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49 CFR Parts 171, 172, 173, 174 and 176
Marine Pollutants; Final Rule

HM-211

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174 and 176

[Docket No. HM-211; Amdt. Nos. 171-116, 172-127, 173-231, 174-70, 176-31]

RIN 2137-AC16

Marine Pollutants

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

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations by listing and regulating, in all modes of transportation, those materials identified as marine pollutants by the International Maritime Organization These changes are necessary to implement the provisions of Annex III of the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78), and to address the risks posed by environmentally hazardous materials when transported in commerce The intended effect of this final rule is to increase the level of safety associated with the transportation of environmentally hazardous materials by way of improved communication of their presence during transportation and establishing appropriate requirements for their packaging

DATES: The effective date of these amendments is January 1, 1993; however, immediate compliance is authorized.

FOR FURTHER INFORMATION CONTACT: John A. Gale, Theresa C. Gwynn, or Jennifer K. Posten (202-366-4488) Office of Hazardous Materials Standards, RSPA, 400 Seventh Street SW , Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 1992, RSPA published in the Federal Register a notice of proposed rulemaking (NPRM) (Docket No HM-211, Notice No. 92-2; 57 FR 3854) which proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) by regulating, in all modes of transportation, those materials that meet the definition of a marine pollutant. This proposal was published in order to comply with MARPOL 73/78 and to address environmentally hazardous materials in domestic commerce.

MARPOL 73/78 is the international agreement to prevent and control accidental and operational discharges of pollution from ships. It includes the 1973 International Convention for the Prevention of Pollution from Ships and the 1978 Protocol which modified and incorporated the 1973 Convention It includes a framework agreement setting forth general obligations, and five annexes that relate to particular sources of marine pollution.

On June 10, 1991, the United States ratified optional Annex III. This ratification was transmitted to the International Maritime Organization (IMO) on July 1, 1991, and on July 1, 1992, Annex III became mandatory.

Annex III, which is entitled "Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons," sets forth general regulations for the transport of harmful packaged substances. Many of these substances, such as pesticides and herbicides, are known to kill or retard the growth of marine life and to bioaccumulate in marine organisms, causing potential danger to the food chain, including health risks to humans as well as to birds and other wildlife that eat fish or shellfish. Regulation 1 3 of Annex III states, in part, that the Government of each Party to the Convention shall issue detailed requirements on the packaging, marking, labeling, documentation, stowage, quantity limitations and exceptions for preventing or minimizing pollution of the marine environment. Annex III provides that the packaging of harmful substances must be adequate to minimize the hazard to the marine environment posed by their specific contents. Packages must be marked to indicate that the contents are harmful to the environment, and must be stowed so as to minimize the risk to the marine environment. In addition, a shipping paper or manifest setting forth the harmful substances on board must be carried. Finally, parties are permitted to prohibit or impose quantity limitations on the carriage of certain very hazardous substances. As with all other MARPOL 73/78 annexes, parties to Annex III are required to apply their regulations to ships of nonparty countries using their ports or off-shore terminals.

Regulation 1.1, of Annex III states, in part, that the regulations of the Annex apply to "harmful substances" in packaged form Regulation 1 1 1, of Annex III identifies "harmful substances" as those substances identified as marine pollutants under the 1990 consolidated edition of the International Maritime Dangerous Goods (IMDG) Code. Marine pollutants are identified in the individual schedules and the General Index of the IMDG Code by the letters "P" or "PP". The letters "PP" identify those materials that are regulated as severe marine pollutants when in concentrations of 1% or more. The letter "P" identifies those commodities that are marine pollutants when in concentrations of 10% or more

In addition to proposing regulations for marine pollutants transported by vessel, as required by Annex III, RSPA also proposed to regulate the transportation of marine pollutants transported by air, rail and highway Because marine pollutants are transported over or near bodies of water in the air, rail and highway modes of transport, such transportation has the potential to result in releases that could cause substantial damage to the aquatic environment. In developing the NPRM, RSPA determined that there are certain commodities that present an environmental hazard that are not currently regulated as hazardous materials under the HMR.

The need to regulate marine pollutants in modes of transportation in addition to water was demonstrated when on July 14, 1991, a railroad tank car containing 19,000 gallons of metam sodium, a pesticide included on the list of marine pollutants, fell into the Sacramento River in California. The resulting damage to the environment and economic costs from this accident were substantial.

II. Discussion of Comments Received

In response to the President's January 28, 1992 announcement of a federal regulatory review, DOT published a notice on February 7, 1992 (Docket No. RR-1; 57 FR 4744) soliciting comments on the Department's regulatory programs. RSPA received several comments to Docket RR-1 concerning the proposed marine pollutant rule. Because the comment period for the NPRM coincided with the Docket RR-1 comment period, the comments were very similar in content. The commenters addressed issues such as the general concept of regulating marine pollutants, including metam sodium, in all modes of transportation, and identifying marine pollutants on shipping papers.

All of the comments have been considered in developing this final rule. Based on the merit of comments to the NPRM and those received during the regulatory review, RSPA is modifying several proposed requirements, as indicated below.

In the NPRM, RSPA proposed to regulate marine pollutants in all modes of transportation, in both bulk and non-bulk packages. Many commenters, however, urged RSPA to reevaluate this proposal Several commenters recommended that the regulation of marine pollutants should be limited to vessel shipments only A few commenters added that RSPA should not get involved in regulating marine pollutants at all; that RSPA should leave it to the IMO to regulate marine pollutants on vessels. Some commenters stated that a marine pollutant that is reclassified as ORM-D (consumer commodity) should not be subject to any additional regulations, even when transported by vessel, because of its lesser degree of environmental impact Other commenters stated that since the environmental disaster that took place in July 1991 contaminating the Sacramento River involved bulk packages, the regulations for marine pollutants should be limited to bulk packages For example, the Conference on the Safe Transportation of Hazardous Articles, Inc. (COSTHA) stated, "In view of the relative risks posed by non-bulk versus bulk shipments of marine pollutants, COSTHA favors placing the regulatory emphasis on bulk shipments."

By regulating as hazardous materials the marine pollutants identified by the IMDG Code, materials known to present an environmental hazard will be adequately regulated. However, based upon the comments and RSPA's analysis, RSPA has concluded that non-bulk packages of marine pollutants pose a limited threat of damage to the marine environment during non-vessel transportation. Therefore, non-bulk packagings of marine pollutants, transported in modes other than water, are not subject to the requirements set forth in this final rule. However, RSPA is not excepting from the provisions of this final rule marine pollutants that are reclassified as ORM-D in vessel transportation. RSPA is unable to provide this exception because of the commitment of the United States of America to comply with the provisions of Annex III which provides no equivalent exception.

