

requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 204

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 204 and Appendix G to Chapter 2 as follows:

1. The authority citation for 48 CFR Part 204 and Appendix G to subchapter I continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7000 is revised to read as follows:

##### 204.7000 Scope.

This subpart—

(a) Prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments; and

(b) Does not apply to communication service authorizations issued by the Defense Information Technology Contracting Organization of the Defense Information Systems Agency in accordance with 239.7407–2.

3. Section 204.7003 is amended by revising paragraph (a)(1) to read as follows:

##### 204.7003 Basic PII number.

(a) \* \* \*

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the DoD Activity Address Code (DoDAAC) assigned to the issuing office. DoDAACs can be found at <https://day2k1.daas.dla.mil/dodaac/dodaac.asp>.

\* \* \* \* \*

4. Section 204.7004 is amended in paragraph (d)(2)(i) by revising the second sentence to read as follows:

##### 204.7004 Supplementary PII numbers.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) \* \* \* The first and second positions contain the call/order code assigned to the ordering office in accordance with 204.7005. \* \* \*

\* \* \* \* \*

5. Section 204.7005 is added to read as follows:

##### 204.7005 Assignment of order codes.

(a) The Defense Logistics Agency, Acquisition Operations Team, Fort

Belvoir, VA 22060–6221, is the executive agent for maintenance of code assignments for use in the first two positions of an order number when an activity places an order against another activity's contract or agreement (see 204.7004(d)(2)). The executive agent distributes blocks of two-character order codes to department/agency monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in two-character order codes to their respective monitors in accordance with department/agency procedures. Order code monitors—

(1) Approve requests for additions, deletions, or changes; and

(2) Provide notification of additions, deletions, or changes to—

(i) The executive agent; and

(ii) The executive editor, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062.

(c) Order code monitors are—

##### ARMY

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

##### NAVY AND MARINE CORPS

Office of the Assistant Secretary of the Navy (RD&A), 2211 South Clark Place, Crystal Plaza 5, Room 506, Arlington, VA 22202–3738

##### AIR FORCE

SAF/AQCX, 1060 Air Force Pentagon, Washington, DC 20330–1060

##### DEFENSE LOGISTICS AGENCY

Defense Logistics Agency, Acquisition Operations Team, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221

##### OTHER DEFENSE AGENCIES

Army Contracting Agency, Attn: SFCA-IT, 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

(d) Order code assignments can be found at <http://www.acq.osd.mil/dpap>.

#### Appendix G to Chapter 2—[Removed and Reserved]

6. Appendix G to Chapter 2 is removed and reserved.

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#### DEPARTMENT OF TRANSPORTATION

#### Research and Special Programs Administration

#### 49 CFR Parts 171, 172, and 173

[RSPA–03–15327 (Docket No. HM–206B)]

RIN 2137–AD28

#### Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation (PIH)

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA is proposing changes to the hazard communication requirements of the Hazardous Materials Regulations (HMR), including revisions of the specifications for labels and placards, based on petitions for rulemaking, requests for clarification, and our own belief that clarifications and improvements in the HMR may be appropriate. The effect of the proposed regulatory changes would be to improve safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

**DATES:** Comments must be submitted on or before August 11, 2003. To the extent possible, we will accept late-filed comments as we develop a final rule.

**ADDRESSES:** Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number RSPA–03–15327 (HM–206B) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System Web site at “<http://dms.dot.gov/>” and following the instructions for submitting a document electronically. If you prefer, you can fax comments to 202–493–2251 for filing in the docket.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System Web site at <http://dms.dot.gov/>.

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

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

##### List of Topics

- I. Background
- II. Marking Requirements
  - A. NON-ODORIZED Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas
  - B. Organic Peroxide Identification Number Marking
  - C. Fumigant Marking
- III. Materials Poisonous by Inhalation (PIH)
  - A. Revision of PIH Label and Placard and Transition Provisions
  - B. Hydrogen Fluoride, Anhydrous, and Similar Materials
  - C. Residues (When PIH Subsidiary)
- IV. Other Requirements for Labels and Placards
  - A. Color Standards for Labels and Placards
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- E. Placarding Exception for Class 9 Materials (Domestic)
- F. Footnote to Table 1 (placards)—Editorial Correction
- V. Training and Emergency Response Information
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  - B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains
  - C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids
- VI. Security Plans
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  - C. Executive Order 13175
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  - F. Regulatory Identification Number (RIN)
  - G. Unfunded Mandates Reform Act
  - H. Environmental Assessment

