

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 171, 172, 173, 175 and 176**

[Docket No. PHMSA-2005-23141 (HM-215F)]

RIN 2137-AE01

**Hazardous Materials: Revision and Reformatting of Requirements for the Authorization To Use International Transport Standards and Regulations**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, PHMSA is amending the Hazardous Materials Regulations to revise and consolidate the requirements applicable to the use of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada’s Transportation of Dangerous Goods Regulations, and the International Atomic Energy Agency’s Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The revisions and reformatting provide a user-friendly format to promote understanding of the conditions and limitations on the use of international standards and regulations. In addition, PHMSA is authorizing the use in domestic transportation of portable tanks, cargo tank motor vehicles, and rail tank cars manufactured in accordance with Transport Canada’s Transportation of Dangerous Goods Regulations. The amendments adopted in this final rule maintain the high transportation safety standard established under the Hazardous Materials Regulations.

**DATES:** *Effective date:* October 1, 2007.

*Incorporation by Reference Date:* The incorporation by reference of certain publications listed in these amendments

is approved by the Director of the Federal Register as of October 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Duane Pfund, International Standards Coordinator, telephone (202) 366-0656, or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

To facilitate the safe and efficient transportation of hazardous materials in international commerce, the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), with certain limitations, permit both domestic and international shipments of hazardous materials to be offered for transportation and transported under provisions of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Dangerous Goods Code (IMDG Code), the Transport Canada’s Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), and the International Atomic Energy Agency’s Safety Standards Series: Regulations for the Safe Transportation of Radioactive Material (IAEA Regulations), as appropriate.

Consistency between U.S. and international regulations helps to assure the safety of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. For example, many shippers find that consistency in requirements aids their understanding of what is required, thereby permitting them to more easily comply with the regulations when shipping hazardous materials in international commerce.

The Federal hazardous materials transportation law (Federal hazmat law;

49 U.S.C. 5101 et seq.) requires PHMSA to align the HMR with international transport standards and requirements to the extent practicable (see § 5120). The Federal hazmat law permits PHMSA to deviate from international transport standards and requirements when such action is in the public interest. Therefore, we periodically align the HMR with international transport standards and regulations through various rulemakings. We also periodically review and revise the provisions for the authorization to use the international transport standards and regulations in order to maintain a safety level equal to that of the HMR, thereby assuring the protection of people, property, and the environment. Based on our comprehensive, technical review, we have determined that the amendments adopted in this final rule provide an equivalent level of safety as is currently achieved under the HMR.

On January 27, 2006, PHMSA issued a notice of proposed rulemaking (NPRM, 71 FR 4544) proposing to amend the HMR by revising and consolidating the requirements applicable to the use of international standards and regulations. Our goal with this rulemaking is to reorganize and clarify the conditions and limitations on the use of international standards and regulations for transportation in the United States. The purpose of the reorganization is to provide an easier format for HMR users, particularly for persons transporting hazardous materials by multiple modes of transportation, thereby providing a clearer understanding of the conditions and limitations for the use of authorized international standards and facilitating the transportation of hazardous material shipments.

**II. Discussion of Comments and Regulatory Revisions**

In response to the NPRM, we received 25 comments from industry associations, shippers and others, as follows:

Commenter	Document No.
The Estee Lauder Companies, Inc. (ELC) .....	PHMSA-2005-23141-2
International Tank Container Organization (ITCO) .....	PHMSA-2005-23141-3
Regulatory Resources, Inc .....	PHMSA-2005-23141-4
Owen B. Bugg .....	PHMSA-2005-23141-5
Fed Ex .....	PHMSA-2005-23141-6
The Fertilizer Institute (TFI) .....	PHMSA-2005-23141-7
National Tank Truck Carriers, Inc. (NTTC) .....	PHMSA-2005-23141-8
Air Products and Chemicals, Inc. (Air Products) .....	PHMSA-2005-23141-9
Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR) .....	PHMSA-2005-23141-10
PPG Industries, Inc. (PPG) .....	PHMSA-2005-23141-11

Commenter	Document No.
American Trucking Associations (ATA)	PHMSA-2005-23141-12
Ashland Specialty Chemical Company (Ashland)	PHMSA-2005-23141-13
Lawrence A. Duncan	PHMSA-2005-23141-14
International Vessel Operators Hazardous Materials Association, Inc. (VOHMA)	PHMSA-2005-23141-15
Air Transport Association of America, Inc. (Air Transport)	PHMSA-2005-23141-16
Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA)	PHMSA-2005-23141-17
Association of Hazmat Shippers (AHS)	PHMSA-2005-23141-18
Association of American Railroads (AAR)	PHMSA-2005-23141-19
National Propane Gas Association (NPGA)	PHMSA-2005-23141-20
CF Industries, Inc	PHMSA-2005-23141-21
U.S. Nuclear Regulatory Commission (NRC)	PHMSA-2005-23141-22
Dangerous Goods Advisory Council (DGAC)	PHMSA-2005-23141-23
Canadian Trucking Alliance (CTA)	PHMSA-2005-23141-24
CropLife America	PHMSA-2005-23141-25
Jerry Hayes	PHMSA-2005-23141-26

Most commenters express support for the goals of this rulemaking; others raise concerns as discussed below. The NPRM primarily addressed the reformatting of the HMR sections addressing the authorization to use international standards. We proposed only minor changes to the specific requirements themselves. Some commenters mistakenly described current requirements incorporated into the reformatted sections as “proposed requirements” and, in some cases, opposed the “revisions.” Other commenters requested changes that were not proposed in the NPRM. These comments are beyond the scope of this rulemaking and are not addressed in this final rule. We direct these commenters to 49 CFR 106.95 for procedures to submit petitions for rulemaking.

In this final rule, PHMSA is amending the HMR to revise, consolidate, and clarify the HMR provisions authorizing the use of the ICAO Technical Instructions, the IMDG Code, the Transport Canada TDG Regulations, and the IAEA Regulations, as previously contained in §§ 171.11, 171.12 and 171.12a. The newly designated sections, as adopted in this final rule, will continue to permit both domestic and international shipments of hazardous materials to be offered for transportation and transported under the provisions of the applicable transport standards and

regulations, subject to certain conditions and limitations. Additionally, we are consolidating the newly designated sections for the use of international standards and regulations into new Subpart C.

#### *A. Incorporation by Reference Material*

In § 171.7, we are incorporating by reference the most recent edition of the Transport Canada TDG Regulations, including Amendments 4 and 5.

Additionally, we are incorporating by reference the Canadian General Standards Board (CGSB) standard, CGSB-43.147 for the “Construction, Modification, Qualification, Maintenance and Selection and Use of Rail Tank Cars.” The incorporation of these materials relates to our adoption of expanded provisions for the use of Canadian bulk packagings for transportation to and from the United States. As indicated below, this incorporation by reference maintains the high safety standard currently achieved under the HMR (see preamble discussion under “Bulk Shipments to Canada”).

#### *B. Consolidation of the Conditions and Limitations for Use of the ICAO Technical Instructions, IMDG Code, and TDG Regulations*

The HMR, ICAO Technical Instructions, IMDG Code, and the Transport Canada TDG Regulations are

based on the UN Recommendations on the Transport of Dangerous Goods (UN Recommendations), which are model regulations issued by the UN Committee of Experts on the Transport of Dangerous Goods and the Globally Harmonized System of Classification and Labeling of Chemicals (UN COE). Currently, the conditions and limitations under which the ICAO Technical Instructions, IMDG Code, and TDG Regulations may be used for domestic transportation are set forth in §§ 171.11, 171.12, and 171.12a. The authorizations to use the ICAO Technical Instructions, IMDG Code, and the Transport Canada TDG Regulations contain many of the same conditions and limitations for use. To eliminate redundancy, we proposed in the NPRM to consolidate and reformat these conditions and limitations into a single section that would apply to the use of all three standards.

CropLife America and the Dangerous Goods Advisory Council (DGAC) are opposed to the consolidation and reformatting of the international standards as proposed in the NPRM. The two organizations suggest users of the HMR are familiar with the current format and assert the proposed formatting, if adopted, would create confusion and possibly “hamper compliance with the regulations.” The two commenters state “Users of the HMR normally are only interested in the

additional requirements applying to requirements of one international body—not all three at one time. Consolidating the requirements forces the user to wade through numerous additional requirements not relevant to the particular international regulation of interest.” DGAC suggests these actions will “complicate compliance and may encourage other countries to reciprocate and apply minutely differing requirements based on their own domestic regulations.”