In the NRPM, RSPA proposed to incorporate the list of marine pollutants into a separate appendix (appendix B) to the § 172 101 Hazardous Materials Table (HMT). Numerous commenters were concerned that the listing of marine pollutants in Appendix B would unnecessarily complicate the determination of proper shipping names and markings on packages because of the need to refer to multiple sources to assure compliance with the HMR. Several commenters encouraged RSPA to incorporate the IMO list of marine pollutants into the existing § 172.101 Appendix (list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) and use "E", "P" and "PP" to distinguish the CERCLA hazardous substances, marine pollutants, and severe marine pollutants, respectively. In addition, commenters requested that tentative reportable quantities (RQ) be assigned to marine pollutants until the Environmental Protection Agency (EPA), through scientific evaluation, establishes substantiated RQ's Other commenters requested that the marine pollutant list be incorporated into the HMT. Still other commenters supported the proposal to incorporate the list of marine pollutants as appendix B to § 172.101.

Determining a material's proper shipping name and whether it is a hazardous substance or a marine pollutant are separate and distinct functions. The HMT is not a list of chemicals; rather, it is a list of proper shipping names. The offeror must determine the appropriate proper shipping name for a material by using a set of guidelines, one of which is knowledge of the material's hazard class or classes. The lists of hazardous substances and marine pollutants are lists of specific chemicals designed to help shippers determine if a material meets the definition of a hazardous substance or a marine pollutant. Any benefit that would result from having a single list would be outweighed by the confusion, and possible non-compliance, of shippers trying to distinguish a marine pollutant from a hazardous substance. Therefore, as proposed, RSPA is adding the list of marine pollutants as appendix B to § 172 101.

Many commenters opposed to the adoption of the list of marine pollutants urged RSPA to establish criteria for the determination of marine pollutants. Some commenters stated that there may be materials that, due to lack of information or unpublished data, are not included in the list. The majority of these commenters believed the criteria should be based on existing criteria from the EPA and the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). One commenter advised RSPA to consider using the rate of biodegradability in determining the hazard of a marine pollutant using guidelines from EPA. Another commenter asserted that if technical data are presented, a manufacturer of a material should be allowed to add to and delete products from Appendix B. The commenter added that any changes made to the list of marine pollutants by GESAMP should be incorporated into appendix B to § 172.101 in a timely fashion.

Although RSPA believes shippers should be able to use a criteria-based system rather than a list-based system for the identification of environmentally hazardous materials, the system developed by the IMO for identifying marine pollutants does not allow the shipper to use the environmental criteria developed by GESAMP. Therefore, at this time, RSPA is adopting the list of marine pollutants identified in the IMDG Code, and may consider, for future rulemaking, the use of a criteria-based system. Any data that contradict the listing or non-listing of chemicals as marine pollutants should be presented to GESAMP for their consideration and the U S. Coast Guard, Office of Marine Safety, Security and Environmental Protection (G-MTH-1). In addition, any changes to the IMDG Code list of marine pollutants will be incorporated into the HMR by RSPA as expeditiously as possible.

In the NPRM, RSPA specifically requested comments relative to the impact and benefit of also requiring the MARINE POLLUTANT mark on packages and transport vehicles that must be labeled or placarded. In response to this request, several commenters stated that the marking requirement might be the beginning of a proliferation of markings or placards for soil, air, and other pollutants. In addition, many commenters did not agree with the proposal to mark bulk packages due to the profusion of placards and markings already mandated by the HMR, and the costs of marking and remarking bulk packages, freight containers, and transport vehicles.

In this final rule, RSPA is harmonizing the HMR, in most respects, with the requirements of the IMDG Code for marine pollutants transported by vessel. This includes mandating marine pollutant markings for both bulk and non-bulk packages transported by vessel. However, to avoid excessive and duplicative hazard communication requirements, RSPA is not requiring the MARINE POLLUTANT mark on bulk packages in non-vessel transportation that contain materials that also meet the definition of a hazard class other than Class 9. RSPA believes that any marine pollutant that meets the definition of another hazard class, or a hazardous

substance, or a hazardous waste, and that is marked, labeled, and placarded accordingly, will already be communicating the environmental hazards of the product to an emergency responder This is in agreement with the majority of commenters, one of whom wrote "Rather than create a more complex identification system, it would be more realistic to assume that all hazardous materials and hazardous substances, including Class 9 materials, are dangerous to the environment *and* marine life. This would eliminate the need to apply an additional placard indicating 'marine pollutant' without forfeiting any loss of identification. There would be no failure in communication provided the indication on the shipping paper—Marine Pollutant—is maintained in this proposal."

Almost all commenters stated that if the marine pollutant mark is required, then its display should be allowed in a square-on-point placard holder for bulk packagings, transport vehicles, and freight containers RSPA agrees, and has adopted this suggestion. To prevent confusion between the HMR and the IMDG Code, RSPA agrees with those commenters who requested that the marine pollutant mark be allowed in contrasting colors to the packaging when applied as a sticker or label, as well as in the proposed black on white. However, RSPA is not changing the wording on the marine pollutant mark to the suggested "Toxic to Fish". The wording remains "Marine Pollutant", for simplicity and consistency with all countries participating under Annex III.

Several commenters requested that the marine pollutant mark be required on all four sides of bulk packagings, transport vehicles and freight containers instead of only two sides as proposed. Since the IMDG Code requires markings on all four sides, RSPA agrees and has modified the final rule appropriately.

As for the specific materials on the list of marine pollutants, one commenter believed that it is inappropriate that chlorine was listed while another commenter questioned why the marine pollutant list covered turpentine, alpha-pinene, and alcohol ethoxylates, when similar pollutants, such as kerosene, diesel and jet fuels are not listed The list of chemicals on the marine pollutant list is not a complete list of all chemicals that can cause environmental damage. However, RSPA believes that the standards developed by GESAMP and used by IMO for listing marine pollutants provide sufficient justification for regulating those chemicals that appear on the list of marine pollutants.

Several commenters stated that the compliance date of this final rule should be consistent with the transition dates in § 171.14 provided under Docket HM-181 The commenters believed that this would greatly ease the regulated community's efforts to comply with these requirements in the areas of training, hazard classification, maintenance of product data bases, package marking, and shipping paper descriptions RSPA agrees Therefore, in § 171 4(d) of this rule, transitional provisions are added to make requirements specific to marine pollutants effective October 1, 1993, except that packagings may conform to the transitional provisions in § 171 14(b)(5). However, it should be noted that for purposes of international vessel transportation, compliance with the provisions in the IMDG Code are likely to be enforced by other countries as in the case for the transport of hazardous materials in general.

In the NPRM, RSPA proposed to require immediate notification of the National Response Center (NRC) of any release of a marine pollutant. Many commenters stated, however, that it would be unreasonable to expect immediate reporting of "any" spill of a marine pollutant. Other commenters suggested that a spill of almost any size into (or immediately adjacent to) a body of water should be reported immediately, and that a non-water spill of 100 pounds or more should be immediately reported also. One commenter suggested that the term "body of water" be defined based on the definition of "navigable waters" in 40 CFR 117.1.