##### I. Background

In general, the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) require that during transportation: (1) Non-bulk packages of hazardous materials must be marked with the shipping name and identification number of the material and have a hazard warning label; (2) bulk shipments of hazardous materials must be identified by placards and identification number markings attached to the transport vehicle or bulk package; and (3) hazardous materials must be described and identified on a shipping paper that accompanies the shipment in transportation and contains an emergency response telephone number that is monitored at all times

while the hazardous material is in transportation. This telephone number is used by emergency responders to obtain detailed, product-specific information that includes guidance for the initial actions to be taken in the event of an incident. These requirements are designed to provide fire and emergency response personnel, transport workers, and the public with information in the event of a transportation incident involving hazardous materials. Hazard communication and emergency response information requirements are set forth in subparts C through G of part 172 of the HMR. The hazard communication system in the HMR is consistent with international standards.

In this NPRM, RSPA (we) is proposing a number of clarifications and improvements to the shipping paper, identification number, other marking, labeling and placarding, and emergency response telephone number requirements. The changes are intended to enhance the identification of hazardous materials in transportation and improve the availability of emergency response information. These changes should result in better response by, and protection of emergency response personnel, fire or police personnel and the public, and help to ensure that hazardous materials are transported with minimum risks to persons, property, and the environment.

We received a number of petitions for rulemaking requesting changes to the hazard communications requirements of the HMR. The following chart summarizes the petitions considered in this NPRM:

| Petition No. | Request                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0804 .....   | Amend placarding requirements for PROPANE to require the phrase NON-AEROMATIC be displayed on a placard when there is no detectable odor to alert emergency response personnel. Requested by New Jersey State Firemen's Mutual Benevolent Association (Proposed in §§ 172.301, 172.326, 172.328, 172.330).                                                                                                                                                                                                                                                                                 |
| 1113 .....   | Amend the requirements for color standards for labels and placards to reference certain colors from the Pantone® Matching System, Pantone® Color Formula Guide, First Edition 2000–2001. Requested by the Dangerous Goods Advisory Council (DGAC, formerly HMAC) (Proposed in §§ 172.407(d) and 172.519(d)).                                                                                                                                                                                                                                                                               |
| 1285 .....   | Amend the labeling requirements to allow commercial motor carriers to transport Division 2.1 or 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C–7. Requested by the Compressed Gas Association (CGA) (Proposed in § 172.400a(a)(1)).                                                                                                                                                                                                                                                                                                                            |
| 1327 .....   | Amend the hazard communication system to require display of the identification number on each bulk packaging, unit load device, freight container, transport vehicle or rail car, when transporting an “Organic peroxide, temperature controlled” material subject to placarding provisions in § 172.504(e), Table 1. Requested by the Los Angeles Police Department (Proposed in § 172.336(b)(2)).                                                                                                                                                                                        |
| 1368 .....   | Revise paragraphs (b) and (e) of § 173.9 to: (1) Require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR; (2) allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated; and (3) clarify that the phrase “or treated with any material,” applies to ready-to-use liquid formulations or “foggers”, such as ant or roach repellants. Requested by the Industrial Fumigant Company (Proposed revision in paragraph (e) in § 173.9). |

| Petition No. | Request                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1416 .....   | Amend the requirements for materials listed as hazardous substances in the § 172.101 Table, Appendix A, Table 1, that only meet the hazard class definition of a Class 9 (miscellaneous) material. The petitioner requested that markings, labels, and placards be allowed to remain on such packages containing a residue of such substances, although the rail cars have been unloaded to a quantity less than the reportable quantity (RQ). Requested by Bayer Corporation (Proposed revision in § 172.514(b) to eliminate confusion regarding these types of returned rail car shipments). |

## II. Marking Requirements

### A. Non-Odorized Marking on Cylinders, Portable Tanks, Cargo Tanks, and Tank Cars Containing Liquefied Petroleum Gas

With certain exceptions, all liquefied petroleum gas (LPG) must be odorized when transported in portable tanks or cargo tanks, as prescribed in Note 2 of § 173.315(b)(1). Odorization must indicate positively, with a distinctive odor, the presence of gas down to a concentration in air of not more than one-fifth the lower limit of combustibility. Exceptions are permitted if odorization is harmful in the use or further processing of LPG, or if odorization will serve no useful purpose as a warning agent. There is no requirement in the HMR to odorize LPG in cylinders or tank cars. The fact that LPG is odorized or not is not required to be communicated to emergency responders or the general public.