We disagree with these commenters. We receive many questions each year from shippers and carriers expressing confusion about the conditions under which the international standards may be used for domestic transportation. Moreover, other commenters who address this issue (including TFI, Air Products, the American Trucking Associations, VOHMA, the Air Transport Association, and COSTHA) express support for the consolidation and reformatting proposed in the NPRM. We believe that expanding the level of detail applicable to the use of the international standards, combined with the reformatting proposed in the NPRM, will make the requirements clearer and easier to understand. Therefore, as proposed, we are consolidating into one section, § 171.22, those conditions and limitations applicable to all of the authorized international transport standards and regulations. Section 171.23 is added for requirements pertaining to specific materials and packagings, §§ 171.24–171.26 are added as separate sections specific to the additional provisions for each standard. The newly numbered sections are contained in new Subpart C of Part 171 as follows:

• Section 171.22, (previously contained in § 171.11, 171.12 and 171.12a), as adopted in this final rule, authorizes the offering, acceptance, and transportation of hazardous materials:

- By aircraft and motor vehicle in accordance with the ICAO Technical Instructions;
- By vessel, motor vehicle, or rail in accordance with the IMDG Code, provided all or part of the transportation is by vessel;
- By motor vehicle or rail in accordance with the Transport Canada TDG Regulations, for: (1) Shipments that originate in Canada and either terminate in the United States or transit the United States to a Canadian or foreign destination, or (2) certain bulk shipments to, from, or within the United States;
- By aircraft, vessel, motor vehicle, or rail for the transportation of

radioactive materials in accordance with the IAEA Regulations for shipments imported into or exported from the United States or transiting the United States during transportation between places outside the United States.

• Section 171.23 specifies requirements for certain specific materials (such as combustible liquids, hazardous wastes, and organic peroxides) and packagings (such as cylinders, aerosols, and chemical oxygen generators) transported under the authorized international standards and regulations.

• Section 171.24 specifies the additional requirements unique to the use of the ICAO Technical Instructions.

• Section 171.25 specifies the additional requirements unique to the use of the IMDG Code.

• Section 171.26 specifies the additional requirements unique to the use of the IAEA Regulations.

Note that additional requirements applicable to North American shipments are contained in § 171.12. These requirements apply to use of the Transport Canada TDG regulations for shipments between the United States and Canada and to shipments into the United States from Mexico. Even though the Mexican standards, Normas Oficiales Mexicanas (NOMs) and the Regulations for Land Transportation of Hazardous Materials and Waste, are to a considerable degree consistent with the HMR, differences do exist and shippers must exercise caution to ensure that shipments transported from Mexico into the United States are in full compliance with the applicable HMR requirements. For additional information and guidance for preparing shipments of hazardous materials between the United States and Mexico, you may access <http://hazmat.dot.gov/nomslst.htm>.

In several places in the NRPM, we proposed to clarify that shipments transported in conformance with an international standard must also conform to all applicable requirements of the HMR. DGAC and CropLife objected to such phrases as “all applicable requirements of this subchapter or part must be met.” The commenters request we direct the user to the requirements by replacing the phrase with the specific regulatory citations for those parts, subparts, or sections of the HMR that apply. We note concerning these comments that this phrase and similar phrases are used throughout the HMR and that it is the responsibility of the shipper or carrier to be knowledgeable about all the HMR

requirements applicable to its operations. From a practical standpoint, using specific citations would mean that we would have to amend these sections if the citations are revised in future rulemakings. The more general reference makes it easier to keep the regulations up to date. For these reasons, we are not adopting the CropLife and DGAC recommendation.

#### C. New Subparts Added to Part 171

With the addition of Subpart C to Part 171, we are also adding new subparts to more appropriately separate the remaining sections in current Part 171. Subpart A is added to include the current provisions concerning the applicability of the HMR and general requirements for transportation, and provisions for the Paperwork Reduction Act, reference material, definitions and abbreviations, rules of construction, units of measure, and North American shipments. Subpart B is added to include the current provisions for incident reporting, approvals and authorizations issued by the Bureau of Explosives, submission of reports, and investigations and special studies. We did not propose revisions to the requirements in new Subparts A and B of Part 171. In this final rule, the reorganized subparts are adopted as proposed in the NPRM except, as indicated above, requirements applicable to Canadian and Mexican shipments are located in § 171.12.

#### D. Revisions to Current Conditions and Limitations for Use

We are making several revisions to the current conditions and limitations for use of international standards and regulations, including: (1) Removing certain unnecessary requirements; (2) clarifying labeling requirements for limited quantities of Division 6.1 materials in Packing Groups II and III; (3) clarifying requirements for the use of International Maritime Organization (IMO) Type 5 tanks; and (4) authorizing the use of the Transport Canada TDG Regulations for return shipments from the United States to Canada. These and other revisions are explained in more detail below.

##### 1. Removal of Unnecessary HMR Requirements

As proposed in the NPRM, we are removing the following conditions and limitations from the HMR because they have been incorporated into the most recent editions of the ICAO Technical Instructions, the IMDG Code, and the Transport Canada TDG Regulations and, therefore, are no longer necessary:

• The restriction in current § 171.11(d)(12), 171.12(b)(14), and 171.12a(b)(14) prohibiting use of international standards for the transportation of ammonium nitrate fertilizer or ammonium nitrate mixed fertilizer that meets the definition for a Class 1 (explosive) material.

• The limitation on the use of abbreviations in current § 171.11, 171.12 and 171.12a.

• The prohibition in current § 171.12a(b)(6) from displaying a product identification number (PIN) preceding a UN number. PIN numbers are no longer authorized in the TDG Regulations.

Currently, under § 171.12a(b)(5)(vi), shipping papers for shipments of anhydrous ammonia prepared in accordance with the TDG Regulations must contain an indication that the markings, labels and placards have been applied in conformance with the TDG Regulations. In the NPRM, we proposed to remove this requirement because the NPRM included a proposal to require an indication on shipping papers of the regulation utilized for the shipments. We are not adopting the new shipping paper requirement in this final rule (see discussion below for a detailed explanation of the issue, comments received, and our decision this proposal). Therefore, we are retaining in this final rule the requirement specific to shipments of anhydrous ammonia.

In addition, in response to a comment from TFI, we are modifying the limitations specific to the transportation of PIH materials to retain the language in current § 171.12a(b)(5)(iv) that permits shipments of anhydrous ammonia to be labeled or placarded in accordance with TDG requirements. This language was inadvertently omitted in the NPRM. TFI also notes that in § 171.102, Special Provision 13, which requires the words "Inhalation Hazard" to be entered on shipping papers and marked on packagings containing anhydrous ammonia, excepts anhydrous ammonia shipments from the shipping paper requirements in § 172.203(m) applicable to materials that are poisonous by inhalation. TFI suggests that since we are incorporating the provisions of § 172.203(m) into new § 171.23(b)(10), Special Provision 13 should be modified to include an exception from the requirements in § 171.23(b)(10). We do not agree; we believe the revised text adopted in this final rule makes clear that shipments of anhydrous ammonia prepared in accordance with the Transport Canada TDG Regulations may be labeled and placarded in accordance with TDG requirements.

## 2. Division 6.1 PG II and III Limited Quantity Labeling Requirements

In the NPRM, we proposed to clarify the current requirement that Division 6.1 materials transported as limited quantities are not excepted from labeling when shipped to, from, or within the United States under the ICAO Technical Instructions, IMDG Code, or the Transport Canada TDG Regulations. ATA opposes this requirement, suggesting that it may require carriers to add labels to certain imported materials. It is not our intention to require carriers to affix labels to packages that are not labeled in accordance with the HMR requirements. As we have said in previous rulemakings and letters of interpretation, a carrier may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect. Therefore, in this final rule, we are adopting the clarifying language as proposed in the NPRM.

## 3. Entering an Indication of the Transport Standard or Regulation Used on Shipping Papers

In the NPRM, we proposed to require shippers to identify by acronym (ICAO, IMDG, TDG, or IAEA) on shipping papers the international standard or regulation under which a hazardous material shipment is being transported. We received several comments supporting and 10 comments opposing the proposal. The commenters opposed to the requirement are FedEx Express, Air Products and Chemicals, Inc. (Air Products), PPG Industries, Inc. (PPG), American Trucking Associations, Inc. (ATA), National Tank Truck Carriers (NTTC), Air Transport Association of America (Air Transport Association), Dangerous Goods Advisory Council (DGAC), Association of Hazmat Shippers (AHS), The Estee Lauder Companies, Inc. (ELC) and the Association of American Railroads (AAR). The commenters in favor of the requirement are the International Vessel Operators Hazardous Materials Association, Inc. (VOHMA), the Council on Safe Transportation of Hazardous Articles (COSTHA), and Lawrence A. Duncan with the U.S. Coast Guard (USCG) Container Inspection Training and Assistance Team.

Commenters supporting the proposal suggest that the lack of an identification of the standard or regulation under which a hazardous material is shipped

causes unnecessary transportation delays and, thus, added costs to the shipper.

Commenters opposing the proposal suggest that it is not necessary and could cause confusion. For example, FedEx calls the proposed change "unnecessary" and states that such a requirement will cause shipments to be delayed and confuse shippers. DGAC states that any "justification" for the requirement has diminished over time with increasing harmonization between the HMR and international regulations. DGAC further states that the requirement would be "extremely burdensome." Some commenters state that the requirement would be repetitive and would cause costly modifications to computer systems.

The Air Transport Association suggests we make the proposed requirement permissive and allow for the acronym to be placed in association with the basic description(s) of the hazardous materials.