RSPA believes that it is necessary that certain releases of marine pollutants be immediately reported to the NRC. These reports are necessary so that appropriate authorities are notified of any potential threats to the environment. However, RSPA concurs with those commenters who stated that it is unreasonable to immediately report "any" release of a marine pollutant. Therefore, RSPA is adopting a requirement for immediate reporting to the NRC of a release of a marine pollutant in a quantity that equals or exceeds the minimum threshold for "bulk" under the HMR, i.e., 450 liters for liquids or 400 kilograms for solids. Since the amendments promulgated under this final rule do not apply to non-bulk packages transported by highway, rail or aircraft, thus reporting requirement only applies in highway, rail and air transport when the release of the marine pollutant is from a bulk packaging. For transportation by vessel, however, releases exceeding 400 kilograms or 450 liters must be reported immediately to the NRC irrespective of the size of the packaging.

III Review by Section

Section 171.1

This section is amended to expand the scope of the HMR to regulate the transportation of marine pollutants in intrastate, as well as interstate, transportation

Section 171.4

This section is added to note that the regulations in the HMR related to the transportation of marine pollutants are based on Annex III In addition, a general exception from the requirements of the HMR specific to marine pollutants is provided for non-bulk packages when transported by motor vehicle, railcar, or aircraft In order for the U.S to be in conformance with the provisions of Annex III, this exception does not apply to the transportation of marine pollutants by vessel in either international or domestic commerce

Section 171.8

The definition of "Hazardous material" is editorially revised to note that those materials that are designated as hazardous materials are defined in § 171 8 (e g , hazardous substances), are specified in §§ 172 101 and 172 102 and are those materials that meet the defining criteria for hazard classes and divisions in Part 173. A definition of "Marine pollutant" is added. A mixture or solution containing one or more materials listed in appendix B to § 172.101, is a marine pollutant if the total concentration of the material(s) listed in appendix B to § 172 101 in one package equals or exceeds: (1) Ten percent by weight of the total amount in the package or (2) one percent by weight of the total amount in the package for materials that are identified as severe marine pollutants.

Section 171.11

This section is revised to note that shipments made in accordance with the ICAO Technical Instructions must conform to certain shipping paper and marking requirements in the HMR related to marine pollutants.

Section 171 12a

This section is revised to note that shipments from Canada must conform to certain shipping paper and marking requirements in the HMR related to marine pollutants.

Section 172 101

The proper shipping name and hazard class for a material that meets the definition of a marine pollutant, and does not meet the definition of another hazard class, is "Environmentally hazardous substances, liquid, n o s , Class 9," for a liquid, or "Environmentally hazardous substances, solid, n o s , Class 9," for a solid These descriptions are the same as those for CERCLA hazardous substances that meet no other hazard class in the HMR Non-bulk packagings are selected from §§ 173 203 or 173.213, and must withstand the testing criteria for Packing Group III. Bulk packagings are selected from either §§ 173.240 or 173 241, as appropriate A special provision, "N50", is added to these two shipping descriptions that excepts marine pollutants, that do not meet the definition of a hazardous substance, hazardous waste, or the definition in § 171 140(a), from the labeling requirements of part 172. In addition, in order to easily identify the proper shipping name for a marine pollutant that is properly classified as a Class 9 material, the entry "Marine pollutants, liquid or solid, n o s. see Environmentally hazardous substances, liquid or solid, n o s." is added to the § 172.101 Hazardous Materials Table.

Appendix to § 172 101

The appendix to § 172 101, which identifies CERCLA hazardous substances, is renamed "Appendix A to § 172 101." RSPA is adding an appendix B to § 172.101, entitled "List of Marine Pollutants," to identify those substances designated as marine pollutants. The first column of the list, entitled "S.M.P ," identifies those materials which are severe marine pollutants by the letters "PP". One difference between the list of marine pollutants in appendix B to § 172.101 and those substances identified as marine pollutants in the IMDG Code, is that RSPA is not listing generic shipping names as marine pollutants as is done in the IMDG Code. These commodities are still subject to the requirements for marine pollutants, however, if the material described under the generic entry meets the definition of marine pollutant in § 171 8.

On January 29, 1992, the IMO Subcommittee on the Carriage of Dangerous Goods revised the list of marine pollutants by adding and deleting numerous entries. This final rule incorporates the deletions that were approved by the IMO for incorporation into the next revision of the IMDG Code. Chemicals that were added by the IMO to the list of marine pollutants will be added to appendix B of § 172.101 at a later date.

Section 172 203

Paragraph (l) is added to this section to require the technical name of the material to be added in parentheses when the name of the marine pollutant is not identified in the proper shipping name In addition, this section requires the words "Marine pollutant" to appear in association with the basic description.

The Hazardous Materials Advisory Council (HMAC) requested, for consistency with the IMDG Code, that the following sentence be added to proposed § 172 203(l)(1): "For pesticide or pesticide preparations, the marine pollutant component indicated in the parentheses may be supplemented by the percent of the active ingredient." Though RSPA agrees with this commenter, RSPA believes that the inclusion of the percentage of a technical name should not be limited to marine pollutants. Therefore, RSPA is revising § 172 202(d) to allow the inclusion of the percentage of the technical constituent for all hazardous materials descriptions.

Section 172 322

This section is added to delineate package and vehicle marking requirements for the transportation of marine pollutants. There are distinctly different marking requirements for vessel versus non-vessel modes of marine pollutant transportation. The marking requirements for marine pollutants transported by vessel harmonize with the IMDG Code. For non-bulk packages, RSPA is requiring the placement of the MARINE POLLUTANT mark and the specific technical name of the marine pollutant to be marked on the package in parentheses in association with the marked proper shipping name if the proper shipping name does not identify the components that make the material a marine pollutant. Except for certain combination packages of marine pollutants transported by vessel, non-bulk packages must bear the MARINE POLLUTANT mark. In vessel Transportation, any bulk packaging, transport vehicle, or freight container must be marked on all four sides with the MARINE POLLUTANT mark. For transportation by air, rail or highway, bulk packagings must be marked on all four sides unless they are placarded in accordance with the HMR. The MARINE POLLUTANT mark may be displayed in a standard square-on-point placard holder with the upper half displaying the mark, black on white, and the lower half being blank Labels and stickers of the mark are allowed in contrasting colors to the packaging.

Section 173 12

This section is amended to require lab packs containing marine pollutants to comply with the requirements of §§ 172 203(l) and 172 322.

Section 173 140

This section is amended to add marine pollutants to the definition of Class 9. If a marine pollutant meets the definition of another hazard class, however, the class of the material is determined in accordance with § 173 2a. Marine pollutants that meet no other hazard class are classified as a Class 9 material and are shipped under the proper shipping name of "Environmentally hazardous substances, liquid or solid, n o s."

