understood DOT’s intent that the number shown on the shipping papers should connect the caller directly to an individual with immediate access to information regarding the specific product(s) covered by the shipping papers on which the emergency number appears, or immediate access to a person who possesses such knowledge and information. First responders and those in the transport industry need accurate and immediate information in order to properly mitigate an incident while also protecting those responding to the incident. For this reason, ACC also agrees with DOT that direct landline telephone provides the most reliable destination connection.

Further, it is also understood that some first responders may or may not possess extensive hazardous materials incident emergency response training or experience and may need guidance in identifying what information is needed to take action. For that reason, ACC believes the person answering the emergency telephone should be properly trained and/or have immediate access to trained and hazardous materials qualified individuals that can assist the caller in obtaining the needed information.

The National Propane Gas Association (NPGA) opposes the clarification. NPGA says that retail marketers of propane often utilize devices such as answering services or beepers, and that the added provision would essentially require propane marketer employees to be considered first responders in order to comply with the *immediate access* requirements. Further, NPGA asserts that it believes that the proposal stated in HM–206B does not increase the level of safety in responding to a propane transportation incident, and could place an undue burden on propane marketers, if adopted as stated. NPGA requests that the added statement be withdrawn from consideration.

We disagree. The emergency response telephone number ensures that appropriate response and mitigation information is available to emergency response personnel in the event of an incident, without unnecessary or undue delay. The number must be of a person who has comprehensive emergency response and accident mitigation information or has immediate access to a person who possesses such knowledge. Some shippers have misinterpreted “immediate access” as authorizing them to use a “call-back” system that requires an emergency responder to wait for a return telephone call. This is not practical since a responder must make quick mitigation decisions at the scene of an incident involving hazardous materials, including propane. Moreover, in a number of letters of clarification issued since adoption of the emergency telephone number requirement, we have stated that “call-back” systems do not

meet the requirement for "immediate access" specified in the regulation. Therefore, in this final rule, we are revising § 172.604 to indicate that beeper numbers and call-back systems do not conform to the requirements in § 172.604 and are not acceptable under the HMR.

B. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids (§ 173.150)

Under the HMR, a combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant is not subject to the requirements of the HMR except those prescribed in § 173.150(f)(3). Emergency response information and training requirements prescribed in subparts G and H of part 172 of the HMR are currently not specified in the requirements in § 173.150(f)(3). It was never intended to exempt such shipments from these requirements. To correct this oversight, in the NPRM, we proposed to revise § 173.150(f)(3) to clarify that the emergency response information and training requirements apply to a shipment of a combustible liquid in a bulk packaging or to a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant. No comments were received on this issue; therefore, the proposal is adopted without change in this final rule.

VIII. Security Plans Applicable to Select Agents

The NPRM proposed to add a new paragraph (p) to § 172.203 that would require each person who offers for transportation an infectious substance that is regulated as a select agent by the Centers for Disease Control and Prevention of the Department of Health and Human Services to include the words "select agent" in association with the basic shipping description on the shipping paper that accompanies the shipment. The proposal was intended to enable carriers to identify select agent shipments that are subject to the security plan requirements in subpart I of part 172 of the HMR.

Of the three comments received on this issue, the American Trucking Associations (ATA) and the American Society of Safety Engineers (ASSE) support the proposals. In ATA's words:

Following publication of RSPA's final rule requiring motor carriers that transport certain "select agents" to develop security plans, ATA raised the issue that motor carriers do not have the ability to determine whether a particular package contains a select agent

unless that fact is communicated by the shipper. As such, we applaud RSPA for promptly addressing the issue and proposing to require each person who offers a select agent for transportation to include the words "Select Agent" in association with the basic shipping description on the shipping paper that accompanies the shipment.

FEDEX opposes this provision suggesting that identifying shipments as select agents on shipping papers could create a security risk by drawing attention to the shipment. We agree. Also, there are other ways for this information to be communicated, such as by contractual arrangement or prior notification by phone call. The shipper's security plan must address en route security (see § 172.802(a)(3) of the HMR). If the shipper is relying on its carrier to handle en route security for the shipment, then the shipper must communicate to the carrier that the shipment is subject to security plan requirements.

The proposal in the NPRM is not adopted in this final rule. We continue to believe, however, that a shipper should communicate that a package contains a select agent to the carrier in order for the carrier to apply security plan measures to the shipment. We encourage shippers to provide this information to carriers. If a carrier is not sure whether a package contains a select agent, the carrier should request this information from the shipper. Although we are not adopting a new notification or paperwork requirement in this final rule, we may address this issue in a future rulemaking.

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not 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 regulated industry may incur minimal costs to comply with the provision of this final rule, most notably the new marking requirements for non-odorized shipments of LPG. We note, however, that many shippers already mark LPG packages and containers "NOT ODORIZED" to conform with the NFPA Standard 58 for LPG and, further, that the new marking requirement may be met using an inexpensive pressure-sensitive vinyl or adhesive-backed marking.