The New Jersey State Firemen's Mutual Benevolent Association (the Association) petition requested that packages containing non-odorized propane that are already required to be placarded have the phrase NON-AEROMATIC or NON-ODORIZED added either above or below the word "propane." The Association stated that emergency response personnel may be unaware of leaks or spills of propane because there is no detectable odor to alert these persons of the hazardous condition present.

We believe this petition has merit. This lack of additional hazard warning information could cause emergency responders to make inappropriate decisions in mitigating an accident, potentially jeopardizing their safety or the public safety.

In 1984, we published an NPRM, Docket HM-126D; Notice No. 84-11 (49 FR 38164) that proposed several changes in parts 171, 172 and 173 regarding odorization of liquefied petroleum gas (LPG), in addition to other revisions. The comments we received ranged from complete support to direct opposition. In a final rule (52 FR 29526) published August 10, 1987, we stated that the odorization issue would be handled under a separate docket. In comments to the HM-126D

rulemaking, an LPG carrier representative and the National LP-Gas Association stated that non-odorized LPG is transported in fewer than 300 cargo tanks, fewer than 600 tank cars, approximately 3500 cylinders, and approximately 100 portable tanks. Commenters also stated that less than 1 percent of the LPG transported by motor vehicle is non-odorized and approximately 94 percent of LPG is transported by motor vehicle.

Emergency responders may assume that each bulk packaging displaying the LPG proper shipping name, or a technical name such as butane, isobutylene, or propane, contains an odorant. However, to provide the appropriate hazard warning information when packaging do not contain an odorant, we believe NON-ODORIZED should be marked in association with the proper shipping name on a cylinder (except for DOT 2P and 2Q containers and DOT 39 cylinders), portable tank, cargo tank, or tank car containing LPG. The specification DOT 2P, 2Q or 39 packagings would not be subject to the marking requirement because of their small size. At an incident involving such cylinders, emergency response personnel would have to get too close to such packages to determine whether they were marked NON-ODORIZED, which could jeopardize the health and safety of the responders.

Therefore, to provide the necessary warning, we propose to require NON-ODORIZED marking on certain cylinders, portable tanks, cargo tanks and tank cars. For portable tanks, cargo tanks and tank cars, the size of the marking would be as prescribed in the general marking requirements for bulk packagings. The annual cost of this marking, using pressure sensitive, vinyl labels that have a 5- to 7-year life expectancy, would be minimal. Accordingly, we propose to amend §§ 172.301, 172.326, 172.328, and 172.330, to require the marking NON-ODORIZED for LPG that does not contain an odorant.

### B. Organic Peroxide Identification Number Marking

Currently, a Division 5.2 ORGANIC PEROXIDE placard is specified in both Table 1 and Table 2 of § 172.504. In

Table 1, a Division 5.2 placard is required for any quantity of an organic peroxide, Type B, liquid or solid, temperature controlled. In Table 2, a Division 5.2 placard is required for organic peroxides not covered by Table 1 when 1,001 pounds or more are on a transport vehicle. Thus, an ORGANIC PEROXIDE placard may or may not indicate that the material is temperature controlled.

The Los Angeles Police Department (LAPD) petition (P-1327) requested that we require an identification number to be displayed on each bulk packaging, unit load device, freight container, transport vehicle, or rail car, when the material transported is a temperature-controlled organic peroxide subject to placarding under § 172.504(e), Table 1. The LAPD said this will clearly identify the organic peroxides requiring special response needs based on temperature controls. The LAPD said that the current requirement to placard any amount of "5.2, Organic peroxide, Type B, liquid or solid, temperature-controlled" material does not convey the warning to emergency personnel that the material must be temperature controlled. This issue was previously discussed in a final rule responding to petitions for reconsideration under HM-206 (62 FR 39398; 07/22/97). During that process, we denied LAPD's petition because such a change was not proposed in the NPRM, and was beyond the scope of that rulemaking. However, because organic peroxides that require refrigeration for stabilization purposes during transportation pose a substantial hazard in any incident that would result in a loss of temperature control, we said this suggestion had merit, and would be considered in future rulemaking.