Section 173 150

This section is amended to provide that combustible liquids in non-bulk packagings that meet the definition of a marine pollutant are subject to the requirements of the HMR.

Section 173 154

This section is amended to provide that materials corrosive to aluminum and steel that meet the definition of a marine pollutant are subject to the HMR.

Section 173 425

This section is amended to require, for vessel transportation, the MARINE POLLUTANT mark on packages of low specific activity radioactive material that contain a marine pollutant and that are shipped under exclusive use.

Section 174.25

This section is amended to require that the words "Marine Pollutant" appear on switching orders, receipts and tickets in association with shipping descriptions for marine pollutants.

Section 176 70

This section is added to prescribe minimum stowage requirements for marine pollutants in vessel transportation.

The following sections have been amended to require marine pollutants that are reclassified as ORM–D to be subject to the shipping paper requirements of the HMR: §§ 173.150, 173 151, 173.152, 173.153, 173.154 and 173.155. In addition, the following sections have been amended in accordance with the foregoing preamble

discussions: §§ 172.202, 172.324, 173.29, and 173.421–2.

IV. Federal Preemption Under the HMTA

Section 105(a)(4) of the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), preempts any non-Federal (i.e., State, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

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

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

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991 final rule (56 FR 8616), RSPA added a new preemption standard to § 107.202 to mirror the requirements of the HMTA. To the extent that the requirements of this final rule involve covered subjects, States, political subdivisions, or Indian tribes are only allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the same as the requirements in Docket HM–211. In a May 13, 1992 final rule (57 FR 20424) RSPA defined the phrase "substantively the same". Section 105(a)(5) of the HMTA, as amended by HMTUSA, provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the Federal Register the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1993.

V. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034) because of the significant public and congressional interest. This final rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 FR 4321 et seq.). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

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

The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

C. Regulatory Flexibility Act

This regulation has minimal impact on shippers and carriers of marine pollutants, some of whom may be small business entities. Based on limited information received from commenters concerning the 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 under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The information collection requirements contained in § 172.203(l) have been approved by the Office of Management and Budget (OMB) under control number 2137–0034 (expiration date September 30, 1994) which was issued by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

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

49 CFR Part 173

Explosives, Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and record keeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and record keeping requirements.

In consideration of the foregoing, parts 171, 172, 173, 174 and 176 of Title 49, Code of Federal Regulations, are amended to read as follows.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows.

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815 and 1818, 49 CFR Part 1.

2. In § 171.1, paragraph (a)(3)(iv) is added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(a) * * *

(3) * * *

(iv) Marine pollutants.

* * * * * *

2a. Section 171.4 is added to read as follows:

§ 171.4 Marine pollutants.

(a) Except as provided in paragraph (c) of this section, no person may offer for transportation or transport a marine pollutant, as defined in § 171.8, in intrastate or interstate commerce except in accordance with the requirements of this subchapter.

(b) The requirements of this subchapter for the transportation of marine pollutants are based on the provisions of Annex III of the 1973 International Convention for Prevention

of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78).

(c) *Exceptions* Except when transported aboard vessel, the requirements of this subchapter specific to marine pollutants do not apply to non-bulk packagings transported by motor vehicles, rail cars or aircraft.

(d) *Transitional provisions* The requirements of this subchapter specific to marine pollutants are effective October 1, 1993, except that packagings may conform to the transitional provisions of § 171.14(b)(5) of this part.

§ 171.8 [Amended]

3 In § 171 8, the definition of "Hazardous substance" is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A" in paragraphs (1), (2), and (3)(i).

4. In § 171 8, the definition of "hazardous material" is revised and the definition of "marine pollutant" is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Hazardous material means a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in this section, materials designated as hazardous under the provisions of §§ 172 101 and 172.102 of this subchapter, and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

* * * * *

Marine pollutant, means a hazardous material which is listed in appendix B to § 172.101 of this subchapter and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(1) Ten percent by weight of the solution or mixture for materials listed in the appendix; or

(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the appendix.

* * * * *

5. In § 171.11, paragraph (d)(13) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(13) Transportation of marine pollutants, as defined in § 171 8 of this subchapter, in bulk packagings must conform to the requirements of §§ 172 203(1) and 172 322 of this subchapter

6 In § 171 12a, paragraph (b)(15) is added to read as follows·

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(15) Transportation of marine pollutants, as defined in § 171.8 of this subchapter, must conform to the requirements of §§ 172 203(1) and 172 322 of this subchapter.

6a. In § 171 15, paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added to read as follows:

§ 171 15 Immediate notice of certain hazardous materials incidents.

(a) * * *

(4) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

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

Authority· 49 App. U.S.C 1803, 1804, 1805, and 1808, 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

8. In the § 172.101 Table, the following changes are made:

a. The entry "Marine pollutants, liquid or solid, n o.s., see Environmentally hazardous substances, liquid *or* solid n o s." is added to Column 2 in appropriate alphabetical order; and

b. For the entries "Environmentally hazardous substances, liquid, n o.s." and "Environmentally hazardous substances, solid, n.o.s.", special provision "N50" is added to column 7.

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

9. The appendix to § 171.101 is redesignated as Appendix A to § 171 101, and the title is revised to read as set forth above.

Appendix B to § 172.101 [Added]

10. A new appendix B to § 172.101 is added to read as follows.

Appendix B to § 172.101—List of Marine Pollutants

1. This appendix lists potential marine pollutants as defined in § 171 8 of this subchapter

2 If a marine pollutant meets the definition of any hazard class or division as defined in this subchapter, other than Class 9, the class of the material must be determined in accordance with § 173.2a of this subchapter

3 This appendix contains two columns. The first column, entitled "S.M.P." (for severe marine pollutants), identifies whether a material is a severe marine pollutant. If the letters "PP" appear in this column for a material, the material is a severe marine pollutant, otherwise it is not The second column, entitled "Marine Pollutant", lists the marine pollutants

Appendix B to § 172.101 List of Marine Pollutants

S M P [c] (1)	Marine Pollutant (2)
	Acetone cyanohydrin, stabilized
	Acetylene dibromide
	Acetylene tetrabromide
	Acetylene tetrachloride
	Acraldehyde, inhibited
	Acrolein, inhibited
	Acrylic aldehyde, inhibited
	Alcohol C-12 - C-15 poly(1-3) ethoxylate
	Alcohol C-13 - C-15 poly(1 6) ethoxylate
	Alcohol C-6 - C-17 (secondary)poly(3 6) ethoxylate
	Aldicarb
PP	Aldrin
	Alkylphenols, liquid, n o s *(including C2-C8 homologues)*
	Alkylphenols, solid, n.o s *(including C2-C8 homologues)*
	Allyl bromide
	ortho-Aminoanisole
	Aminocarb
	Ammonium arsenate
	Ammonium dinitro-o-cresolate
	Amyl mercaptans
	ortho-Anisidines
	Arsenates, liquid, n o s.
	Arsenates, solid, n o s.
	Arsenic bromide
	Arsenic chloride
	Arsenical pesticides liquid, toxic, flammable, n.o s.
PP	Azinphos-methyl
PP	Azinphos-ethyl
	Barium compounds, soluble, n o s
	Barium cyanide
	Bendiocarb
	Benquinox
	Benzyl chlorocarbonate
	Benzyl chloroformate
PP	Binapacryl
	Biphenyl phenyl ether and diphenyl oxide, mixtures
PP	Brodifacoum
	Bromine cyanide
	Bromoallylene
	ortho-Bromobenzyl cyanide
	Bromocyane
	Bromoform