The small costs that may be incurred, however, are more than offset by the benefits that will accrue because of the provisions in this final rule that provide the industry with increased flexibility in meeting hazard communication

requirements. For example, this final rule expands the current exception for neckring marking of cylinders transported in all modes, permits marking and placards to remain on packagings containing a hazardous substance below its RQ, and provides increased flexibility for use of the FUMIGANT marking. In addition, the final rule will enhance the safe transport of hazardous materials by clarifying the requirements of the emergency response telephone number on shipping papers and the emergency response and training requirements for shipments of combustible liquids in bulk packagings. The compliance costs associated with requirements in this final rule are minimal. Moreover, this final rule should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

B. Executive Order 13132

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

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

(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 material; 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 subject items 1, 2, and 3 above and preempts State,

local, and Indian tribe requirements not meeting the “substantively the same” standard. This final rule is necessary to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the 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 a final rule and not later than two years after the date of issuance. Therefore, the effective date of Federal preemption will be 90 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

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 a rule is not expected to have a significant economic impact on a substantial number of small entities. The changes in this final rule will impose only minimal new costs of compliance on the regulated industry, and may reduce costs of compliance for several provisions, such as not requiring removal of markings and placards on packagings (*e.g.*, returning rail cars) containing a hazardous substance below its reportable quantity (RQ). I hereby certify that while the changes in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

Need for the final rule. We are making changes to the hazard communication requirements in the HMR based on petitions for rulemaking, requests for clarification, and our own determination that clarifications and improvements may be appropriate. This action is being taken to improve safety and enhance emergency response to hazardous materials incidents.

Description of actions. In this final rule, we are amending the HMR to:

- Clarify that beeper numbers and call-back systems that require an emergency responder to wait for a return telephone call do not conform to the requirements for an emergency response telephone number on shipping papers
- Revise certain package marking requirements to more accurately convey information about the material being transported to emergency responders, transport workers, and the general public
- Permit more flexibility in color requirements for placards
- Provide exceptions for the return transportation of rail cars that contain residues of hazardous substances so that placards and required markings need not be removed

In addition, in this final rule, we are making several clarifications and editorial revisions to current hazard communication requirements.

Identification of potentially affected small entities. Businesses likely to be affected by the final rule are shippers and transporters of hazardous materials. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of “small business” has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to this final rule are small businesses. For the most part, these entities will incur minimal costs to comply with the changes made in this final rule.

Reporting and record keeping requirements. This final rule does not contain new reporting or record keeping requirements.

Related Federal rules and regulations. With respect to hazard communication requirements for hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal Government.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazard communication requirements for hazardous materials transported in

commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

This final rule was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this final rule. For example, to minimize the burden associated with the new ODORANT marking requirement, we are permitting rail cars in mixed service to be permanently marked and are providing an extended compliance period. Other changes provide clarification of certain provisions to eliminate confusion and enhance compliance. In addition, several exceptions from current requirements to decrease compliance burdens are included in this final rule.

Conclusion. We conclude that, while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. The compliance costs associated with requirements in this final rule are minimal. Moreover, this final rule should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not propose any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading of this document 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 objectives 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. The improvements to the hazard communication system in this final rule will have a net positive effect on the environment by improving response to and mitigation of incidents involving hazardous materials in transportation. We have determined that there would be no significant environmental impact associated with this final rule.

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

Shippers—General requirements for shipments and packagings.

■ In consideration of the foregoing, 49 CFR parts 171, 172 and 173 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, 44701; 49 1.45 and CFR 1.53; Pub L. 101–410 section 4 (28 U.S.C. 2461); Pub. L. 104–134, section 31001.

■ 2. In § 171.7, in paragraph (b), one new entry is added in alphabetical order to read as follows:

§ 171.7 Reference material.

* * * * *

(b) *List of informational materials not requiring incorporation by reference.*

* * *

Source and name of material	49 CFR reference
* * * * *	* * * * *
Pantone Incorporated, 590 Commerce Boulevard, Carlstadt, New Jersey 07072–3098. Pantone® Formula guide coated/uncoated, Second Edition 2004	172.407, 172.519
* * * * *	* * * * *

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.

■ 4. In § 172.301, paragraph (f) is added to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON-ODORIZED marking on cylinders containing LPG.* After September 30, 2006, no person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, that contains an unodorized Liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section.

■ 5. In § 172.326, paragraph (d) is added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) *NON-ODORIZED marking on portable tanks containing LPG.* After September 30, 2006, no person may offer for transportation or transport a portable tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section, or near the placards.

■ 6. In § 172.328, paragraph (e) is added to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(e) *NON-ODORIZED marking on cargo tanks containing LPG.* After September 30, 2006, no person may offer for transportation or transport a cargo tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides

near the marked proper shipping name as specified in paragraph (b)(1) of this section, or near the placards.

■ 7. In § 172.330, paragraph (c) is added to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

* * * * *

(c) After September 30, 2006, no person may offer for transportation or transport a tank car or multi-unit tank car tank containing liquefied petroleum gas (LPG) that is unodorized unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (a)(2) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a tank car or multi-unit tank car tank used for both unodorized and odorized LPG.