Under the current regulations, a bulk packaging is required to display an identification number marking. Similarly, a transport vehicle or freight container containing a single hazardous material in non-bulk packagings having an aggregate gross weight of 4000 kg (8,820 pounds) or more is also required to display the identification number on the exterior of the transport vehicle or freight container. In addition, the shipping paper provides appropriate information on organic peroxide temperature-controlled material,

including the identification number. However, the shipping paper may not be immediately available at the scene of an incident. Thus, other than the ORGANIC PEROXIDE placard, there may not be other information readily available to inform responders of the unique characteristic (*i.e.*, temperature controlled) of this type of material to assist them in determining an appropriate response. We believe the LAPD petition has merit and propose to add a new paragraph (b)(2) in § 172.336 to require the identification number to be displayed on a transport vehicle or freight container containing any quantity of an organic peroxide, temperature controlled, material that is required to be placarded in accordance with the requirements in § 172.504(e), Table 1.

### C. Fumigant Marking

Effective October 1, 1998, we adopted new requirements for fumigated loads (62 FR 1217; 01/08/97). Formerly, fumigation requirements applied only to rail transportation and set forth different provisions depending on the type of fumigant used. We adopted requirements in § 173.9 specifying that a fumigated transport vehicle or freight container is a "package" for purposes of the fumigation requirements, and expanded the requirements to cover all modes of transportation. The rule applies to fumigation with any material and set forth defining criteria and concentration thresholds for unlisted fumigants. This approach benefits shippers, carriers, law enforcement agencies, and, in particular, transport workers who may be exposed unknowingly when they open transport units. Thus, if the transport unit or freight container has been treated with any material, or is undergoing fumigation, it is subject to the fumigation marking requirements of the HMR.

The Industrial Fumigant Company (IFC) petitioned us (P-1368) to amend the HMR to revise paragraphs (b) and (e) of § 173.9 to require only the EPA FUMIGANT warning label to be prominently displayed instead of the FUMIGANT marking currently prescribed in the HMR. The petition also requested that we allow for aeration of the transport vehicle or freight container without requiring unloading of the lading that has been fumigated. In addition, the petitioner requested that we clarify the phrase "or treated with any material," as it applies to materials, such as ready-to-use liquid formulations or "foggers," such as ant and roach repellants. IFC said that these "foggers," or non-residual insecticides, are lower

in toxicity than fumigants and can be found in ready-to-use liquid formulations used in a household environment. IFC stated it would be incorrect to place a FUMIGANT marking on an application such as this, and that the phrase "or treated with any material" is too broad and could cause confusion.

In regard to ready-to-use liquid formulations, such as pyrethrin, we believe persons entering a transport unit should be made aware of the presence of chemicals that may pose a threat to their health and safety. We do not agree with IFC that such chemicals do not pose a risk during transportation, and we continue to believe that persons offering or transporting treated or fumigated loads must have immediate knowledge relative to such materials or fumigants.

We also do not agree that only the EPA fumigant marking or label should be displayed on a transport vehicle or freight container containing fumigated lading. The design of the FUMIGANT marking was adopted for consistency with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) for fumigated lading in transportation in commerce. For domestic transportation, we allow the hazard warning label authorized by EPA under 40 CFR part 156 as an alternative to the FUMIGANT marking.

However, we believe that this petition has merit and should, in part, be granted. We understand that some fumigated materials are aerated without being unloaded from the transport vehicle or freight container. Thus, the requirement as written in § 173.9(e)(1), that the FUMIGANT marking must remain on the package unless both the fumigated lading is unloaded and the transport vehicle is sufficiently aerated may be an unnecessary burden on the fumigation industry. In this NPRM, we propose to revise the requirements in paragraph (e) of § 173.9 to specify that the FUMIGANT marking must remain on the vehicle or container until the fumigated lading is "unloaded or has undergone sufficient aeration." The word "or" replaces the word "and" in the current paragraph (e)(1). This revision will permit aeration or ventilation of the vehicle or container without unloading.

### III. Materials Poisonous by Inhalation (PIH)

#### A. Revision of PIH Label and Placard and Transition Periods

In a final rule issued January 8, 1997 (62 FR 1217), we adopted new labels

and placards for both liquids (Division 6.1) and gases (Division 2.3) that are PIH materials to enhance their identification when transported in commerce. The dark background for skull and crossbones of the symbol depicted on the PIH label and placard graphically conveys the appropriate information to alert responders to the hazards of PIH materials. The new PIH label and placard also improve hazard communication by creating an instantly recognizable difference between PIH materials and other poisons. The effective date was delayed one year, until October 1, 1998. At that time, we included transitional provisions for continued use of the POISON or POISON GAS labels and placards, until October 1, 1999, and October 1, 2001, respectively.