SMP (1)	Marine Pollutant (2)
PP	Bromophos-ethyl
	3-Bromopropene
	Bromoxynil
	2-Butenal, inhibited
	Butyl benzenes
	Butyl benzyl phthalate
	Butylphenols, liquid
	Butylphenols, solid
	para-tertiary-butyltoluene
PP	Cadmium compounds
	Cadmium sulphide
	Calcium arsenate
	Calcium arsenate and calcium arsenite, mixtures, solid
	Calcium cyanide
	Calcium naphthenate
PP	Camphechlor
	Carbaryl
	Carbofuran
	Carbon bisulphide
	Carbon tetrabromide
	Carbon tetrachloride
PP	Carbophenothion
	Cartap hydrochloride
PP	Chlordane
	Chlorfenvinphos
	Chlorinated paraffins (C-10 - C-13)
	Chlorine
	Chlorine cyanide, inhibited
	Chlormephos
	4-Chloro-2-nitrotoluene
	Chloro-ortho-nitrotoluene
	2-Chloro-5-trifluoromethylnitrobenzene
	para-Chlorobenzyl chloride, liquid or solid
	Chlorobenzylchlorides
	Chlorodinitrobenzenes
	1-Chloroheptane
	1-Chlorohexane
	Chloronitroanilines
	Chloronitrotoluenes *liquid*
	Chloronitrotoluenes, *solid*
	1-Chlorooctane
PP	Chlorophenates, liquid
PP	Chlorophenates, solid
	Chlorophenols, liquid
	Chlorophenols, solid
	Chlorophenyltrichlorosilane
	alpha-Chloropropylene
	1-Chloropropylene
	2-Chloropropylene
	Chlorotoluenes
PP	Chlorpyrifos
PP	Chlorthiophos
	Chromyl chloride
	Coal tar
	Coal tar naphtha
	Cocculus
	Copper acetoarsenite
	Copper arsenite
	Copper chloride
PP	Copper cyanide
	Coumachlor
PP	Coumaphos
	Creosote (coal tar)
	Creosote (wood tar)
	Cresols (*o-, m-, p-*)
PP	Cresyl diphenyl phosphate
	Cresylic acid
	Cresylic acid sodium salt
	Crotonaldehyde, inhibited
	Crotonic aldehyde
	Crotoxyphos
	Cumene
	Cupric arsenite
	Cupric chloride
PP	Cupric cyanide
	Cupriethylenediamine solution
	Cuprous chloride

SMP (1)	Marine Pollutant (2)
	Cyanide mixtures
	Cyanide solutions
	Cyanides, inorganic, n o s
	Cyanogen bromide
	Cyanogen chloride, inhibited
	Cyanophos
PP	Cyhexatin
PP	Cypermethrin
	2,4-D
PP	DDT
	Decyl acrylate
	DEF
	Di-allate
	Di-n-Butyl phthalate
PP	Dialifos
PP	Diazinon
	1,2-Dibromethene
	1,2-Dibromoethane
PP	Dichlofenthion
	Dichloroanilines
	o-Dichlorobenzene
	p-Dichlorobenzene
	1,3-Dichlorobenzene
	1,2-Dichlorobenzene
	1,4-Dichlorobenzene
	Dichlorobenzene (meta, ortho, para)
	2,2-Dichlorodiethyl ether
	Dichloroether
	Dichloroethyl ether
	Dichloroethyl oxide
	1,1-Dichloroethylene, inhibited
	1,6-Dichlorohexane
	Dichlorophenols, liquid
	Dichlorophenols solid
	2,4-Dichlorophenoxyacetic acid (see also 2,4D)
	2,4-Dichlorophenoxyacetic acid diethanolamine salt
	2,4-Dichlorophenoxyacetic acid dimethylamine salt
	2,4-Dichlorophenoxyacetic acid triisopropylamine salt
	Dichlorophenyltrichlorosilane
PP	Dichlorvos
	Dicrotophos
PP	Dieldrin
	Diisopropylbenzenes
PP	Dimethoate
	Dimethylarsinic acid
	Dimethylphenols, liquid or solid
	Dinitro-o-cresol, *solid*
	Dinitro-o-cresol, *solution*
	Dinitrochlorobenzenes, liquid or solid
	Dinitrophenol, *dry or wetted with less than 15 per cent water, by mass*
	Dinitrophenol solutions
	Dinitrophenol, wetted *with not less than 15 per cent water, by mass*
	Dinitrophenolates *alkali metals, dry or wetted with less than 15 per cent water, by mass*
	Dinitrophenolates, wetted *with not less than 15 per cent water, by mass*
	Dinobuton
	Dinoseb
	Dioxacarb
	Dioxathion
	Diphacinone
	Diphenyl
	Diphenyl ether
	Diphenyl oxide
	Diphenyl oxide and biphenyl phenyl ether mixtures
PP	Diphenylamine chloroarsine

SMP (1)	Marine Pollutant (2)
PP	Diphenylchloroarsine, solid *or* liquid
	Disulfoton
	DNOC
	DNOC (pesticide)
PP	Dodecylphenol
	Drazoxolon
	Edifenphos
	Endosulfan
PP	Endrin
PP	EPN
PP	Ethion
	Ethoprophos
	Ethyl acrylate inhibited
	Ethyl chlorothioformate
	Ethyl fluid
	5-Ethyl-2-picoline
	Ethyl propenoate, inhibited
	2-Ethyl-3-propylacrolein
	Ethyl tetraphosphate
	Ethyldichloroarsine
	Ethylene chloride
	Ethylene dibromide and methyl bromide mixtures, liquid
	Ethylene dichloride
	2-Ethylhexenal
	Ethylidene dichloride
	Fenaminphos
PP	Fenitrothion
PP	Fenpropathrin
	Fensulfothion
PP	Fenthion
PP	Fentin acetate
PP	Fentin hydroxide
	Ferric arsenate
	Ferric arsenite
	Ferrous arsenate
PP	Fonofos
	Formetanate
PP	gamma-BHC
	Gasoline, leaded
PP	Heptachlor
	Heptenophos
	normal-Heptyl chloride
PP	Hexachlorobutadiene
	1,3-Hexachlorobutadiene
	Hexaethyl tetraphosphate *liquid*
	Hexaethyl tetraphosphate, *solid*
	normal-Hexyl chloride
	Hydrocyanic acid, anhydrous, stabilized
	Hydrocyanic acid, anhydrous, stabilized, absorbed in a porous inert material
	Hydrocyanic acid, aqueous solutions *not more than 20% hydrocyanic acid*
	Hydrogen cyanide, anhydrous, stabilized
	Hydrogen cyanide, anhydrous, stabilized, *absorbed in a porous inert material*
	Hydroxydimethylbenzenes, liquid or solid
	Ioxynil
	Isoamyl mercaptan
	Isodecyl acrylate
	Isodecyl diphenyl phosphate
	Isofenphos
	Isooctyl nitrate
	Isoprocarb
	Isopropenyl chloride
	Isopropenylbenzene
	Isopropyl chloride
	Isopropylbenzene
PP	Isoxathion
	Lead acetate
	Lead arsenates

