

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs  
Administration****49 CFR Parts 171, 172, 173, 175, and  
176****[Docket No. HM-126C; Amdt. Nos. 171-102,  
172-116, 173-213, 175-45, and 176-28]****RIN Number 2137-AA88****Emergency Response Communication  
Standards; Corrections In Response to  
Petitions for Reconsideration; and  
Extension of Effective Date****AGENCY:** Research and Special Program  
Administration (RSPA), DOT.**ACTION:** Final rule; corrections in  
response to petitions for  
reconsideration; and extension of the  
effective date.

**SUMMARY:** This document revises the final rule under Docket HM-126C published January 10, 1990 (55 FR 870) which, in addition to corrections and clarifications, extended the effective date of the final rule published in June 27, 1989 (HM-126C; 54 FR 27138). On May 21, 1990 (55 FR 20796), RSPA extended the effective dates of the final rules published June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870) from June 4, 1990 to September 17, 1990. The final rule amended the Hazardous Materials Regulations (HMR; 49 CFR 171-180) to include new requirements for additional emergency response information on shipping papers and packages and maintenance of emergency response information on transportation vehicles and at transportation facilities. The requirements adopted under the final rule are intended to improve hazard communication standards by requiring that more detailed emergency response information accompany shipments of hazardous materials. These revisions are made in response to three petitions for reconsideration of certain aspects of the final rule (55 FR 870).

**EFFECTIVE DATES:** The effective dates of the final rule published June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870) are changed from September 17, 1990 to December 31, 1990. The effective date of this final rule, which is in response to petitions for reconsideration, is December 31, 1990. However, compliance with this final rule is authorized immediately.

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**SUPPLEMENTARY INFORMATION:****I. General Discussion**

This document revises and clarifies the Final Rules under Docket HM-126C published on June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870). In this amendment, the following paragraphs address the changes made as a result of three petitions for reconsideration of certain aspects of the final rule. This discussion concerns the issues raised in the petitions for reconsideration, and a section-by-section review of the changes and clarifications. To aid the reader, the regulatory text of Docket HM-126C is republished in its entirety. A more complete discussion of the background to this rule is contained in the August 20, 1987, Notice of Proposed Rulemaking (NPRM; 52 FR 31486).

**II. Background**

As a result of eleven petitions for reconsideration of certain aspects of the final rule entitled "Emergency Response Communication Standards", published June 27, 1989 (54 FR 27138), a correction final rule (55 FR 870) was published, on January 10, 1990, containing revisions, clarifications and an extension of the effective date of the final rule. The January 10, 1990 final rule, made changes that: (1) Revised the definition of "technical name" in § 171.8 to allow the use of recognized chemical names used in scientific handbooks, journals, and texts, provided they readily identify the general chemical group, (2) provided an exception from the requirement for inclusion of technical names of hazardous wastes described by n.o.s. descriptions if the chemical constituents are unknown, provided the EPA hazardous waste number is included in place of the technical name, (3) allowed marking of non-bulk packages with the technical name shown "in association with" rather than "immediately following," the proper shipping name, and (4) provided a one year exception from marking the technical name on non-bulk packages filled prior to the effective date of the final rule. The effective date of the final rule was extended from April 2, 1990 to June 4, 1990. Subsequently, RSPA experienced delays in printing and making available proof copies for commercial reproduction of the revised 1990 DOT "Emergency Response Guidebook" (ERG), which may be used to comply with certain emergency response information requirements of this rule. On May 21, 1990, RSPA extended the effective date of the final rule published

June 27, 1989 and January 10, 1990 under Docket HM-126C from June 4, 1990 to September 17, 1990 (55 FR 870).

RSPA received three petitions for reconsideration of certain aspects of the final rule (55 FR 870) from Government Service Institute Incorporated (GSI), a company that provides training on the regulations applicable to hazardous materials transportation, the Petroleum Marketers Association of America (PMAA), and the Ocean Carrier Dangerous Goods Coalition. These petitions and the actions being taken by RSPA are addressed in this final rule.

### III. Petitions for Reconsideration

#### A. Technical Names for Hazardous Wastes described by N.O.S. descriptions

GSI petitioned that § 172.203(k)(4)(ii) be reinstated as published in the final rule dated June 27, 1989 (54 FR 27138) to require the inclusion of the technical name of n.o.s. descriptions, with the limited exception of ORM-E classed hazardous wastes that are regulated as hazardous substances. GSI stated:

Assuming that the technical name information has a safety consequence to emergency response personnel compliance with the rule as modified in the January 10, 1990 Federal Register is unreasonable and not in the public interest to the extent that it deprives those whom it was designed to protect from the very information designed to protect them.