As stated in the NPRM, we believe that identifying the particular transport standard or regulation under which a shipment is transported would expedite shipments by providing on-the-spot information to inspectors, carrier personnel and freight forwarders that would facilitate transportation and avoid confusion and frustrated shipments. However, we agree with the commenters who suggest that the need for identification of the standard or regulation used to prepare the shipment has lessened over time with the increasing harmonization of domestic and international transportation standards. Moreover, we agree that the burden this requirement would impose on shippers would outweigh any benefits that might result from its adoption. Therefore, we are not adopting the proposal in this final rule. We note, however, that shippers who wish to do so may include the acronym on shipping papers if they so choose; no rule change is necessary to permit such an indication on a shipping paper.

## 4. Retention of Shipping Papers

In the NPRM, we proposed to clarify that each person who receives a hazardous materials shipment must retain a copy of the shipping paper in accordance with § 172.201(e). DGAC comments that we appeared to propose a more "severe requirement" in § 171.22(g)(5) by proposing to require consignees to retain shipping papers. DGAC notes that neither the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) nor the HMR apply to consignees. DGAC appears to have misunderstood our intent. We did

not propose to expand the requirement to include consignees. The requirement continues to apply to each person who provides a shipping paper (see § 172.201(e)) and each person who receives a hazardous material shipment that will continue in transportation (see §§ 174.24(b), 175.30(a)(2), 176.24(b) and 177.817(f)).

#### 5. Including the Word "Poison" or "Toxic" on Shipping Papers

We are removing from § 171.23(b)(10) the proposed requirement to include the word "Poison" or "Toxic" on a shipping paper when the shipping name or class entry does not reflect the material as being poisonous. We removed this requirement under Docket HM-189Y (FR 70 56084), published on September 23, 2005, as no longer necessary because § 172.202(a)(2) requires the subsidiary hazard class(es) to be entered following the primary hazard class or division number.

#### 6. Shipper's Certification

In accordance with § 172.204, unless otherwise excepted, each person who offers a hazardous material for transportation must certify that the material is offered in accordance with all applicable HMR requirements. This certification is accomplished through the offeror's signature below a statement certifying that the shipment is properly classified, described, packaged, marked and labeled, and in proper condition for transportation according to applicable DOT regulations. A similar certification statement is also required under the IMDG Code and ICAO, but not the Transport Canada TDG Regulations. In the NPRM, we proposed to require each shipper to provide a "shipper's certification," as required by § 172.204 of the HMR, for shipments being transported under all authorized international standards and regulations into the United States. The adoption of this requirement would align shipments being transported under the Transport Canada TDG Regulations with the other authorized international standards.

AAR opposes this proposal. According to AAR, it will be extremely difficult to adapt the Electronic Data Interchange (EDI) system used to transmit information between railroads to include the proposed certification. AAR requests a two-year implementation period. We agree that additional time would be beneficial to companies who may have to adapt computer systems to accommodate the new requirement. In this final rule, we are providing two years from the date of publication of the final rule for

implementation of the new certification requirement.

FedEx and Air Transport also oppose the new certification requirement, stating that it would pose an economic burden on shippers offering hazardous materials that are excepted from the certification (such as diagnostic specimens and dry ice) under the ICAO Technical Instructions. The commenters suggest an amendment to the proposal that would continue to except such shipments from the shipper's certification requirement. Commenters appear to have misunderstood the NPRM proposal. It was not our intention to require a shipper's certification for shipments that are currently excepted from this requirement. However, the comments suggest a need to clarify this issue in the regulatory text. Therefore, in this final rule, we are adopting the requirement as proposed with the addition of the phrase "unless otherwise excepted" in the regulatory text to clarify that the existing exceptions from the shipping certification requirement are still in effect.

#### 7. Use of IMO Type 5 Tanks

In the NPRM, we proposed in § 171.24 to clarify the conditions under which IMO Type 5 tanks are authorized for the transportation of hazardous materials. An IMO Type 5 tank is only authorized when specifically identified in the applicable packaging section of the HMR. If an IMO Type 5 tank is not specifically listed as an authorized packaging, the portable tank must meet DOT 51 or UN portable tank requirements. No commenters addressed this proposal. Therefore, it is adopted as proposed in the NPRM.

#### 8. Bulk Shipments to Canada

In the current § 171.12a, the use of the Transport Canada TDG Regulations includes the return to Canada of empty bulk packages containing only a residue of the hazardous materials initially imported into the United States. We proposed in the NPRM to expand in § 171.26 the authorization to permit the use of bulk packagings authorized in the TDG regulations to transport hazardous materials while returning to Canada from the United States. Additionally, we requested comments concerning whether we should expand reciprocity and allow the use in domestic transportation in the United States of cargo tanks, rail tank cars, and portable tanks built to Canadian specifications as Canada permits the use in Canada of similar packagings built to U.S. specifications. We asked commenters to address whether there are safety or operational considerations we should

examine before expanding reciprocal treatment beyond the amendments we proposed in the NPRM.

ATA, NTTC, Air Products and CTA support expanded reciprocity to allow unrestricted use in the United States of cargo tanks constructed to Canadian specifications. AAR strongly supports reciprocity for tank cars, noting the current similarities between the two regulations.

We agree with these commenters that expansion of authorization for use of the Transport Canada TDG Regulations in the United States will provide additional flexibility and is consistent with the reciprocity currently extended to the United States for DOT specification bulk packagings. We note in this regard that Transport Canada is considering implementing restrictions on the use in Canada of DOT specification cargo tanks, rail tank cars, and portable tanks that are similar to the restrictions we now place on bulk packagings manufactured in accordance with Canadian specifications. If implemented in Canada, such a restriction would limit U.S. carriers' operational flexibility and potentially increase transportation costs.

PHMSA worked closely with Transport Canada to compare the cargo tank, rail tank car and portable tank requirements in the HMR and the TDG Regulations. We determined that the standards for design, manufacture, and requalification of cargo tanks, rail tank cars, and portable tanks in the TDG Regulations are equivalent to the standards for design, manufacture, and requalification of cargo tanks, rail tank cars, and portable tanks in the HMR. Further, according to Transport Canada, cargo tanks, rail tank cars, and portable tanks built to the Canadian specifications have a well-established history of safe operations. We reviewed the small number of incidents in the United States over the past several years involving cargo tanks, rail tanks cars, and portable tanks built to the Canadian specifications and found no evidence of safety problems attributable to flaws in the design or manufacturing specifications. NTTC and ATA agree that there is no safety rationale for continuing to deny full reciprocity to bulk packagings built to Canadian specifications.

Therefore, we are authorizing the domestic use of portable tanks, cargo tank motor vehicles and rail tank cars manufactured in accordance with the TDG Regulations, provided the packagings conform to all applicable operational requirements specified in Parts 173, 177, and 180 of the HMR. Thus, a portable tank, cargo tank, or rail

tank car conforming to the TDG regulations may be used for transportation within the United States provided an equivalent packaging is authorized under the HMR and the bulk packaging conforms to operational requirements specific to each bulk packaging type. For example, a cargo tank motor vehicle constructed in accordance with the TDG regulations may be used in the United States provided it conforms to the HMR requirements applicable to loading, maximum lading pressure, pressure relief devices, retention of lading in piping, and emergency discharge control systems. As a result of this amendment, we are revising §§ 171.31, 171.32 and 171.33 to reflect the authorization. We are also revising the HMR to clarify the parts of the HMR applicable to Canadian specification bulk packagings (for example, hazardous material authorizations in the § 172.101 Hazardous Materials Table (HMT) Special Provision B Codes, material specific requirements in Part 173, operational requirements in Parts 174 and 177 for rail and motor vehicle transportation, and periodic testing and inspection requirements in Part 180). These amendments will ensure that bulk packagings constructed in accordance with the Canadian specifications will conform to all applicable HMR requirements when operated in the United States, thus maintaining the level of safety currently achieved under the HMR.

We note concerning this provision that shippers may use a portable tank, cargo tank motor vehicle or rail tank car equivalent to a corresponding DOT specification and conforming to and authorized by the Transport Canada TDG Regulations provided an equivalent type of packaging is authorized for the hazardous material in the HMR. Generally, an equivalent type of packaging will be one with same specification number as a U.S. packaging. Thus, an equivalent type of packaging to the MC 331 cargo tank authorized in the HMR is the TC 331 cargo tank authorized in the TDG regulations.

As proposed in the NPRM, in § 171.26 (previously § 171.12a(a)), we are removing the statement concerning TDG reciprocal provisions for U.S. shipments. The statement is not regulatory in nature and, therefore, is not appropriate for inclusion in the HMR. We also are removing the information currently contained in § 171.12a(b) that tells the reader how to obtain copies of the Transport Canada TDG Regulations; this is covered in the Reference Material provisions of § 171.7.