■ 8. In § 172.400, in the table in paragraph (b), the entries for “6.1” are revised to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design section reference
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.429
6.1 (other than material poisonous by inhalation)	POISON	172.430

■ 9. In § 172.400a, paragraph (a)(1) is revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter or a cylinder containing a Division 2.1, 2.2, or 2.3 material that is—

- (i) Not overpacked; and
- (ii) Durably and legibly marked in accordance with CGA Pamphlet C-7, Appendix A (IBR; see § 171.7 of this subchapter).

* * * * *

■ 10. In § 172.407, paragraph (d)(5) is revised and paragraphs (d)(6) and (d)(7) are added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(5) The following color standards in the PANTONE® formula guide coated/uncoated (see § 171.7(b) of this subchapter) may be used to achieve the required colors on markings and hazard warning labels and placards:

- (i) For Red—Use PANTONE® 186 U
- (ii) For Orange—Use PANTONE® 151 U
- (iii) For Yellow—Use PANTONE® 109 U
- (iv) For Green—Use PANTONE® 335 U
- (v) For Blue—Use PANTONE® 285 U
- (vi) For Purple—Use PANTONE® 259 U

(6) Where specific colors from the PANTONE MATCHING SYSTEM® are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation must be used to ensure

a proper match with the color standards in the PANTONE® formula guide coated/uncoated for colors prescribed in paragraph (d)(5) of this section. PANTONE® is the property of Pantone, Inc.

(7) The specified label color must extend to the edge of the label in the area designated on each label, except for the CORROSIVE, RADIOACTIVE YELLOW-II, and RADIOACTIVE YELLOW-III labels on which the color must extend only to the inner border.

■ 11. In § 172.504, in Table 1, the entry for “6.1” and the footnote are revised; in Table 2, the entry for “6.1” is revised; and paragraph (f)(9) is revised, to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
6.1 (material poisonous by inhalation (see § 171.8 of this subchapter)).	POISON INHALATION HAZARD	172.555

¹ RADIOACTIVE placard also required for exclusive use shipments of low specific

activity material and surface contaminated objects transported in accordance with

§ 173.427(b)(4) and (5) or (c) of this subchapter.

TABLE 2

Category of material (hazard class of division number and additional description, as appropriate)	Placard name	Placard design section reference
6.1 (other than material poisonous by inhalation)	POISON	172.554

(f) * * *
 (9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in

§ 171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a

CLASS 9 placard, an orange panel, or a white square-on-point display

configuration as required by subpart D of this part.

* * * * *

■ 12. In §172.514, paragraph (b) is revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(b) Each bulk packaging that is required to be placarded when it contains a hazardous material, must remain placarded when it is emptied, unless it—

(1) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(2) Is refilled, with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous; or

(3) Contains the residue of a hazardous substance in Class 9 in a quantity less than the reportable quantity, and conforms to § 173.29(b)(1) of this subchapter.

* * * * *

■ 13. In § 172.519, paragraph (d)(3) is revised to read as follows:

§ 172.519 General specification for placards.

* * * * *

(d) * * *

(3) Upon visual examination, a color on a placard must fall within the color tolerances displayed on the appropriate Hazardous Materials Label and Placard Color Tolerance Chart (see § 172.407(d)(4)). As an alternative, the PANTONE® formula guide coated/uncoated as specified for colors in § 172.407(d)(5) may be used.

* * * * *

■ 14. In § 172.604, paragraph (a)(2) is revised to read as follows:

§ 172.604 Emergency response telephone number.

(a) * * *

(2) The telephone number of a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of paragraph (a) of this section; and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 44701; 49 CFR 1.45, 1.53.

■ 16. In § 173.9, paragraph (e)(1) and (2) are revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

* * * * *

(e) * * *

(1) The fumigated lading is unloaded; or

(2) A fumigated closed transport vehicle or freight container has been completely ventilated either by opening the doors of the transport vehicle or freight container or by mechanical ventilation to ensure no harmful concentration of gas remains after fumigation has been completed.

* * * * *

■ 17. In § 173.29, paragraph (c) introductory text is revised and paragraph (h) is added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(c) A non-bulk packaging containing only the residue of a hazardous material

covered by Table 2 of § 172.504 of this subchapter that is not a material poisonous by inhalation or its residue shipped under the subsidiary placarding provisions of § 172.505—

* * * * *

(h) A package that contains a residue of a hazardous substance, Class 9, listed in the § 172.101 Table, Appendix A, Table I, that does not meet the definition of another hazard class and is not a hazardous waste or marine pollutant, may remain marked, labeled and, if applicable, placarded in the same manner as when it contained a greater quantity of the material even though it no longer meets the definition in § 171.8 of this subchapter for a hazardous substance.

■ 18. In § 173.150, the section heading is revised, and in paragraph (f)(3), paragraphs (vii) and (viii) are revised and paragraph (x) is added to read as follows:

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

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform with requirements of § 173.203;

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

(x) Emergency response information requirements of subpart G of part 172.

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Elaine E. Joost,

Acting Deputy Administrator, Research and Special Programs Administration.

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