GSI's position is supported by the Chemical Waste Transportation Institute's (CWTI) letter to RSPA. In their letter, CWTI stated:

The members of the Institute realize from the preamble of the January 10th amendment and the revision to 172.203(k)(4)(ii) that the CWTI position has not been clearly understood. Therefore, this letter should clarify our position on this issue.

In a letter dated April 27, 1989, the Institute clarified for OHMT that the relief we were seeking for hazardous wastes under HM-126C was confined to wastes in the ORM-E class. [The Institute's concerns about additional description requirements for wastes packaged in accordance with 49 CFR 173.12(b) have been successfully resolved through the HM-126C rulemaking and are not at issue here.] The Institute was therefore confused to read in the January 10th preamble that the CWTI was seeking relief from additional description requirements as permitted in 172.203(c) for "DOT hazard classes other than ORM-E." Clearly, the final rule goes far beyond what was intended.

The Institute admits that part of the confusion could have resulted from a subsequent letter dated August 10, 1989 in which the Institute asked for reconsideration of 172.203(k)(4)(ii) on what was a very narrow ground. The publication of this sentence on June 27, 1989 began by providing relief to materials using the proper shipping

name "Hazardous Waste, liquid or solid, n.o.s.". Such wastes were, in the Institute's mind, the ORM-E hazard class entries for which relief was sought. We failed to make clear we supported the limitation in our August 10th letter. Again, what we were seeking was a deletion of the phrase, "that are also hazardous substances." OHMT must have assumed when we used the term "n.o.s. ORM-E entries" in our April 27th letter that we were not referring to hazard class but to proper shipping names. In effect, 172.203(k)(4)(ii) provided no more relief than what already existed under 172.203(c). We were trying to extend the relief of 172.203(c) to hazardous wastes, liquid or solid, n.o.s., ORM-E that were shipped in quantities larger than qualified to be packaged according to 173.12(b), but smaller than the reportable quantity for that waste stream.

RSPA did not intend to except all hazardous waste shipments which are described in accordance with the provisions of § 172.203(c) from the requirement for inclusion of the technical name on shipping papers and non-bulk packages, or to allow the use of the EPA hazardous waste number in place of the technical name for all hazardous wastes. Accordingly, except for hazardous wastes correctly using the proper shipping name "Hazardous wastes, liquid or solid, n.o.s.", and meeting the hazard class definition of ORM-E (in which case the EPA Hazardous waste number may be included in place of the technical name), hazardous wastes described by "n.o.s." descriptions must include the technical name of the materials on shipping papers and non-bulk packages. In this amendment, § 172.203(k)(4)(ii) is revised to provide an exception for inclusion of the technical name only for hazardous wastes using the proper shipping name "Hazardous waste, liquid or solid, n.o.s."

#### B. 24-hour Emergency Response Telephone Number

PMAA petitioned RSPA to amend 49 CFR 172.604 to provide for a limited application of the requirement to maintain a "24 hour" emergency response telephone number that is monitored at all times since many petroleum marketers limit their deliveries of hazardous materials to daytime hours only. PMAA stated that many of the smaller petroleum marketers deliver only to residential and farm accounts during the daytime and do not transport product 24 hours per day and, therefore, maintenance of a "24 hour" telephone contact is overly burdensome and imposes unnecessary costs. Secondly, PMAA indicated that these small marketers do not employ common carriers, that they would know when any of their product is being

transported and, because they control the delivery, would be able to provide an emergency response telephone number during the times that the product is being shipped. RSPA agrees. Accordingly, § 172.604(a)(1) is revised to clarify that the emergency response telephone number must be monitored at all times the hazardous material is in transportation, including storage incidental to transportation.

#### C. Applicability of final rule to Import/Export Shipments by Vessel

The Ocean Carrier Dangerous Goods Coalition petitioned RSPA to further delay (indefinitely) implementation of the emergency response information requirements with respect to hazardous materials shipments moving between points of origin and destination in international ocean commerce to or from a U.S. port and, in particular, clarification and/or reconsideration of the final rule with respect to the transportation of hazardous materials by vessel, transiting a U.S. port or being offloaded and transhipped between vessels within U.S. port facilities. The Coalition includes both U.S. and foreign flag carriers. These carriers transport substantial volumes of hazardous materials in freight containers under all-water and intermodal bills of lading.