SMP	Marine Pollutant
(1)	(2)
	Lead arsenites
	Lead compounds, soluble, n.o.s
	Lead cyanide
	Lead nitrate
	Lead perchlorate, solid or solution
	Lead tetraethyl
	Lead tetramethyl
PP	Lindane
	London Purple
	Magnesium arsenate
	Malathion
	Maneb or Maneb preparations with not less than 60% maneb
	Maneb *or* Maneb preparations *with not less than 60 per cent maneb*
	Maneb stabilized *or* Maneb preparations, stabilized *against self-heating*
	Manganese ethylene-1,2-bis dithiocarbamate
	Manganese ethylene-1,2-bis-dithiocarbamate, stabilized against self-heating
	Mephosfolan
	Mercaptodimethur
	Mercarbam
PP	Mercuric acetate
PP	Mercuric ammonium chloride
PP	Mercuric arsenate
PP	Mercuric benzoate
PP	Mercuric bisulphate
PP	Mercuric bromide
PP	Mercuric chloride
PP	Mercuric cyanide
PP	Mercuric gluconate
	Mercuric iodide
PP	Mercuric nitrate
PP	Mercuric oleate
PP	Mercuric oxide
PP	Mercuric oxycyanide, desensitized
PP	Mercuric potassium cyanide
PP	Mercuric Sulphate
	Mercuric sulphide
PP	Mercuric thiocyanate
PP	Mercurol
PP	Mercurous acetate
PP	Mercurous bisuphate
PP	Mercurous bromide
PP	Mercurous chloride
PP	Mercurous nitrate
PP	Mercurous salicylate
PP	Mercurous sulphate
PP	Mercury acetates
PP	Mercury ammonium chloride
PP	Mercury based pesticides, liquid, flammable, toxic, n.o.s.
PP	Mercury based pesticides, liquid, toxic, flammable, n.o.s.
PP	Mercury based pesticides, liquid, toxic, n.o.s.
PP	Mercury based pesticides, solid, toxic, n.o.s.
PP	Mercury benzoate
PP	Mercury bichloride
PP	Mercury bisulphates
PP	Mercury bromides
PP	Mercury compounds, liquid, n.o.s
PP	Mercury compounds, solid, n.o.s.
PP	Mercury compounds, solid, n.o.s
PP	Mercury cyanide
PP	Mercury gluconate

SMP	Marine Pollutant
(1)	(2)
PP	Mercury (I) (mercurous) compounds (pesticides)
PP	Mercury (II) (mercuric) compounds (pesticides)
	Mercury iodide
	Mercury iodide, *solution*
PP	Mercury nucleate
PP	Mercury oleate
PP	Mercury oxide
PP	Mercury oxycyanide, desensitized
PP	Mercury potassium cyanide
PP	Mercury potassium iodide
PP	Mercury salicylate
PP	Mercury sulfates
PP	Mercury thiocyanate
	Metaarsenic acid
	Metam-sodium
	Methamidophos
	Methanethiol
	Methidathion
	Methomyl
	ortho-Methoxyaniline
	Methyl bromide and ethylene dibromide mixtures, liquid
	1-Methyl-4-ethylbenzene
	2-Methyl 5-ethylpyridine
	Methyl mercaptan
	2-Methyl-2 phenylpropane
	3-Methyl pyridine
	Methyl salicylate
	3-Methylacroleine, inhibited
	Methylchlorobenzenes
	Methylchloroform
	Methylene bromide
	Methylene dibromide
	Methylnaphthalenes, liquid
	Methylnaphthalenes, solid
	Methylnitrophenols
	alpha-Methylstyrene
	Methylstyrenes, inhibited
	Methyltrithion
	Methylvinylbenzenes, inhibited
PP	Mevinphos
	Mexacarbate
	Mirex
	Monocrotophos
	Motor fuel anti-knock *mixtures*
	Motor fuel anti-knock mixtures or compounds
	Nabam
	Naled
	Naphtha, coal tar
	Naphthalene, crude *or* refined
	Naphthalene, molten
	Naphthenic acids, liquid
	Naphthenic acids, solid
PP	Nickel carbonyl
PP	Nickel cyanide
PP	Nickel tetracarbonyl
	Nitrates, inorganic, n.o.s.
	Nitrites, inorganic, n.o.s.
	3-Nitro-4-chlorobenzotrifluoride
	Nitrobenzotrifluorides
	Nitrocresols
	Nitroxylenes, (o-, m-; p-)
	Nonylphenol
PP	Organotin compounds, liquid, n.o.s.
PP	Organotin compounds (pesticides)
PP	Organotin compounds, solid, n.o.s.
PP	Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C*

SMP	Marine Pollutant
(1)	(2)
PP	Organotin pesticides, liquid, toxic, flammable, n.o.s.
PP	Organotin pesticides, liquid, toxic, n.o.s
PP	Organotin pesticides, solid, toxic, n.o.s.
	Orthoarsenic acid
	Osmium tetroxide
	Oxamyl
	Oxydisulfoton
	Paraoxon
PP	Parathion
PP	Parathion-methyl
PP	PCBs***
	Pentachloroethane
PP	Pentachlorophenol
PP	Pentachlorophenol
	Pentalm
	Pentanethiols
	Perchloroethylene
	Perchloromethylmercaptan
	Petrol, leaded
PP	Phenarsazine chloride
PP	Phenthoate
	1-Phenylbutane
	2-Phenylbutane
	Phenylethylene, inhibited
PP	Phenylmercuric acetate
PP	Phenylmercuric compounds, n.o.s
PP	Phenylmercuric hydroxide
PP	Phenylmercuric nitrate
	2-Phenylpropene
PP	Phorate
PP	Phosalone
	Phosmet
PP	Phosphamidon
PP	Phosphorus, white *or* yellow dry *or* under water *or* in solution
PP	Phosphorus white, or yellow, molten
	Pindone (and salts of)
	alpha-Pinene
	Pirimicarb
PP	Pirimiphos-ethyl
PP	Polychlorinated biphenyls
PP	Polyhalogenated biphenyls, liquid *or* Terphenyls liquid
PP	Polyhalogenated biphenyls, solid *or* Terphenyls, solid
PP	Potassium cuprocyanide
	Potassium cyanide
PP	Potassium cyanocuprate I
PP	Potassium cyanomercurate
	Potassium dihydrogen arsenate
PP	Potassium mercuric iodide
	Promecarb
	Propaphos
	Propenal, inhibited
	Propenyl chloride (cis-, trans-)
	Propoxur
	Propylene dichloride
	Propylidene dichloride
	Prothoate
	Prussic acid, anhydrous, stabilized
	Prussic acid, anhydrous, stabilized, absorbed in a porous inert material
PP	Pyrazophos
	Quinalphos
	Rotenone
	Salithion
	Silver arsenite
	Silver cyanide
PP	Silver orthoarsenite
PP	Sodium copper cyanide, solid
PP	Sodium copper cyanide solution