However, on the new PIH label and placard, we inadvertently specified a smaller skull and crossbones symbol in the upper black diamond than currently shown on the Poison placard and label. In this notice, we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the placards and labels to conform, pictorially, in size, with the symbol on the Poison placard and label used for poisons other than those that are PIH materials. Increasing the size of the symbol will make these placards and labels more visible from a distance and will enhance the ability of emergency responders and transport workers to identify the PIH materials.

Identification number markings are not prohibited on the POISON GAS or POISON INHALATION HAZARD placards, as specified in § 172.334. Display of an identification number on a hazard warning placard must be in conformance with the identification number marking requirements prescribed in § 172.332(c) of the HMR. That is, the identification number must be displayed across the center area of the placard in 88 mm (3.5 inches) black Alpine Gothic or Alternate Gothic No. 3 numerals on a white background 100 mm (3.9 inches) high and approximately 215 mm (8.5 inches) wide, and the top of the 100 mm (3.9 inches) high white background must be 40 mm (1.6 inches) above the placard horizontal center line. Because we are proposing to enlarge the upper black diamond above the horizontal center line and, proportionally, the skull and crossbones symbol at the top of the PIH placards, identification number markings displayed on the proposed PIH placards may cause overlapping of the lower point of the upper black diamond and

impinge on space used for identification number display on such placards.

To allow space for the identification number, we propose allowing the lower point of the upper black diamond to impinge on space used to display an identification number marking on a PIH placard. A provision would be added in § 172.332(c) to allow the overlapping or clipping-off of the lower point of the black square-on-point (upper black diamond) above the horizontal center line on both the POISON GAS and POISON INHALATION HAZARD placards displayed on transport vehicles or freight containers containing materials poisonous by inhalation.

We are also proposing in § 171.14(a) and (b) to allow those persons who had begun, prior to October 1, 2001, to use and maintain a supply of the new PIH labels and placards with smaller size symbols to continue to use them in transportation. For non-permanent placard displays (e.g., tagboard), the proposed compliance date would be October 1, 2006. The proposed compliance date for use of the proposed revised labels (with enlarged symbols on the upper black background) would be October 1, 2004, except that if a permanent PIH label (e.g., labels printed, embossed or stamped on the surface of a package) conforms to the specifications in effect on October 1, 1998, and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. For permanent placard displays (e.g., metal "flip-type", that cannot be transferred to another motor vehicle, rail car, freight container, etc.), we propose that if a permanently-mounted PIH placard conforms to the specifications in effect on October 1, 1998 (delayed effective date of HM-206), and is manufactured and installed prior to October 1, 2003, it may continue to be used for its useful life. Accordingly, the present requirements in paragraphs (a) and (b) in § 171.14, which are obsolete and therefore no longer necessary, would be removed and new paragraphs (a) and (b) would be added to include continued use provisions and transition dates for PIH labels and placards.

#### *B. Hydrogen Fluoride, Anhydrous, and Similar Materials*

In the HM-206 final rule (62 FR 1217; 1/8/97), materials such as hydrogen fluoride, anhydrous, that meet the definition of a PIH material, were not specifically addressed in the provisions for labeling and placarding PIH materials in Division 6.1. To correct this oversight, we are proposing to revise §§ 172.400 and 172.504 to require an inhalation hazard label or placard for all

materials that meet the definition of a PIH material in § 171.8.

#### *C. Placarding Requirement for Residues (When PIH Subsidiary)*

In accordance with § 173.29, a non-bulk packaging containing only a residue of a hazardous material covered by placarding Table 2 of § 172.504 of the HMR need not be included in determining the applicability of the placarding requirements in subpart F of part 172 and is not subject to shipping paper requirements when collected and transported by a contract or private carrier for reconditioning, manufacturing, or reuse. However, the exception in § 173.29(c) was not intended to apply to the residue of a material shipped in non-bulk packagings that has a subsidiary PIH hazard that would require the transport vehicle to be placarded in accordance with the subsidiary placarding requirements in § 172.505(a). Therefore, we are proposing to clarify that the exception in § 173.29(c) does not apply to the residue of a PIH material.