In reviewing their internal procedures and methods of ensuing compliance by their customers (in the U.S. and abroad) with the requirements for emergency response information, including the 24-hour telephone number, members of the Coalition believe that, despite the efforts of carriers, many shippers in U.S. foreign commerce simply cannot, or will not, comply with the requirements under Docket HM-126C. The petitioner stated:

\* \* \* In many countries the respect for the rule of law generally is also not what it is in the U.S. Further, carriers must often operate in truly hostile legal and political environments. Shippers and transportation intermediaries in these countries may not only feel little compunction about noncompliance with legal requirements, they are often quite confident that they are beyond the reach of U.S. governmental enforcement efforts, let alone private actions by carriers.

\* \* \* This requirement may be perceived by foreign entities as unimportant since it is intended solely to deal with the speculative possibility of an accident far away, in the U.S. The Coalition believes the burdens of the rule will increase existing incentives to misdescribe by certain foreign chemical and other hazardous goods shippers. The result in certain trades could very well be an increase in international cargoes moving without any ER information whatsoever, including proper shipping name.

Further exacerbating this problem is the increasing involvement of transportation intermediaries, such as non-vessel operating common carriers forwarders, brokers, trading companies, and consolidators. In many foreign trades these entities control the routing and booking of large portions of total trade FCL and consolidated cargo, including hazardous cargo. In fact, the ocean carrier may be several layers removed in the transportation chain from the actual manufacturer. Intermediaries may often be "telephone and desk" operations with little capital investment or staffing, let alone any hazardous cargo expertise. As a result, the intermediaries will generally not be able to provide the ER information themselves. Unfortunately, in many cases it is also likely that they will not require production of the information from their underlying customers (who themselves may be trading companies or other intermediaries). Moreover, these intermediaries will often have a very strong commercial interest in preventing the ocean carrier from identifying the underlying manufacturer-exporter. They may view providing the HM-126C information (for example, the telephone number) to the carrier as inconsistent with this interest.

The Coalition stated that they do not oppose the basic methodology or the objective of the final rule, at least in the domestic market. However, the Coalition is concerned with the implementation of the final rule relative to meeting the effective date as it applies to all-water and intermodal hazardous cargoes moving under single bills of lading (e.g., issued by NVOCC's) in international ocean commerce. It is concerned with the applicability of the emergency response information requirements to hazardous materials shipments by vessels originating outside of the U.S., transiting U.S. ports in the course of being shipped between destinations outside of the U.S., and particularly with the 24-hour emergency response telephone number required on shipping documents.

The emergency response information requirements are intended to improve and enhance the communication of hazard information and the identification of hazardous materials involved in transportation incidents. RSPA is concerned about the views expressed by the Coalition relative to alleged intentional noncompliance with the Hazardous Materials Regulations (HMR). In recent years, RSPA has initiated 19 civil penalty cases and completed 14, with collection of civil penalties from various businesses located outside of the United States in Canada, England, Hong Kong, China, Venezuela, Japan, Scotland and West Germany. The argument that shippers, foreign or domestic, may intentionally attempt to evade or defeat the requirements under the HMR (e.g.,

misdescription, false telephone numbers, or nondeclaration of dangerous goods) does not, in itself, substantiate or justify indefinite delay of the effective date of the final rule with respect to hazardous materials shipments moving between origin and destination in international ocean commerce. In addition, the Coalition is reminded of the requirements of 49 CFR 171.12(a) that importers of hazardous materials into the U.S. provide shippers and forwarding agents with information concerning not only the requirements of the amendments under this Docket, but other requirements that have been applicable to international ocean shipments for many years, including documentation requirements. Therefore, this portion of the Coalition's petition is denied.

The Coalition also requested reconsideration and/or clarification of the scope of the final rule as it applies to the movement of hazardous materials by vessel from a point of origin outside of the U.S. to a destination outside of the U.S., which transit U.S. ports in vessels or are offloaded between ocean vessels within a U.S. port facility, and are not moved on a public highway. The petitioner stated:

\* \* \* These cargoes have always moved under IMO requirements, both because of the foreign-to-foreign and essentially maritime nature of the transportation, as well as the minimal contact with the U.S. \* \* \*

RSPA currently provides requirements, in §§ 171.12(d) and 176.11(a), regarding hazardous materials shipped by vessel from the point of origin outside of the U.S., destined for places outside of the U.S., and which transit U.S. ports, or are offloaded between ocean vessels at port facilities. Hazardous materials transported solely under, and in full compliance with, the requirements of the International Maritime Organization's (IMO) International Maritime Dangerous Goods Code (IMDG Code), are excepted from compliance with the corresponding requirements in the HMR pertaining to packaging, making, labelling, classification, description, certification, placarding, stowage and segregation, including transportation by motor vehicles used in connection with the discharge or loading of vessels, if they are not operated on a public highway. Also, following present international practice under the IMDC code, technical names of materials described by n.o.s. entries are required on the dangerous cargo manifest for international shipments by vessel. In the event of an incident, the IMO "Emergency Procedures for Ships Carrying

Dangerous Goods (EMS)" provides detailed advice and guidance for mitigating incidents involving hazardous materials on board vessels.