#### *E. Combustible Liquids*

In the NPRM, we stated that under the HMR, a material with a flashpoint of 38 [deg]C (100 [deg]F) or more but less than 60.5 [deg]C (141 [deg]F), may be classed as a combustible liquid when packaged in a non-bulk package. Since publication of the NPRM, a final rule under Docket PHMSA-06-25476 (HM-215I) at 71 FR 78596 published on December 29, 2006, adopted an amendment to revise the combustible liquid definition's lower limit to 60 [deg]C (140 [deg]F). Therefore, based on the new definition, such materials are not subject to the provisions of the HMR when transported by highway or rail. However, these same materials are regulated as flammable liquids when transported by vessel in accordance with the IMDG Code or by air under the ICAO Technical Instructions. In the NPRM, we proposed to add a statement to new § 171.23 indicating that a material reclassified as a combustible liquid under the HMR may require classification as a flammable liquid when offered for transportation or transported internationally.

ATA comments that the proposed language is permissive and fails to establish a specific standard for the transportation of combustible liquids under the international standards. Upon reconsideration, we agree that recommendatory language generally is not appropriate for inclusion in regulatory text. Therefore, we are not adopting the provision in this final rule.

ATA further suggests that, in the short term, flammable liquids reclassified as combustible liquids should continue to be excepted from placarding requirements and, in the long term, the combustible liquids classification should be abolished. ATA's comments are beyond the scope of this rulemaking; we will consider them in a future rulemaking.

A material with a flashpoint greater than 60 [deg]C (140 [deg]F) is not regulated as a hazardous material under the ICAO Technical Instructions or the IMDG Code; however, a material with a flashpoint between 60 [deg]C (140 [deg]F) and 93 [deg]C (200 [deg]F) is regulated as a combustible liquid under the HMR. When transported in bulk packages, a combustible liquid must be placarded with a COMBUSTIBLE placard (see § 172.544). The COMBUSTIBLE placard is not recognized overseas; therefore, shipments prepared in accordance with the HMR may be frustrated internationally by inspectors and enforcement personnel who are not familiar with the U.S. requirements. To avoid such frustration, shippers and carriers may remove the COMBUSTIBLE

placard prior to placing the shipment on board a vessel for overseas shipment. However, these efforts are complicated by the requirement for the COMBUSTIBLE placard to remain on bulk packages while in the United States. Shipments originating overseas and bound for the United States encounter a similar problem when the shipment arrives in the United States, and the COMBUSTIBLE placard must be affixed prior to the shipment's movement. In the NPRM, we proposed to provide an exception from placarding for bulk shipments of combustible liquids in port areas.

DGAC and VOHMA support the proposal to except combustible liquids shipments from placarding requirements in port areas. Both organizations view the proposal as a positive solution to the problem of incompatible domestic and international regulations applicable to the transportation of combustible liquids.

Air Products and Owen Bugg express reservations regarding the proposed exception. These commenters state that under the proposed exception, shipments could sit at a port for several days without information for emergency responders. The commenters add that this may lead to segregation and enforcement complications because "port area" is not defined under the HMR, and enforcement officers may have varying interpretations of its meaning. The commenters suggest clarifying the issue by defining "port area."

Based on the comments received as well as our own additional analysis and review, we believe several issues as they relate to the use of placards for combustible liquids must be further studied before we modify regulations for domestic shipments of materials to international destinations. Among the issues that need further review, clarification and development are the definition of "port area," hazard communications, emergency responder notification and other related critical safety issues. Therefore, in this final rule, we are not adopting the exception as proposed in the NPRM. However, we will continue to consider this issue as part of a review of all the regulatory requirements applicable to combustible liquids, as discussed in the following paragraph.

VOHMA raised a number of additional concerns about combustible liquids including concerns about improper documentation of flammable liquids with a flashpoint above 38 [deg]C (93 [deg]F) that are reclassified as combustible liquids being improperly transported by

vessel. These issues are beyond the scope of this rulemaking. However, PHMSA has initiated a review of the regulations applicable to the transportation of combustible liquids. This review will consider the transportation risk posed by these materials and differences between the domestic and international requirements for combustible liquids with a view towards determining whether the domestic regulations should be modified to more appropriately address the transportation risks of these materials. This effort will include a review of classification criteria, packaging requirements, shipping documentation, and hazard communication.

#### F. Cylinders in Port Area

In the NPRM, we proposed to consolidate current provisions governing the limitations on the use of international standards for the transportation of hazardous materials in cylinders. We did not propose changes to the conditions under which non-DOT specification cylinders may be used within the United States. Since publication of the NPRM, PHMSA published a final rule under Docket Number HM-220E (June 12, 2006; 71 FR 33858) adopting standards for the design, construction, maintenance, and use of cylinders and multiple element gas containers contained in the UN Recommendations. The HM-220E final rule revised current § 171.12 to specify the conditions and limitations on the use of UN cylinders in the United States. In this final rule, we are incorporating without change the revised provisions of § 171.12 into new § 171.23(a).

Additionally, we moved the cylinder import/export requirements from current paragraphs (k) and (l) in § 173.301 to new § 171.23 and the Canadian cylinder requirements from paragraph (m) of § 173.301 to new § 171.26. Section 173.301(j) is revised and paragraph (n) is redesignated as paragraph (k).

#### G. Authorization To Use TC Specification Cylinders

Currently, the HMR authorize the use of Canadian Transport Commission (CTC) specification cylinders that are manufactured, originally marked, and approved in accordance with the Transport Canada TDG Regulations and in full conformance with the TDG Regulations, provided certain requirements are met. In the NPRM, we proposed to expand this authorization to include Transport Canada (TC) specification cylinders. We received a

comment from the National Propane Gas Association (NPGA) supporting the facilitation of international transportation of hazardous materials, but raising concerns about our proposal. NPGA questions whether the markings on the cylinders will be in metric units and recommends that we authorize dual markings in both metric and non-metric units of measurements.

Upon revisiting the issue, we realized that in addition to the marking requirements, the HMR would need updating to reflect the correct filling and requalification cites applicable to the TC cylinders. The proposed authorization for use of TC cylinders is not being adopted in this final rule; however, PHMSA will address TC cylinders in an upcoming rulemaking.

#### G. Training Requirements

Currently, the HMR permit training related to the requirements of the ICAO Technical Instructions and the IMDG Code as an alternative to function specific training on the requirements of the HMR. In the NPRM, we proposed to require hazmat employees to be provided training on the international standards in addition to function-specific training on the requirements of the HMR.

Four commenters (DGAC, Croplife, AAR, and ATA) object to the proposed revision to the training requirements. DGAC and Croplife note their understanding that the current function-specific training provisions require training on those sections of the ICAO Technical Instructions or IMDG Code that are relevant to a hazmat employee's responsibilities. DGAC and Croplife suggest that revised language is unnecessary and could result in confusion on the degree to which the additional training is required. DGAC and Croplife recommend we clarify this issue through guidance rather than rulemaking. AAR expresses concern that, since the revision was not discussed in the preamble to the NPRM, it is unclear what additional training would be required, why it is necessary, or the cost implications for the industry. ATA suggests it will be extremely difficult and expensive to train truck drivers on the requirements of both the HMR and the international regulations.

DGAC and Croplife are correct that, under the current function specific training requirements in § 172.704, hazmat employees should be trained on those sections of the ICAO Technical Instructions or IMDG Code that apply to a hazmat employee's responsibilities. However, we agree with those commenters who suggest that we do not currently have adequate information on

the potential impacts of the proposed revision to mandate training for hazmat employees on the international standards in addition to function-specific training on the requirements of the HMR. Therefore, we are not adopting it in this final rule. We may consider this issue in a future rulemaking.

#### H. Incorporating Complete Text

As proposed in the NPRM, we are minimizing references in the regulatory text to other sections and parts of the HMR by incorporating the complete text for certain requirements in place of the reference number. This revision is being made to facilitate use of the HMR by minimizing the frequency with which the user will need to refer to other sections of the HMR.

### III. Rulemaking Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

Under § 5120(b) of Federal hazmat law, the Secretary of Transportation must ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. We are making revisions to the requirements authorizing the use of international standards and regulations in the United States. The continually increasing amount of hazardous materials transported in international commerce warrants harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; more importantly, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements.

#### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

This final rule reorganizes and clarifies the conditions and limitations on the use of international standards and regulations for transporting hazardous materials in the United

States. The final rule also removes unnecessary and outdated requirements and includes provisions to increase shipper flexibility for the transport of hazardous materials. The final rule imposes a new requirement for shippers to provide a shipper's certification for shipments transported into the United States under the Transport Canada TDG Regulations. Such a certification is already required under the HMR, ICAO Technical Instructions, and IMDG Code, and we believe that most Canadian shippers already include such a certification on shipments into the United States. Moreover, we are providing a two-year transition period to minimize potential cost impacts. The final rule also provides for expanded exceptions concerning the use of bulk packagings manufactured in accordance with Canadian standards. The exceptions provide increase flexibility for both shippers and carriers and will facilitate the international transportation of hazardous materials, thereby reducing overall transportation costs, while maintaining the current level of safety currently achieved under the HMR.

#### C. Executive Order 13132

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

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

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a

packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazmat law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for this rule is August 1, 2007.

#### D. Executive Order 13175

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

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. While the requirements in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

*Identification of potentially affected small entities.* Businesses likely to be affected by the rule are persons who offer for transportation or transport hazardous materials in commerce, including hazardous materials manufacturers and distributors; transportation companies, including air, highway, rail, and vessel carriers; hazardous waste generators; and container and packaging manufacturers.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act. Because no such special definition has been established, we employ the thresholds published by SBA for establishments that will be subject to the adopted amendments. Based on data

for 2002 compiled by the U.S. Census Bureau, upwards of 95 percent of persons that would be affected by this rule are small businesses.