SMP	Marine Pollutant
(1)	(2)
PP	Sodium cuprocyanide, solid
PP	Sodium cuprocyanide, solution
	Sodium cyanide
	Sodium dinitro-o-cresolate, *dry or wetted with less than 15 per cent water, by mass*
	Sodium dinitro-ortho-cresolate, wetted *with not less than 15 per cent water, by mass*
	Sodium metaarsenite
	Sodium orthoarsenate
PP	Sodium pentachlorophenate
	Strontium orthoarsenite
	Strychnine *or* Strychnine salts
	Styrene monomer, inhibited
	Sulfotep
PP	Sulprophos
	Sym Dichloroethyl ether
	Temephos
	TEPP
PP	Terbufos
	1,1,2,2-Tetrabromoethane
	Tetrabromomethane
	Tetrachloroethane
	1,1,2,2-Tetrachloroethylene
	Tetrachloromethane
	Tetrachlorophenol
	Tetraethyl dithiopyrophosphate
	Tetraethyl lead, liquid
	Tetramethyllead
	Thallium chlorate
	Thallium compounds, n o s
	Thallium compounds (pesticides)
	Thallium compounds (pesticides)
	Thallium nitrate
	Thallium sulfate
	Thallous chlorate
	Thiocarbonyl tetrachloride
	Tnaryl phosphates, isopropylated
PP	Tnaryl phosphates, n o.s.
	Tnazophos
	Tnbromomethane
PP	Tributyltin compounds
	Tnchlorfon
	Tnchlorobenzenes, liquid
	Tnchlorobutene
	Tnchlorobutylene
	Tnchloromethane sulphuryl chlonde
	Tnchloromethyl sulphochloride
	Tnchloronat
	Tncresyl phosphate (less than 1% ortho-isomer)
PP	Tncresyl phosphate (not less than 1% ortho-isomer)
	Tncresyl phosphate *with more than 3 per cent ortho isomer*
	Tnethylbenzene
	Tnmethylene dichlonde
PP	Tnphenyltin compounds
	Tntolyl phosphate (less than 1% ortho-isomer)
PP	Tntolyl phosphate (not less than 1% ortho-isomer)
	Tnxylenyl phosphate
	Turpentine
	Turpentine substitute
	Vinylbenzene, inhibited
	Vinylidene chlonde, inhibited
	Vinyltoluenes, inhibited *mixed isomers*
	Warfann (and salts of)
	White arsenic
PP	White phosphorus, dry
PP	White phosphorus, molten
PP	White phosphorus, wet
	White spirit, low (15-20%) aromatic
	Xylenols
PP	Yellow phosphorus, dry
PP	Yellow phosphorus, molten
PP	Yellow phosphorus, wet
	Zinc bromide
	Zinc cyanide

11 In § 172 102, paragraph (c)(5), special provision "N50" is added in appropriate alpha-numerical order:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(5) * * *

N50 A Class 9 material that meets the definition of a marine pollutant, but does not meet the definition of a hazardous substance or a hazardous waste or the definition in § 173.140(a) of this subchapter, is excepted from the labeling requirements of this part.

* * * * *

§ 172.200 [Amended]

12 In § 172 200, in the introductory text of paragraph (b), the phrase "hazardous waste or a hazardous substance," is removed and replaced with the phrase "hazardous substance, hazardous waste or marine pollutant,".

§ 172.202 [Amended]

13. In § 172 202, paragraph (d) is amended by removing the phrase "may be used." and replacing it with the phrase "and/or the percentage of the technical constituent may also be used "

§ 172 203 [Amended]

14. In § 172 203, paragraph (c)(1)(i) is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A".

15. In § 172 203, paragraph (l) is added to read as follows:

§ 172 203 Additional description requirements.

* * * * *

(l) *Marine pollutants.* (1) If the proper shipping name for a material which is a marine pollutant does not identify by name the component which makes the material a marine pollutant, the name of that component must appear in parentheses in association with the basic description. Where two or more components which make a material a marine pollutant are present, the names of at least two of the components most predominantly contributing to the marine pollutant designation must appear in parentheses in association with the basic description.

(2) The words "Marine Pollutant" shall be entered in association with the basic description for a material which is a marine pollutant

* * * * *

16 Section 172 322 is added to read as follows:

§ 172.322 Marine pollutants.

(a) For vessel transportation of each non-bulk packaging that contains a marine pollutant—

(1) If the proper shipping name for a material which is a marine pollutant does not identify by name the component which makes the material a marine pollutant, the name of that component must be marked on the package in parentheses in association with the marked proper shipping name. Where two or more components which make a material a marine pollutant are present, the names of at least two of the components most predominantly contributing to the marine pollutant designation must appear in parentheses in association with the marked proper shipping name; and

(2) The MARINE POLLUTANT mark shall be placed in association with the hazard warning labels required by Subpart E of this Part or, in the absence of any labels, in association with the marked proper shipping name.

(b) A bulk packaging that contains a marine pollutant must be marked on each end and each side with the MARINE POLLUTANT mark and must be visible from the direction it faces. This mark may be displayed in black lettering on a white square-on-point configuration having the same outside dimensions as a placard.

(c) A transport vehicle or freight container that contains a package subject to the marking requirements of paragraph (a) or (b) of this section must be marked with the MARINE POLLUTANT mark. The mark must appear on each side and each end of the transport vehicle or freight container, and must be visible from the direction it faces. This requirement may be met by the marking displayed on a freight container or portable tank loaded on a motor vehicle or rail car. This mark may be displayed in black lettering on a white square-on-point configuration having the same outside dimensions as a placard

(d) The MARINE POLLUTANT mark is not required—

(1) On a combination package containing a severe marine pollutant (see appendix B to § 172.101), in inner packagings each of which contains:

(i) 0 5 liters (17 ounces) or less net capacity for liquids, or

(ii) 500 grams (17 6 ounces) or less net capacity for solids.