RSPA agrees with the Coalition that a hazardous material conforming to the provisions of paragraph (a) of § 176.11, in the course of being shipped from a point of origin outside of the U.S. to a destination outside of the U.S., when transiting U.S. ports, or being transhipped between vessels at a single U.S. port facility, would not be subject to the emergency response telephone number requirement specified in § 172.201(d). Accordingly, a new paragraph (a)(3) is added to § 176.11 to clarify that materials shipped by vessel, solely in accordance, and in full compliance, with the IMDG Code, and not moved on a public highway, are excepted from compliance with the requirements for an emergency response telephone number.

In regard to the Coalition's concerns for providing a 24-hour emergency response telephone number for international shipments imported into the U.S., RSPA has similar concerns regarding the effectiveness of an overseas 24-hour emergency response telephone number contact for foreign shippers, and that there could be some difficulty in obtaining emergency response information for import shipments. However, adoption of alternative approaches, such as requirements that a representative in the U.S. be designated as the 24-hour contact is beyond the scope of this rulemaking. RSPA anticipates addressing this issue in future rulemaking.

#### **IV. Availability of the DOT Emergency Response Guidebook (ERG) and Delay of the Effective Date of the Final Rule Under Docket HM-126C**

In the correction final rule published January 10, 1990 (55 FR 870), the effective date of Docket HM-126C was extended from April 2, 1990 to June 4, 1990 to give carriers, who elect to place the DOT Emergency Response Guidebook (ERG) on their vehicles, the necessary time to equip their vehicles with the latest edition of the ERG. Since publication of the correction final rule, RSPA experienced further difficulties in making camera-ready copies of the 1990 ERG available to commercial sources. Subsequently, based on RSPA's anticipation of the unavailability of the 1990 ERG, on May 21, 1990 (55 FR 20796), RSPA again extended the effective date of the final rule from June 4, 1990 to September 17, 1990, to allow additional time for complying with the emergency

response information requirements under Docket HM-126C.

RSPA has received petitions from Yellow Freight System, Inc., and the American Trucking Associations (ATA) requesting a further delay of the effective date for implementation of Docket HM-126C, to assure that all affected carriers will be afforded the necessary lead time to equip their vehicles with the latest edition of the DOT ERG. In their letter, the ATA stated:

This delay effectively prevented compliance with the regulations by September 17, 1990. For many carriers, a lead time of at least 90 days from the date of public availability will be needed to assure system-wide distribution of the ERG.

The ERG will be the method utilized by these carriers to comply with the regulations. In real-world applications, Less-than-Truckload (LTL) carriers have all but ruled out the use of individual Material Safety Data Sheets (MSDS) or printing the information on each shipping paper as methods of compliance with the final rule. In many cases, the decision to utilize the ERG was not one made merely by choice, but by shipper demand.

Due to the concerns of carriers regarding the availability of the Emergency Response Guidebook and their desire to comply with the final rule, ATA urges RSPA to delay the September 17, 1990, implementation date up to 90 days from the date of public availability of the ERG.

RSPA understands the petitioners' concerns and agrees with the necessity for a delay of the effective date of the final rule. Consequently, RSPA is extending the effective date of the final rule under Docket HM-126C from September 17, 1990 to December 31, 1990. Recently, the Government Printing Office (GPO) notified RSPA that copies of the 1990 ERG and printers negatives can now be purchased from the GPO. For information contact: Government Printing Office, Customer Service, Accounts Representative, North Capitol and H Streets, NW., Washington, DC 20401, Phone: 202-275-8099.