*Reporting and recordkeeping requirements.* This final rule includes no new requirements for reporting or recordkeeping.

*Related Federal rules and regulations.* There are no related Federal rules or regulations governing the transportation of hazardous materials in domestic or international commerce.

*Alternate proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

*Conclusion.* While the final rule will apply to a substantial number of small entities, there will not be a significant impact on those entities. This final rule reorganizes and clarifies the conditions and limitations on the use of international standards and regulations for transporting hazardous materials in the United States. The final rule also removes unnecessary and outdated requirements and includes expanded exceptions to increase shipper flexibility for the transport of hazardous materials to Canada. The exceptions provide increased flexibility for both shippers and carriers and will facilitate the international transportation of hazardous materials, thereby reducing overall transportation costs, while maintaining the safety standard currently achieved under the HMR.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

#### F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

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

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading



of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider and analyze the environmental consequences of its actions. The analysis helps determine if the action is a major action that may significantly affect the quality of the human environment.

We regulate hazardous materials transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the

most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

The changes made to the HMR in this final rule will improve the effectiveness of the HMR by clarifying the conditions under which international transport standards and regulations may be used for shipments transported in the United States. When used as authorized in this final rule, the international standards and regulations provide an equivalent level of safety and environmental protection as the HMR. Therefore, there are no significant environmental impacts associated with this final rule.

#### J. Privacy Act

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

#### List of Subjects

##### 49 CFR Part 171

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

##### 49 CFR Part 172

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

##### 49 CFR Part 173

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

##### 49 CFR Part 175

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

#### 49 CFR Part 176

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

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

■ 2. In part 171, designate §§ 171.1 through 171.14 as subpart A and add a new subpart A heading immediately before § 171.1 to read as follows:

#### Subpart A—Applicability, General Requirements, and North American Shipments

\* \* \* \* \*

#### § 171.7 [Revised]

■ 3. In § 171.7, in paragraph (a)(3), in the Table of Material Incorporated by Reference, the following changes are made:

■ a. The entry “Canadian General Standards Board” is added in alphabetical order.

■ b. Under the entry “International Atomic Energy Agency (IAEA),” revise the entry “IAEA, Regulations for the Safe Transport of Radioactive Material, 1996 Edition (Revised), No. TS–R–1 (ST–1, Revised)” by adding the words “(IAEA Regulations)” after the wording “Regulations for the Safe Transport of Radioactive Material”, and in the second column, remove “171.12” and add “171.22; 171.23; 171.26” in its place.

■ c. Under the entry “International Civil Aviation Organization (ICAO),” in the entry “Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2007–2008 Edition”, in the second column, remove “171.11” and add “171.22; 171.23; 171.24; 175.33” in its place.

■ d. Under the entry “International Maritime Organization (IMO),” in the entry “International Maritime Dangerous Goods Code (IMDG Code), 2006 Edition, Incorporating Amendment 33–06 (English Edition), Volumes 1 and 2”, in the second column, remove “171.12” and add “171.22; 171.23; 171.25” in its place.

■ e. Under the entry “Transport Canada”, revise the entire entry for “Transportation of Dangerous Goods (TDG) Regulations, August 2001

including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2002–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; and Amendment 3 (SOR/2003–400) December 3, 2003.”

■ f. Under the entry “United Nations”, revise the entry “UN Recommendations

on the Transport of Dangerous Goods (UN Recommendations), Fourteenth revised edition (2005), Volumes I and II”, in the second column, remove “171.12” and add “171.28” in its place, and add “173.56” in appropriate numerical order.

The additions read as follows:

**§ 171.7 Reference material.**

(a) \* \* \*

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

\* \* \* \* \*

Source and name of material	49 CFR reference
*****	
Canadian General Standards Board, Place du Portage III, 6B1 11 Laurier Street, Gatineau, Quebec, Canada K1A 1G6	171.12
National Standard of Canada (CAN/CGSB 43.147—2005) Construction, Modification, Qualification, Maintenance, and Selection and Use of Means of Containment for the Handling, Offering for Transport, or Transportation of Dangerous Goods by Rail.	
*****	
Transport Canada * * *	
Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), August 2001 including Clear Language Amendments SOR/2001–286, Amendment 1 (SOR/2002–306) August 8, 2002; Amendment 2 (SOR/2003–273) July 24, 2003; Amendment 3 (SOR/2003–400) December 3, 2003; Amendment 4 (SOR/2005–216) July 13, 2005; and Amendment 5 (SOR/2005–279) September 21, 2005.	171.12; 171.22; 171.23; 172.401; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33
*****	

**§§ 171.11 [Removed and Reserved]**

■ 4. Remove and reserve §§ 171.11.

■ 5. Revise the section heading for § 171.12; revise paragraph (a); remove paragraphs (b), (c), and (d); and redesignate paragraph (e) as paragraph (b), to read as follows:

**§ 171.12 North American Shipments.**

(a) *Requirements for the use of the Transport Canada TDG Regulations.* (1) A hazardous material transported from Canada to the United States, from the United States to Canada, or transiting the United States to Canada or a foreign destination may be offered for transportation or transported by motor carrier and rail in accordance with the Transport Canada TDG Regulations (IBR, see § 171.7) as authorized in § 171.22, provided the requirements in § 171.22 and 171.23, as applicable, and this section are met. In addition, a cargo tank motor vehicle, portable tank or rail tank car authorized by the Transport Canada TDG Regulations may be used for transportation to, from, or within the United States provided the cargo tank motor vehicle, portable tank or rail tank car conforms to the applicable requirements of this section. Except as otherwise provided in this subpart, the requirements in parts 172, 173, and 178 of this subchapter do not apply for a material transported in accordance with the Transport Canada TDG Regulations if all other requirements of this subpart and the TDG Regulations are met.

(2) *General packaging requirements.* When the provisions of this subchapter

require a DOT specification or UN standard packaging to be used for transporting a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used, subject to the limitations of this subpart, and only if it is equivalent to the corresponding DOT specification or UN packaging (see § 173.24(d)(2) of this subchapter) authorized by this subchapter.

(3) *Bulk packagings.* A portable tank, cargo tank motor vehicle or rail tank car equivalent to a corresponding DOT specification and conforming to and authorized by the Transport Canada TDG Regulations may be used provided—

(i) An equivalent type of packaging is authorized for the hazardous material according to the § 172.101 table of this subchapter;

(ii) The portable tank, cargo tank motor vehicle or rail tank car conforms to the requirements of the applicable part 173 bulk packaging section specified in the § 172.101 table for the material to be transported;

(iii) The portable tank, cargo tank motor vehicle or rail tank car conforms to the requirements of all assigned bulk packaging special provisions (B codes, and T and TP codes) in § 172.102 of this subchapter; and

(iv) The bulk packaging conforms to all applicable requirements of §§ 173.31, 173.32, 173.33 and 173.35 of this subchapter, and parts 177 and 180 of this subchapter. The periodic retests and inspections required by §§ 173.31, 173.32 and 173.33 of this subchapter

may be performed in accordance with part 180 of this subchapter or in accordance with the requirements of the TDG Regulations provided that the intervals prescribed in part 180 of this subchapter are met.

(v) Rail tank cars must conform to the requirements of Canadian General Standards Board standard 43.147 (IBR, see § 171.7).

(4) *Cylinders.* When the provisions of this subchapter require that a DOT specification or a UN pressure receptacle must be used for a hazardous material, a packaging authorized by the Transport Canada TDG Regulations may be used only if it corresponds to the DOT specification or UN standard authorized by this subchapter. Unless otherwise excepted in this subchapter, a cylinder (including a UN pressure receptacle) may not be transported unless—

(i) The packaging is a UN pressure receptacle marked with the letters “CAN” for Canada as a country of manufacture or a country of approval or is a cylinder that was manufactured, inspected and tested in accordance with a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirements must meet the requirements in § 171.23. Each cylinder must conform to the applicable requirements in part 173 of this subchapter for the hazardous material involved.

(ii) The packaging is a Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Transport Canada TDG Regulations.

(A) The CTC specification corresponds with a DOT specification and the cylinder markings are the same as those specified in this subchapter except that they were originally marked with the letters "CTC" in place of "DOT";

(B) The cylinder has been requalified under a program authorized by the Transport Canada TDG Regulations or requalified in accordance with the requirements in § 180.205 within the prescribed requalification period provided for the corresponding DOT specification;

(C) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of "DOT", a cylinder marked "CTC" which otherwise bears the same markings that would be required of the specified "DOT" cylinder may be used; and

(D) Transport of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (e.g. valve protection, filling requirements, operational requirements, etc.).

(5) *Class 1 (explosive) materials.* When transporting Class 1 (explosive) material, rail and motor carriers must comply with 49 CFR 1572.9 and 1572.11 to the extent the requirements apply.