(2) On a combination packaging containing a marine pollutant, other than a severe marine pollutant, in inner packagings each of which contains:

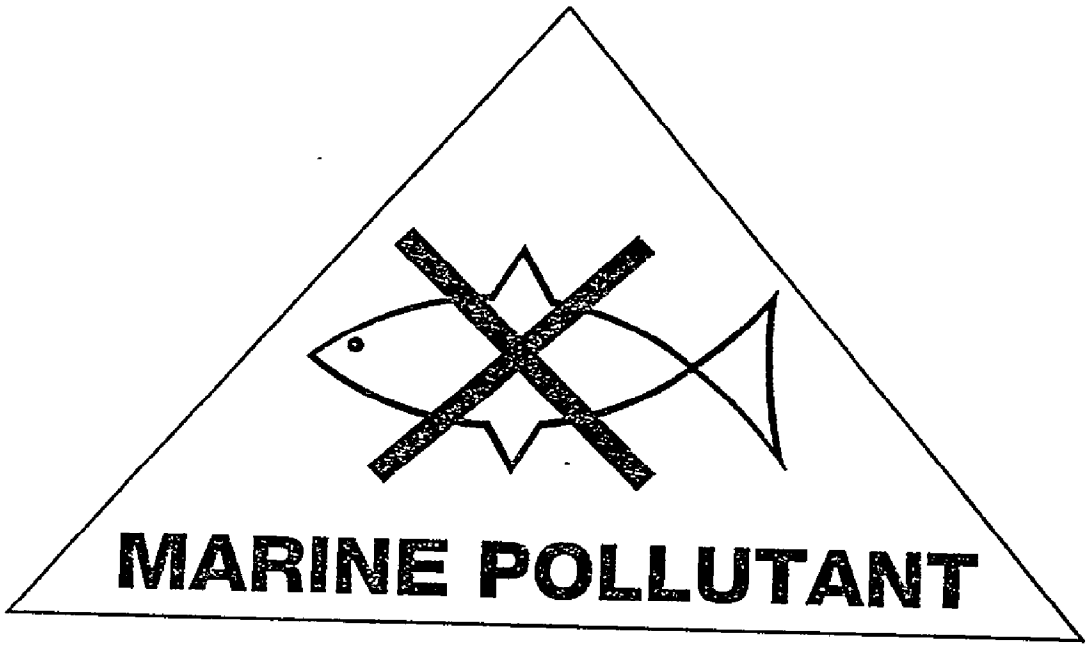
(i) 5 liters (1 gallon) or less net capacity for liquids; or

(ii) 5 kilograms (11 pounds) or less net capacity for solids.

(3) Except for transportation by vessel, on a bulk packaging, freight container or transport vehicle that bears a label or placard specified in Subparts E or F of this part.

(e) *MARINE POLLUTANT mark.* The MARINE POLLUTANT mark must conform to the following·

(1) Except for size, the MARINE POLLUTANT mark must appear as follows:



(2) The symbol, letters and border must be black and the background white, or the symbol, letters, border and background must be of contrasting color to the surface to which the mark is being affixed. For non-bulk packagings of marine pollutants, each side of the mark must be at least 100 mm (3 9 inches), except in the case of packagings which, because of their size, can only bear smaller marks. For bulk packagings, each side of the mark must be at least 250 mm (9 8 inches).

§ 172 324 [Amended]

17. In § 172.324, paragraph (a)(1) is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

Authority: 49 App. U S C. 1803, 1804, 1805, 1806, 1807, 1808 and 1817, 49 CFR Part 1, unless otherwise noted.

19. In § 173.12, the word "and" is removed from the end of paragraph (d)(1), in paragraph (d)(2) the "." is removed and replaced with a "; and", and paragraph (d)(3) is added to read as follows:

§ 173.12 Exceptions for shipments of waste materials.

* * * * *

(d) * * *

(3) Packagings containing marine pollutants must be described as required in § 172.203(1) of this subchapter and marked as required in § 172 322 of this subchapter.

§ 173 29 [Amended]

20. In § 173.29, paragraph (b)(3) is amended by removing the phrase "either a hazardous substance or a hazardous waste." and replacing it with the phrase "a hazardous substance, a hazardous waste, or a marine pollutant."

21. In § 173.140, paragraph (b) is revised to read as follows:

§ 173.140 Class 9—Definitions.

* * * * *

(b) Any material which meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

§ 173.150 [Amended]

22. In § 173.150, paragraph (c) is amended by removing the phrase

"hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant", and paragraphs (f)(2), (f)(3) and (f)(4) are amended by removing the phrase "hazardous substance or a hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

§ 173.151 [Amended]

23 In § 173 151, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

§ 173 152 [Amended]

24 In § 173 152, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

§ 173 153 [Amended]

25 In § 173 153, paragraph (c)(3) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

§ 173.154 [Amended]

26. In § 173.154, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant" and paragraph (d) is amended by removing the phrase "hazardous substance or a hazardous waste," and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant,".

§ 173.155 [Amended]

27. In § 173.155, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

§ 173 421–2 [Amended]

28 In § 173.421–2, paragraphs (b)(1)(i) and (b)(2)(i) are amended by removing the phrase "hazardous waste or hazardous substance" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

29 In § 173 425, paragraph (b)(8) is amended by adding the following sentence to the end of the existing regulatory text:

§ 173.425 Transport requirements for low specific activity (LSA) radioactive materials.

* * * * *

(b) * * *

(8) * * * For vessel transportation, packages that contain a marine pollutant must be marked in accordance with § 172 322 of this subchapter

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PART 174—CARRIAGE BY RAIL

30. The authority citation for part 174 continues to read as follows.

Authority: 49 App U S C 1803, 1804, 1808, 49 CFR 1.53(e), 1.53, app. A to part 1.

31. In § 174.25, paragraph (b)(5) is added to read as follows:

§ 174 25 Additional information on way bills, switching orders and other billings.

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(b) * * *

(5) For any entry for a material that is a marine pollutant, the words "Marine Pollutant" must be entered in association with the basic description.

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PART 176—CARRIAGE BY VESSEL

32 The authority citation for part 176 continues to read as follows

Authority: 49 App U S C 1803, 1804, 1805 1808, 49 CFR Part 1.53, app A to Part 1

33 Section 176 70 is added to read as follows:

§ 176.70 Stowage requirements for marine pollutants.

(a) Marine pollutants must be properly stowed and secured to minimize the hazards to the marine environment without impairing the safety of the ship and the persons on board

(b) Where stowage is permitted "on deck or under deck", under deck stowage is preferred except when a weather deck provides equivalent protection

(c) Where stowage "on deck only" is required, preference should be given to stowage on well-protected decks or to stowage inboard in sheltered areas of exposed decks.

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Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

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