#### V. Review by Sections

RSPA is amending the October 1, 1989 edition of title 49, Code of Federal Regulations (49 CFR) as amended by the correction final rule published January 10, 1990 (55 FR 870) and republishing all post-October 1, 1989 changes for convenience of users. The following review by sections addresses the revisions resulting from petitions for reconsideration of the January 10, 1990 final rule, and contains several editorial corrections. For a complete review by sections, interested persons should refer to the preamble to Docket HM-126C as published on June 27, 1989 (54 FR 27138)

and January 10, 1990 (55 FR 870). Additionally, as an aid to the reader, the following section-by-section review of changes includes references to the appropriate page numbers in the June 27, 1989 and January 10, 1990 final rules affected herein. To facilitate better understanding of all the provisions, the requirements of the final rule entitled "Emergency Response Communication Standards" are republished in their entirety.

**Section 172.203.** In § 172.203, a correction is made to paragraph (k)(4)(i) to include the word "correctly" between the words "is" and "described," and the shipping name "ORM-E, nos.," which is an alternate name allowed for a material correctly described as "Hazardous substance, liquid or solid, n.o.s.". A revision is made in paragraph (k)(4)(ii) of this section to correct and clarify the exception to the technical name requirement for hazardous wastes. For consistency with the provisions in § 172.101(c)(12) for shipping samples, a new paragraph (k)(4)(iii) is added to provide an exception for inclusion of technical names for materials described by n.o.s. descriptions. Additionally, in § 172.203, paragraph (l) is removed and reserved. The provision specific to IM portable tanks requiring the addition of technical names on shipping papers for hazardous materials using n.o.s. descriptions is no longer necessary. These changes supplement those made to this section on page 55 FR 875 (January 10, 1990).

**Section 172.301.** In § 172.301, paragraph (d)(3) is revised to amend the dates for the exception to marking technical names of n.o.s. descriptions on non-bulk packages to correspond to the extended effective date (i.e., December 31, 1990 to December 31, 1991) of the final rule. These changes supplement those made to this section on page 55 FR 873 (January 10, 1990).

**Section 172.505.** In § 172.505, the phrase "shipping paper description" is revised for clarity to read "shipping paper requirements". These changes supplement those made to this section on page 55 FR 873 (January 10, 1990).

**Section 172.600.** In § 172.600, paragraph (c)(2) is revised to clarify that the general requirements for emergency response information include the emergency response telephone number. These changes supplement those made to this section on page 54 FR 27145 (June 27, 1989).

**Section 172.604.** In § 172.604, a revision is made to paragraph (a)(1) of this section to clarify that the 24-hour emergency response telephone number applies when the materials are in transportation and must be monitored at

all times the material is in transportation, including storage incidental to transportation. These changes supplement those made on page 54 FR 27146 (June 27, 1989).

**Section 172.11.** In § 176.11, a new paragraph (a)(3) is added to clarify that the requirements for the emergency response telephone number do not apply to the transportation of hazardous materials by vessel, which are shipped solely under IMDG Code requirements and which transit U.S. ports (not operating on a public highway) in the course of being shipped between places outside of the U.S.

#### VI. Administrative Notices

##### A. Paperwork Reduction Act

The changes and new requirements for information collection in §§ 172.201, 172.203, 172.602, and 172.604 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-522) under OMB control numbers 2137-0034 and 2137-0580 (expiration date: June 30, 1992).

##### B. Executive Order 12291

The RSPA has determined that this final rule (1) does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule; (2) is not considered to be a "significant" rule under DOT Regulatory Policies and Procedures [44 FR 11034]; (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require a Regulatory Impact Analysis or an Environmental Impact Statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The changes made in this final rule do not modify or affect the original regulatory evaluation, which is available for review in the Docket.

##### C. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### D. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this final rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities. The changes made to this final rule do not modify or affect the original regulatory

evaluation, which is available for review in the Docket.

**E. Regulatory Information Number (RIN)**

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

**List of Subjects**

**49 CFR Part 171**

Exports, Hazardous materials transportation, Definitions, Hazardous waste, Imports, Report and recordkeeping requirements.

**49 CFR Part 172**

Hazardous materials transportation, Hazardous wastes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Shipping papers, Markings, and Emergency response information.

**49 CFR Part 173**

Hazardous materials transportation, Packaging and containers, Radioactive materials, Report and recordkeeping requirements.

**49 CFR Part 175**

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

**49 CFR Part 176**

Hazardous materials transportation, Maritime carriers.

**Note:** The effective dates of this final rule and of the final rules published June 27, 1989 (54 FR 27138) and January 10, 1990 (55 FR 870) (which previously were extended from April 2, 1990 to June 4, 1990, and from June 4, 1990 to September 27, 1990) are changed from September 17, 1990, to December 31, 1990.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 175 and 176 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. App. 1802, 1803, 1804, 1805, 1808; 49 CFR part 1.