\* \* \* \* \*

**§ 171.12a [Removed and Reserved]**

- 6. Remove and reserve § 171.12a.
- 7. In part 171, designate §§ 171.15 through 171.21 as subpart B and add a new Subpart B heading immediately before § 171.15 to read as follows:

**Subpart B—Incident Reporting, Notification, BOE Approvals and Authorization**

\* \* \* \* \*

- 8. In part 171, add new Subpart C to read as follows:

**Subpart C—Authorization and Requirements for the Use of International Transport Standards and Regulations**

Sec.

- 171.22 Authorization and conditions for the use of international standards and regulations.
- 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG

Code, Transport Canada TDG Regulations, or the IAEA Regulations.

- 171.24 Additional requirements for the use of the ICAO Technical Instructions.
- 171.25 Additional requirements for the use of the IMDG Code.
- 171.26 Additional requirements for the use of the IAEA Regulations.

**§ 171.22 Authorization and conditions for use of international standards and regulations.**

(a) *Authorized international standards and regulations.* This subpart authorizes, with certain conditions and limitations, the offering for transportation and the transportation in commerce of hazardous materials to, from, or within the United States in accordance with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), and the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material (IAEA Regulations) (IBR, see § 171.7).

(b) *Limitations on the use of international standards and regulations.* A hazardous material that is offered for transportation or transported in accordance with the international standards and regulations authorized in paragraph (a) of this section—

- (1) Is subject to the requirements of the applicable international standard or regulation and must be offered for transportation or transported in conformance with the applicable standard or regulation; and
- (2) Must conform to all applicable requirements of this subpart.

(c) *Materials excepted from regulation under international standards and regulations.* A material designated as a hazardous material under this subchapter, but excepted from or not subject to the international transport standards and regulations authorized in paragraph (a) of this section (e.g., paragraph 1.16 of the Transport Canada TDG Regulations excepts from regulation quantities of hazardous materials less than or equal to 500 kg gross transported by rail) must be transported in accordance with all applicable requirements of this subchapter.

(d) *Materials not regulated under this subchapter.* Materials not designated as hazardous materials under this subchapter but regulated by an international transport standard or regulation authorized in paragraph (a) of

this section may be offered for transportation and transported in the United States in full compliance (i.e., packaged, marked, labeled, classed, described, stowed, segregated, secured) with the applicable international transport standard or regulation.

(e) *Forbidden materials.* No person may offer for transportation or transport a hazardous material that is a forbidden material or package as designated in—

- (1) Section 173.21 of this subchapter;
- (2) Column (3) of the § 172.101 Table of this subchapter;
- (3) Column (9A) of the § 172.101 Table of this subchapter when offered for transportation or transported on passenger aircraft or passenger railcar; or
- (4) Column (9B) of the § 172.101 Table of this subchapter when offered for transportation or transported by cargo aircraft.

(f) *Complete information and certification.* (1) Except for shipments into the United States from Canada conforming to § 171.12, each person importing a hazardous material into the United States must provide the forwarding agent at the place of entry into the United States timely and complete written information as to the requirements of this subchapter applicable to the particular shipment.

(2) After May 4, 2009, the shipper, directly or through the forwarding agent at the place of entry, must provide the initial U.S. carrier with the shipper's certification required by § 172.204 of this subchapter, unless the shipment is otherwise excepted from the certification requirement. Except for shipments for which the certification requirement does not apply, a carrier may not accept a hazardous material for transportation unless provided a shipper's certification.

(3) All shipping paper information and package markings required in accordance with this subchapter must be in English. The use of shipping papers and a package marked with both English and a language other than English, in order to dually comply with this subchapter and the regulations of a foreign entity, is permitted under this subchapter.

(4) Each person who provides for transportation or receives for transportation (see §§ 174.24, 175.30, 176.24 and 177.817 of this subchapter) a shipping paper must retain a copy of the shipping paper or an electronic image thereof that is accessible at or through its principal place of business in accordance with § 172.201(e) of this part.

(g) *Additional requirements for the use of international standards and*

*regulations.* All shipments offered for transportation or transported in the United States in accordance with this subpart must conform to the following requirements of this subchapter, as applicable:

- (1) The emergency response information requirements in subpart G of part 172 of this subchapter;
- (2) The training requirements in subpart H of part 172 of this subchapter, including function-specific training in the use of the international transport standards and regulations authorized in paragraph (a) of this section, as applicable;
- (3) The security requirements in subpart I of part 172 of this subchapter;
- (4) The incident reporting requirements in §§ 171.15 and 171.16 of this part for incidents occurring within the jurisdiction of the United States including on board vessels in the navigable waters of the United States and aboard aircraft of United States registry anywhere in air commerce;
- (5) The general packaging requirements in §§ 173.24 and 173.24a of this subchapter;
- (6) The requirements for the reuse, reconditioning, and remanufacture of packagings in § 173.28 of this subchapter; and
- (7) The registration requirements in subpart G of part 107 of this chapter.

**§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.**

All shipments offered for transportation or transported in the United States under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations (IBR, see § 171.7) must conform to the requirements of this section, as applicable.

(a) *Conditions and requirements for cylinders*—(1) Except as provided in this paragraph, a filled cylinder (pressure receptacle) manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, or a DOT exemption or special permit cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309(a) of this subchapter, may not be transported to, from, or within the United States.

(2) Cylinders (including UN pressure receptacles) transported to, from, or within the United States must conform to the applicable requirements of this subchapter. Unless otherwise excepted in this subchapter, a cylinder must not be transported unless—

(i) The cylinder is manufactured, inspected and tested in accordance with

a DOT specification or a UN standard prescribed in part 178 of this subchapter, except that cylinders not conforming to these requirements must meet the requirements in paragraphs (a)(3), (a)(4) or (a)(5) of this section;

(ii) The cylinder is equipped with a pressure relief device in accordance with § 173.301(f) of this subchapter and conforms to the applicable requirements in part 173 of this subchapter for the hazardous material involved;

(iii) The openings on an aluminum cylinder in oxygen service conform to the requirements of this paragraph, except when the cylinder is used for aircraft parts or used aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. An aluminum DOT specification cylinder must have an opening configured with straight (parallel) threads. A UN pressure receptacle may have straight (parallel) or tapered threads provided the UN pressure receptacle is marked with the thread type, e.g. “17E, 25E, 18P, or 25P” and fitted with the properly marked valve; and

(iv) A UN pressure receptacle is marked with “USA” as a country of approval in conformance with §§ 178.69 and 178.70 of this subchapter.

(3) Importation of cylinders for discharge within a single port area: A cylinder manufactured to other than a DOT specification or UN standard in accordance with part 178 of this subchapter and certified as being in conformance with the transportation regulations of another country may be authorized, upon written request to and approval by the Associate Administrator, for transportation within a single port area, provided—

(i) The cylinder is transported in a closed freight container;

(ii) The cylinder is certified by the importer to provide a level of safety at least equivalent to that required by the regulations in this subchapter for a comparable DOT specification or UN cylinder; and

(iii) The cylinder is not refilled for export unless in compliance with paragraph (a)(3) of this section.

(4) Filling of cylinders for export or for use on board a vessel: A cylinder not manufactured, inspected, tested and marked in accordance with part 178 of this subchapter, or a cylinder manufactured to other than a UN standard, DOT specification, exemption or special permit, may be filled with a gas in the United States and offered for transportation and transported for export or alternatively, for use on board a vessel, if the following conditions are met:

(i) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator;

(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved; and

(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: “This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export.”

(5) Cylinders not equipped with pressure relief devices: A DOT specification or a UN cylinder manufactured, inspected, tested and marked in accordance with part 178 of this subchapter and otherwise conforms to the requirements of part 173 for the gas involved, except that the cylinder is not equipped with a pressure relief device may be filled with a gas and offered for transportation and transported for export if the following conditions are met:

(i) Each DOT specification cylinder or UN pressure receptacle must be plainly and durably marked “For Export Only”;

(ii) The shipping paper must carry the following certification: “This cylinder has (These cylinders have) been retested and refilled in accordance with the DOT requirements for export.”; and

(iii) The emergency response information provided with the shipment and available from the emergency response telephone contact person must indicate that the pressure receptacles are not fitted with pressure relief devices and provide appropriate guidance for exposure to fire.

(b) *Conditions and requirements specific to certain materials*—(1) *Aerosols.* Except for a limited quantity of a compressed gas in a container of not more than 4 fluid ounces capacity meeting the requirements in § 173.306(a)(1) of this subchapter, the proper shipping name “Aerosol,” UN1950, may be used only for a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure the sole purpose of which is to expel a nonpoisonous (other than Division 6.1, Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device (see § 171.8). In addition, an aerosol must be in a metal packaging when the packaging exceeds 7.22 cubic inches.

(2) *Air bag inflator, air bag module and seat-belt pretensioner.* For each

approved air bag inflator, air bag module and seat-belt pretensioner, the shipping paper description must conform to the requirements in § 173.166(c) of this subchapter.