2. In § 171.8, the definition of "technical name" is revised to add an "s" to the word "compound" to read as follows:

**§ 171.8 Definitions and abbreviations.**

*Technical name* means a recognized chemical name currently used in scientific and technical handbooks, journals, and texts. Generic descriptions are authorized for use as technical names provided they readily identify the general chemical group. Examples of acceptable generic descriptions are organic phosphate compounds, petroleum aliphatic hydrocarbons, and tertiary amines. Except for names which appear in subpart B of part 172 of this subchapter, trade names may not be used as technical names.

3. In § 171.11, paragraph (d)(10) is republished to read as follows:

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

(d) \* \* \*

(10) Shipments of hazardous materials under this section must conform to the requirements for emergency response information as prescribed in subpart C of part 172 of this subchapter.

4. In § 171.12a, paragraph (a)(7) is republished to read as follows:

**§ 171.12a Canadian shipments and packagings.**

(a) \* \* \*

(7) Shipments of hazardous materials subject to the requirements of this section must conform to the requirements for emergency response information as prescribed in subpart C of part 172 of this subchapter.

**PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS**

5. The authority citation for part 172 continues to read as follows:

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

**§ 172.201 General entries.**

(d) *Emergency response telephone number.* A shipping paper must contain an emergency response telephone number, as prescribed in subpart C of part 172 of this subchapter.

7. In § 172.203, paragraph (i)(2) is deleted, paragraph (i)(3) is redesignated in paragraph (i)(2), the introductory text of paragraphs (k) (1), (2), (3), and paragraph (m) are republished, paragraph (k)(4) is revised, and paragraph (l) is removed and reserved to read as follows:

**§ 172.203 Additional descriptions requirements.**

(k) *Technical names for "n.o.s." and other generic descriptions.* Unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (k)(3), the technical name of the hazardous material must be entered in parentheses in association with the basic description. For example: "Corrosive liquid, n.o.s. (Caprylyl chloride), UN1760" or "Corrosive liquid, n.o.s., UN1760 (contains caprylyl chloride)". The word "contains" may be used in association with the technical name, if appropriate.

(1) In addition to the n.o.s. descriptions listed herein, the requirements of this section apply to all shipping descriptions for poisonous materials which are subject to the requirements of paragraph (m) of this section, and for which the proper shipping name does not specifically identify the poisonous constituent by technical name. For example, "Motor fuel antiknock compound (Tetraethyl lead), Poison B, UN1649" or "Motor fuel antiknock compound, Poison B, UN1649, (Tetraethyl lead)".

(2) If a hazardous material is a mixture or solution of two or more hazardous materials, the technical names of at least two components most predominately contributing to the hazards of the mixture or solution must be entered on the shipping paper as required by paragraph (k) of this section. For example, "Flammable liquid, corrosive, n.o.s., Flammable liquid, UN2924 (contains Methanol, Potassium hydroxide)".

(3) Proper shipping names for which the provisions of this paragraph apply are as follows:

- Acid, liquid, n.o.s.
- Alcohol, n.o.s.
- Alkaline liquid, n.o.s.
- Cement, adhesive, n.o.s.
- Combustible liquid, n.o.s.
- Compressed gas, n.o.s.
- Corrosive liquid, n.o.s.
- Corrosive liquid, poisonous, n.o.s.
- Corrosive solid, n.o.s.
- Dispersant gas, n.o.s.
- Etching acid, liquid, n.o.s.
- Etiologic agent, n.o.s.
- Flammable gas, n.o.s.
- Flammable liquid, corrosive, n.o.s.
- Flammable liquid, n.o.s.
- Flammable liquid, poisonous, n.o.s.
- Flammable solid, corrosive, n.o.s.
- Flammable solid, n.o.s.
- Flammable solid, poisonous, n.o.s.
- Hazardous substance, liquid or solid, n.o.s.
- Hazardous waste, liquid or solid, n.o.s.
- Infectious substance, human, n.o.s.
- Insecticide, dry, n.o.s.

Insecticide, liquid, n.o.s.  
 Irritating agent, n.o.s.  
 Nonflammable gas, n.o.s.  
 Organic peroxide, solid, n.o.s.  
 Organic peroxide, liquid or solution, n.o.s.  
 ORM-A, n.o.s.  
 ORM-B, n.o.s.  
 ORM-E, n.o.s.  
 Oxidizer, corrosive, liquid, n.o.s.  
 Oxidizer, corrosive, solid, n.o.s.  
 Oxidizer, n.o.s.  
 Oxidizer, poisonous, liquid, n.o.s.  
 Oxidizer, poisonous, solid, n.o.s.  
 Poisonous liquid or gas, flammable, n.o.s.  
 Poisonous liquid or gas, n.o.s.  
 Poisonous liquid, n.o.s.  
 Poison B liquid, n.o.s.  
 Poisonous solid, corrosive, n.o.s.  
 Poisonous solid, n.o.s.  
 Poison B, solid, n.o.s.  
 Pyrophoric liquid, n.o.s.  
 Pyrophoric liquid, n.o.s.  
 Refrigerant gas, n.o.s.  
 Water reactive solid, n.o.s.

(4) The provisions of this paragraph do not apply—

(i) To a material that is correctly described with the proper shipping name "Hazardous Substance, liquid or solid, n.o.s." or "ORM-E, n.o.s.", provided the material is described in accordance with the provisions of § 172.203(c) of this part;

(ii) To a material that is a hazardous waste and correctly described using the proper shipping name "Hazardous waste, liquid or solid, n.o.s.", classed as an ORM-E, provided the EPA hazardous waste number is included on the shipping paper in association with the basic description, or provided the material is described in accordance with the provisions of § 172.203(c) of this part; or

(iii) To a material for which the hazard class is to be determined by testing under the criteria in § 172.101(c)(12).

(1) [Removed and Reserved].

(m) *Poisonous materials.*

Notwithstanding the hazard class to which a material is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria

specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of paragraphs (c) and (d) of the same section), the words "Poison Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings containing inner receptacles of one liter capacity or less.

8. In § 172.301, paragraph (c) is republished and paragraph (d)(3) is revised to read as follows:

**§ 172.301 General marking requirements.**

(c) *Technical names.* Each non-bulk packaging containing hazardous materials subject to the provisions of § 172.203(k) of this part must be marked with the technical name in parentheses in association with the proper shipping name, in accordance with the requirements and exceptions specified for display of technical descriptions on shipping papers in § 172.203(k) of this part.

(d) \* \* \*

(3) Display of technical names on non-bulk packagings filled for shipment prior to December 31, 1990 until December 31, 1991.

9. Section 172.302 is removed and republished to read as follows:

**§ 172.302 [Removed]**

10. Section 172.505 is revised to read as follows:

**§ 172.505 Special placarding requirements for certain poisonous materials.**

Each transport vehicle and freight container that contains a material subject to the "Poison-Inhalation Hazard" shipping paper requirements of § 172.203(m)(3) must be placarded POISON on each side and each end in addition to the placards required by § 172.504. This requirement also applies to portable tanks. Duplication of POISON placards is not required nor display on UN class numbers at the bottom of additional placards required by this section.

11. In § 172.600, paragraphs (a), (b), (c) introductory text, (c)(1) and (d) are republished, and paragraph (c)(2) is revised to read as follows:

**§ 172.600 Applicability and general requirements.**

(a) *Scope.* Except as provided in paragraph (d) of this section, this subpart prescribes requirements for providing and maintaining emergency response information during

transportation and at facilities where hazardous materials are loaded for transportation stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *Applicability.* This subpart applies to persons who offer for transportation, accept for transportation, transfer or otherwise handle hazardous materials during transportation.

(c) *General requirements.* No person to whom this subpart applies may offer for transportation, accept for transportation, transfer, store or otherwise handle during transportation a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present; and

(2) Emergency response information, including the emergency response telephone number, required by this subpart is immediately available to any person who, as a representative of a Federal, state or local government agency, responds to an incident involving a hazardous material, or is conducting an investigation which involves a hazardous material.

(d) *Exception.* The requirements of this subpart do not apply to hazardous materials which are excepted from the shipping paper requirements of this subchapter.

12. Section 172.602, is republished to read as follows:

**§ 172.602 Emergency response information.**

(a) *Information required.* For purposes of this subpart, the term "emergency response information" means information that can be used in the mitigation of an incident involving hazardous materials and, as a minimum, must contain the following information:

- (1) The basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the TDG Regulations, as appropriate;
- (2) Immediate hazards to health;
- (3) Risks of fire or explosion;
- (4) Immediate precautions to be taken in the event of an accident or incident;
- (5) Immediate methods for handling fires;

- (6) Initial methods for handling spills or leaks in the absence of fire; and
- (7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

- (1) Printed legibly in English;

(2) Available for use away from the package containing the hazardous material; and

(3) Presented—

(i) On a shipping paper;  
 (ii) In a document, other than a shipping paper, that includes both the basic description and technical name of the hazardous material as required by §§ 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the TDC Regulations, as appropriate, and the emergency response information required (e.g., a material safety data sheet); or

(iii) Related to the information on a shipping paper, a written notification to pilot-in-command, or a dangerous cargo manifest, in a separate document (e.g., an emergency response guidance document), in a manner that cross-references the description of the hazardous material on the shipping paper with the emergency response information contained in the document. Aboard aircraft, the ICAO "Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods" and, aboard vessels, the IMO "Emergency Procedures for Ships Carrying Dangerous Goods," or equivalent documents, may be used to satisfy the requirements of this section for a separate document.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification to pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an incident involving the hazardous material.