(i) The EX number or product code must be included in association with the basic shipping description. When a product code is used, it must be traceable to the specific EX number assigned to the inflator, module or seat-belt pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

(ii) The proper shipping name "Articles, pyrotechnic for technical purposes, UN0431" must be used for all air bag inflators, air bag modules, and seat-belt pretensioners meeting the criteria for a Division 1.4G material.

(3) *Chemical oxygen generators.* Chemical oxygen generators must be approved, classed, described, packaged, and transported in accordance with the requirements of this subchapter.

(4) *Class 1 (explosive) materials.* Prior to being transported, Class 1 (explosive) materials must be approved by the Associate Administrator in accordance with § 173.56 of this subchapter. Each package containing a Class 1 (explosive) material must conform to the marking requirements in § 172.320 of this subchapter.

(5) *Hazardous substances.* Except for Class 7 (radioactive) materials, a material meeting the definition of a hazardous substance as defined in § 171.8, must conform to the shipping paper requirements in § 172.203(c) of this subchapter and the marking requirements in § 172.324 of this subchapter:

(i) The proper shipping name must identify the hazardous substance by name, or the name of the substance must be entered in parentheses in association with the basic description and marked on the package in association with the proper shipping name. If the hazardous substance meets the definition for a hazardous waste, the waste code (for example, D001), may be used to identify the hazardous substance;

(ii) The shipping paper and the package markings must identify at least two hazardous substances with the lowest reportable quantities (RQs) when the material contains two or more hazardous substances; and

(iii) The letters "RQ" must be entered on the shipping paper either before or after the basic description, and marked on the package in association with the proper shipping name for each hazardous substance listed.

(6) *Hazardous wastes.* A material meeting the definition of a hazardous waste (see § 171.8) must conform to the following:

(i) The shipping paper and the package markings must include the word "Waste" immediately preceding the proper shipping name;

(ii) The shipping paper must be retained by the shipper and by each carrier for three years after the material is accepted by the initial carrier (see § 172.205(e)(5)); and

(iii) A hazardous waste manifest must be completed in accordance with § 172.205 of this subchapter.

(7) *Marine pollutants.* Except for marine pollutants (see § 171.8) transported in accordance with the IMDG Code, marine pollutants transported in bulk packages must meet the shipping paper requirements in § 172.203(l) of this subchapter and the package marking requirements in § 172.322 of this subchapter.

(8) *Organic peroxides.* Organic peroxides not identified by technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with § 173.128(d) of this subchapter.

(9) *Poisonous materials, Division 6.1.* Division 6.1 hazardous materials transported as limited quantities are not excepted from labeling (see § 173.153(b)).

(10) *Poisonous by inhalation materials.* A material poisonous by inhalation (see § 171.8) must conform to the following requirements:

(i) The words "Poison-Inhalation Hazard" or "Toxic-Inhalation Hazard" and the words "Zone A," "Zone B," "Zone C," or "Zone D" for gases, or "Zone A" or "Zone B" for liquids, as appropriate, must be entered on the shipping paper immediately following the basic shipping description. The word "Poison" or "Toxic" or the phrase "Poison-Inhalation Hazard" or "Toxic-Inhalation Hazard" need not be repeated if it otherwise appears in the shipping description;

(ii) The material must be packaged in accordance with the requirements of this subchapter;

(iii) The package must be marked in accordance with § 172.313 of this subchapter; and

(iv) Except as provided in subparagraph (B) of this paragraph (b)(10)(iv) and for a package containing anhydrous ammonia prepared in accordance with the Transport Canada TDG Regulations, the package must be labeled or placarded with POISON INHALATION HAZARD or POISON GAS, as appropriate, in accordance with

Subparts E and F of part 172 of this subchapter.

(A) For a package transported in accordance with the IMDG Code in a closed transport vehicle or freight container, a label or placard conforming to the IMDG Code specifications for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

(B) For a package transported in accordance with the Transport Canada TDG Regulations in a closed transport vehicle or freight container, a label or placard conforming to the TDG Regulations specifications for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter. While in transportation in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate Transport Canada TDG Regulations in addition to being placarded with the POISON GAS or POISON INHALATION HAZARD placards.

(11) *Class 7 (radioactive) materials.* (i) Highway route controlled quantities (see § 173.403 of this subchapter) must be shipped in accordance with §§ 172.203(d)(4) and (d)(10); 172.507, and 173.22(c) of this subchapter;

(ii) For fissile materials and Type B, Type B(U), and Type B(M) packagings, the competent authority certification and any necessary revalidation must be obtained from the appropriate competent authorities as specified in §§ 173.471, 173.472, and 173.473 of this subchapter, and all requirements of the certificates and revalidations must be met;

(iii) Type A package contents are limited in accordance with § 173.431 of this subchapter;

(iv) The country of origin for the shipment must have adopted the edition

of TS-R-1 of the IAEA Regulations referenced in § 171.7;

(v) The shipment must conform to the requirements of § 173.448, when applicable;

(vi) The definition for “radioactive material” in § 173.403 of this subchapter must be applied to radioactive materials transported under the provisions of this subpart;

(vii) Except for limited quantities, the shipment must conform to the requirements of § 172.204(c)(4) of this subchapter; and

(viii) Excepted packages of radioactive material, instruments or articles, or articles containing natural uranium or thorium must conform to the requirements of §§ 173.421, 173.424, or 173.426 of this subchapter, as appropriate.

(12) *Self-reactive materials.* Self-reactive materials not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with § 173.124(a)(2)(iii) of this subchapter.

#### § 171.24 Additional requirements for the use of the ICAO Technical Instructions.

(a) A hazardous material that is offered for transportation or transported within the United States by aircraft, and by motor vehicle or rail either before or after being transported by aircraft in accordance with the ICAO Technical Instructions (IBR, see § 171.7), as authorized in paragraph (a) of § 171.22, must conform to the requirements in § 171.22, as applicable, and this section.

(b) Any person who offers for transportation or transports a hazardous material in accordance with the ICAO Technical Instructions must comply with the following additional conditions and requirements:

(1) All applicable requirements in parts 171 and 175 of this subchapter (also see 14 CFR 121.135, 121.401, 121.433a, 135.323, 135.327 and 135.333);

(2) The quantity limits prescribed in the ICAO Technical Instructions for transportation by passenger-carrying or cargo aircraft, as applicable;

(3) The conditions or requirements of a United States variation, when specified in the ICAO Technical Instructions.

(c) *Highway transportation.* For transportation by highway prior to or after transportation by aircraft, a shipment must conform to the applicable requirements of part 177 of this subchapter, and the motor vehicle must be placarded in accordance with subpart F of part 172.

(d) *Conditions and requirements specific to certain materials.* Hazardous materials offered for transportation or transported in accordance with the ICAO Technical Instructions must conform to the following specific conditions and requirements, as applicable:

(1) *Batteries*—(i) *Nonspillable wet electric storage batteries.* Nonspillable wet electric storage batteries are not subject to the requirements of this subchapter provided—

(A) The battery meets the conditions specified in Special Provision 67 of the ICAO Technical Instructions;

(B) The battery, its outer packaging, and any overpack are plainly and durably marked “NONSPILLABLE” or “NONSPILLABLE BATTERY”; and

(C) The batteries or battery assemblies are offered for transportation or transported in a manner that prevents short circuiting or forced discharge, including, but not limited to, protection of exposed terminals.

(ii) *Primary lithium batteries and cells.* Primary lithium batteries and cells may not be transported aboard passenger-carrying aircraft. Equipment containing or packed with primary lithium batteries or cells may not be transported aboard passenger-carrying aircraft except as provided in § 172.102, Special Provision A101 or A103, of this subchapter. Except for primary lithium batteries and cells contained in or packed with equipment, packagings containing primary lithium batteries and cells meeting the exceptions in § 173.185(b) and (c) of this subchapter must be marked “PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” and may be transported aboard cargo-only aircraft.

(iii) *Prototype lithium batteries and cells.* Prototype lithium batteries and cells are forbidden for transport aboard passenger aircraft and must be approved by the Associate Administrator prior to transportation aboard cargo aircraft, in accordance with the requirements of Special Provision A55 in § 172.102 of this subchapter.

(2) *Oxygen cylinders.* A cylinder containing “Oxygen, compressed” may not be transported aboard a passenger-carrying aircraft, or in an inaccessible cargo location aboard a cargo-only aircraft, unless it is packaged as required by parts 173 and 178 of this subchapter and is placed in an overpack or outer packaging that satisfies the requirements of Special Provision A52 in § 172.102.

#### § 171.25 Additional requirements for the use of the IMDG Code.

(a) A hazardous material may be offered for transportation or transported to, from or within the United States by vessel, and by motor carrier and rail in accordance with the IMDG Code (IBR, see § 171.7), as authorized in § 171.22, provided all or part of the movement is by vessel. Such shipments must conform to the requirements in § 171.22, as applicable, and this section.

(b) Any person who offers for transportation or transports a hazardous material in accordance with the IMDG Code must conform to the following additional conditions and requirements:

(1) Unless otherwise excepted, a shipment must conform to the requirements in part 176 of this subchapter. For transportation by rail or highway prior to or subsequent to transportation by vessel, a shipment must conform to the applicable requirements of parts 174 and 177 respectively, of this subchapter, and the motor vehicle or rail car must be placarded in accordance with subpart F of part 172 of this subpart. When a hazardous material regulated by this subchapter for transportation by highway is transported by motor vehicle on a public highway under the provisions of this subpart, the segregation requirements of Part 7, Chapter 2 of the IMDG Code are authorized.