13. In § 172.604, paragraphs (a) introductory text, (a)(3), and (b) are republished and paragraphs (a) (1) and (2) are revised to read as follows:

**§ 172.604 Emergency response telephone number.**

(a) A person who offers a hazardous material for transportation must provide a 24-hour emergency response telephone number (including the area code or international access code) for use in the event of an emergency involving the hazardous material. The telephone number must be—

(1) Monitored at all times the hazardous material is in transportation, including storage incidental to transportation;

(2) The number of a person who is either knowledgeable of the hazards and characteristics 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; and

(3) Entered on a shipping paper, as follows:

(i) Immediately following the description of the hazardous material required by subpart C of this subchapter; or

(ii) Entered once on the shipping paper in a clearly visible location. This provision may be used only if the telephone number applies to each hazardous material entered on the shipping paper, and if it is indicated that the telephone number is for emergency response information (for example: "EMERGENCY CONTACT: \* \* \*").

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing the detailed information concerning the hazardous material. A person offering a hazardous material for transportation who lists the telephone number of an agency or organization shall ensure that agency or organization has received current information on the material, as required by paragraph (a)(2), before it is offered for transportation.

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

14. In § 173.4, paragraph (a)(1)(iii) is republished to read as follows:

**§ 173.4 Exceptions for small quantities.**

(a) \* \* \*

(1) \* \* \*

(iii) One (1) gram for authorized materials classed as Poison B or subject to the "Poison-Inhalation Hazard"

shipping paper description requirements of § 172.203(m)(3); and

15. In § 173.12, paragraph (f) is republished to read as follows:

**§ 173.12 Exceptions for shipment of waste material.**

(f) *Technical names for n.o.s. descriptions.* The requirements for the inclusion of technical names for n.o.s. descriptions on shipping papers and package markings, §§ 172.203 and 172.301 of this subchapter, respectively, do not apply to packagings prepared in accordance with the requirements of this section, except as follows:

(1) Packages containing materials meeting the definition of a hazardous substance must be described as required in § 172.203(c) and marked as required in § 172.324 of this subchapter; and

(2) Packages containing hazardous materials subject to the provisions of § 172.203(m) of this subchapter must be described in accordance with § 172.203(m) of this subchapter.

**PART 175—CARRIAGE BY AIRCRAFT**

16. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. App. 1303, 1804, 1808; 49 CFR part 1.

17. In § 175.33, paragraph (b) is republished to read as follows:

**§ 175.33 Notification of pilot-in-command.**

(b) A copy of the written notification to pilot-in-command shall be readily available to the pilot-in-command during flight. Emergency response information required by subpart C of part 172 of this subchapter must be maintained in the same manner as the written notification to pilot-in-command during transport of the hazardous material aboard the aircraft.

**PART 176—CARRIAGE BY VESSEL**

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

Authority: 49 U.S.C. App. 1603, 1804, 1808; 49 CFR part 1.

19. In § 176.11, a new paragraph (a)(3) is added to read as follows:

**§ 176.11 Exceptions.**

(a) \* \* \*

(3) A hazardous material which conforms to the provisions of paragraph (a) of this section is not subject to the requirement specified in § 172.201(d) of this subchapter, for an emergency response telephone number, when

transportation of the hazardous material originates and terminates outside the United States and the hazardous material—

- (i) Is not offloaded from the vessel; or
- (ii) Is offloaded between ocean vessels at a U.S. port facility without being transported by public highway.

21. In § 176.30, paragraph (a)(3)(i) is republished to read as follows:

**§ 176.30 Dangerous cargo manifest.**

- (a) \* \* \*
- (3) \* \* \*

(i) An emergency response telephone number as prescribed in subpart G of part 172 of this subchapter.

Issued in Washington, DC on August 10, 1990 under the authority delegated in 49 CFR part 1.

**Travis P. Dungan,**  
*Administrator, Research and Special Programs Administration.*

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