(2) The stowage and segregation requirements in Part 7 of the IMDG Code may be substituted for the stowage and segregation requirements in part 176 of this subchapter.

(c) *Conditions and requirements for bulk packagings.* Except for IBCs and UN portable tanks used for the transportation of liquids or solids, bulk packagings must conform to the requirements of this subchapter. Additionally, the following requirements apply:

(1) UN portable tanks must conform to the requirements in Special Provisions TP37, TP38, TP44 and TP45 when applicable, and any applicable bulk special provisions assigned to the hazardous material in the Hazardous Materials Table in § 172.101 of this subchapter;

(2) IMO Type 5 portable tanks must conform to DOT Specification 51 or UN portable tank requirements, unless specifically authorized in this subchapter or approved by the Associate Administrator;

(3) Except as specified in this subpart, for a material poisonous (toxic) by inhalation, the T Codes specified in Column 13 of the Dangerous Goods List in the IMDG Code may be applied to the

transportation of those materials in IM, IMO and DOT Specification 51 portable tanks, when these portable tanks are authorized in accordance with the requirements of this subchapter; and

(4) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 [deg]F (38 [deg]C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

(d) *Use of IMDG Code in port areas.*  
 (1) Except for Division 1.1, 1.2, and Class 7 materials, a hazardous material being imported into or exported from the United States or passing through the United States in the course of being shipped between locations outside the United States may be offered and accepted for transportation and transported by motor vehicle within a single port area, including contiguous harbors, when packaged, marked, classed, labeled, stowed and segregated in accordance with the IMDG Code, offered and accepted in accordance with the requirements of subparts C and F of part 172 of this subchapter pertaining to shipping papers and placarding, and otherwise conforms to the applicable requirements of part 176 of this subchapter.

(2) The requirement in § 172.201(d) of this subchapter for an emergency telephone number does not apply to shipments made in accordance with the IMDG Code if the hazardous material is not offloaded from the vessel, or is offloaded between ocean vessels at a U.S. port facility without being transported by public highway.

**§ 171.26 Additional requirements for the use of the IAEA Regulations.**

A Class 7 (radioactive) material being imported into or exported from the United States or passing through the United States in the course of being shipped between places outside the United States may be offered for transportation or transported in accordance with the IAEA Regulations (IBR, see § 171.7) as authorized in paragraph (a) of § 171.22, provided the requirements in § 171.22, as applicable, are met.

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

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

**Authority:** 49 U.S.C. 5101–5128; 44701; 49 CFR, 1.53.

■ 8. In § 172.400a, revise paragraph (d) to read as follows:

**§ 172.400a Exceptions from labeling.**

(d) A package containing a material poisonous by inhalation (see § 171.8 of this subchapter) in a closed transport vehicle or freight container may be excepted from the POISON INHALATION HAZARD or POISON GAS label or placard, under the conditions set forth in § 171.23(b)(11) of this subchapter.

■ 9. In § 172.519, revise paragraph (f) to read as follows:

**§ 172.519 General specifications for placards.**

(f) *Exceptions.* When hazardous materials are offered for transportation or transported under the provisions of subpart C of part 171 of this subchapter, a placard conforming to the specifications in the ICAO Technical Instructions, the IMDG Code, or the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) may be used in place of a corresponding placard conforming to the requirements of this subpart. However, a bulk packaging, transport vehicle, or freight container containing a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded in accordance with this subpart (see § 171.23(b)(11) of this subchapter).

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

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

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

**§ 173.21 [Amended]**

■ 13. In § 173.21, in paragraph (k), in the first sentence, the phrase “including § 171.11 and” is revised to read “including subpart C of part 171 and”.

■ 14. In § 173.24, revise paragraphs (c)(2) and (i) to read as follows:

**§ 173.24 General requirements for packagings and packages.**

\* \* \* \* \*

(c) \* \* \*

(2) The packaging is permitted under, and conforms to, provisions contained in subparts B or C of part 171 of this subchapter or §§ 173.3, 173.4, 173.5, 173.5a, 173.6, 173.7, 173.8, 173.27, or § 176.11 of this subchapter.

\* \* \* \* \*

(i) *Air transportation.* Except as provided in subpart C of part 171 of this subchapter, packages offered or intended for transportation by aircraft must conform to the general requirements for transportation by aircraft in § 173.27.

■ 15. In § 173.27, revise paragraph (f) introductory text to read as follows:

**§ 173.27 General requirements for transportation by aircraft.**

\* \* \* \* \*

(f) *Combination packagings.* Unless otherwise specified in this part, or in subpart C of part 171 of this subchapter, when combination packagings are offered for transportation aboard aircraft, inner packagings must conform to the quantity limitations set forth in Table 1 of this paragraph for transport aboard passenger-carrying aircraft and Table 2 of this paragraph for transport aboard cargo aircraft only, as follows:

\* \* \* \* \*

■ 15. In § 173.31, add new paragraph (a)(8) to read as follows:

**§ 173.31 Use of tank cars.**

(a) \* \* \*

(8) A tank car authorized by the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) may be used provided it conforms to the applicable requirements in § 171.12 of this subchapter.

\* \* \* \* \*

■ 16. In § 173.32, add new paragraph (b)(4) to read as follows:

**§ 173.32 Requirements for the use of portable tanks.**

\* \* \* \* \*

(b) \* \* \*

(4) A portable tank authorized by the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) may be used provided it conforms to the applicable requirements in § 171.12 of this subchapter.

\* \* \* \* \*

■ 17. In § 173.33, add new paragraph (h) to read as follows:

**§ 173.33 Hazardous materials in cargo tank motor vehicles.**

\* \* \* \* \*

(h) A cargo tank motor vehicle authorized by the Transport Canada TDG Regulations (IBR, see § 171.7 of this subchapter) may be used provided it conforms to the applicable requirements in § 171.12 of this subchapter.

■ 18. In § 173.56, revise paragraph (g) to read as follows:

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

(g) An explosive may be transported under subparts B or C of part 171 or § 176.11 of this subchapter without the approval of the Associate Administrator as required by paragraph (b) of this section if the Associate Administrator has acknowledged in writing the acceptability of an approval issued by the competent authority of a foreign government pursuant to the provisions of the UN Recommendations, the ICAO Technical Instructions, the IMDG Code (IBR, see § 171.7 of this subchapter), or other national or international regulations based on the UN Recommendations. In such a case, a copy of the foreign competent authority approval, and a copy of the written acknowledgement of its acceptance must accompany each shipment of that explosive.

■ 19. In § 173.301, revise paragraph (j); remove paragraphs (k), (l) and (m); and redesignate paragraph (n) as paragraph (k), to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.**

(j) *Non-specification cylinders in domestic use.* Except as provided in §§ 171.12(a) and 173.23(g) of this subchapter, a filled cylinder

manufactured to other than a DOT specification or a UN standard in accordance with part 178 of this subchapter, or a DOT exemption or special permit cylinder or a cylinder used as a fire extinguisher in conformance with § 173.309(a), may not be transported to, from, or within the United States.

**PART 175—CARRIAGE BY AIRCRAFT**

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

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 21. In § 175.30, in paragraph (a)(2), revise the first sentence to read as follows:

**§ 175.30 Inspecting shipments.**

(a) \* \* \*  
 (2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by Subpart C of part 171 of this subchapter. \* \* \*

■ 22. In § 175.33, revise paragraph (a)(1)(ii) to read as follows:

**§ 175.33 Shipping paper and notification of pilot-in-command.**

(a) \* \* \*  
 (1) \* \* \*  
 (ii) The ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), any additional information required to be shown on shipping papers by subpart C of part 171 of this subchapter must also be shown in the notification.

**PART 176—CARRIAGE BY VESSEL**

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

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 24. In § 176.11, revise the first sentence of paragraph (a) introductory text, and paragraph (b) to read as follows:

**§ 176.11 Exceptions**

(a) A hazardous material may be offered and accepted for transport by vessel when in conformance with the IMDG Code (IBR, see § 171.7 of this subchapter), subject to the conditions and limitations set forth in subpart C of part 171 of this subchapter. \* \* \*

(b) Canadian shipments and packages may be transported by vessel if they are transported in accordance with this subchapter. (See subparts B and C of part 171 of this subchapter.)

**§ 176.24 [Amended]**

■ 25. In § 176.24, in paragraph (a), the phrase “authorized by § 171.12 of this subchapter” is revised to read “authorized by subpart C of part 171 of this subchapter”.

■ 26. In § 176.27, in paragraph (b), revise the last sentence to read as follows:

**§ 176.27 Certificate.**

(b) \* \* \* See subpart C of part 171 of this subchapter.

Issued in Washington, DC, on April 16, 2007, under authority delegated in 49 CFR Part 1.

**Thomas J. Barrett,**  
*Administrator.*

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