#### **IV. Other Requirements for Labels and Placards**

##### *A. Color Standards for Labels and Placards*

The Dangerous Goods Advisory Council (DGAC) (formerly, the Hazardous Materials Advisory Council) petitioned RSPA (P-1113) to consider alternative means of achieving reasonable conformance to color standards for hazard warning labels and placards. DGAC said the specifications for colors in the Tables in Appendix A of part 172 of the HMR cause difficulty since the systems on which they are based (*i.e.*, Munsell Notations) are not in common use. According to DGAC, this is reinforced by the lack of specified standards in the UN Recommendations, the International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air. DGAC said that, while the text of each document refers to some degree of conformance to the illustrations shown, variation does exist within a given color. Some of DGAC's member companies note that the color tolerance charts previously available from RSPA are no longer available. DGAC recommended that color standards for labels and placards conform generally to the same standards prescribed in the Canadian Transport of Dangerous Goods (TDG) Regulations, which are colors conforming to the Pantone® Formula Guide published by Pantone Incorporated (Pantone®).

DGAC suggested specific colors based on the Pantone® Formula Guide and proposed regulatory language. DGAC stated that these standards should apply to labels, placards, and identification number markings that are surfaced with printing inks. Where colors are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation would be required to ensure a proper match with the color standards suggested in the petition.

The use of the Pantone® Formula Guide was addressed in the NPRM under Docket HM-206 (59 FR 41848; 8/15/94). No changes were proposed in the NPRM to the present label and placard color code system because there was insufficient cost and safety information available to justify adopting a new color system. At that time, we asked for comments or information concerning color code systems that would allow for a range of color and estimates of the costs and benefits of adopting a new color tolerance system. The Pantone® Formula Guide uses specific colors and does not allow for deviations or tolerances as do the Munsell Notations. In the HM-206 NPRM, we also asked commenters to provide information on specific colors from the Pantone® Formula Guide that, in their view, constitute compliance with the label and placard color standards, including tolerances currently referenced in the HMR. However, commenters did not provide any new or additional safety or cost information on this issue.

Pantone sells samples for over 1,100 colors, along with printing ink formulas to achieve each color. All colors are mixed from a set of 14 standard base colors. Pantone's product line consists of loose-leaf books of color samples and instructions to enable graphic artists and printers to reproduce each color on various types of paper and other printing materials. In past discussions, Pantone said that any manufacturers' inks can be used to achieve Pantone's colors. This distinguishes its system from other color systems, which prescribe formulas for printers to use, but may require printers to use only its brand of inks. Dyes used for paints are different from printing dyes, but are expected to be longer lasting, more durable, and stand up against fading. Printing dyes are relatively inexpensive, but not designed to last for long periods of time.

We understand that the Munsell Notations present problems for persons making hazard warning labels and placards because the system is not

widely recognized or used, and many printers do not understand it. Therefore, based on DGAC's petition, in this NPRM we propose to reference certain Pantone® Formula Guide numbers as a convenience to users, not as a requirement. Sections 172.407 and 172.519 would be revised to voluntarily permit the use of certain Pantone® Formula Guide colors for identification number and other markings and hazard warning labels and placards as an alternative to the Munsell notations. These color standards conform generally to the same standards under the Canadian TDG Regulations.

For many years now, the set of Color Tolerance Charts, prescribed in §§ 172.407 and 172.519, which are used to compare and determine compliance with the colors for identification number markings and hazard warning labels and placards, have not generally been available. Recently, we have become aware of the availability of the Color Tolerance Charts from a commercial source, Hale Color Charts, Inc. The set of Color Tolerance Charts displays the desired color (central) with a series of tolerance limits and color matches. The availability of these charts will assist enforcement personnel in the field in determining compliance with colors for markings, labels and placards and assist persons who wish to produce their own labels and placards based on the range of colors set forth in these charts for comparison. Therefore, we have added this source to our "Commercial Suppliers" lists of hazardous materials regulatory and emergency response publications at our Hazmat Safety Web site at <http://hazmat.dot.gov>.

#### *B. ASTM D4956-95 (Red and White) for Reflective Colors*

Domestically, reflective or retroreflective placards are permitted, but not required, under the HMR. In accordance with the provisions in § 172.519(a)(3), reflective materials may be used on a placard if the prescribed colors, strengths, and durability are maintained. Place Quick, Inc. (Place Quick), filed an application for exemption (11972-N) from certain requirements in the HMR to use retroreflective material and colors that meet the Federal Highway Administration Standard FP-96 for highway safety colors. In support of its application, Place Quick submitted samples of placards and labels made from Scotchlite™ Reflective Sheeting Diamond Grade reflective materials. That material conforms to Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated

Equipment specified in 49 CFR 571.108. Because the exemption application concerns a matter of general applicability and future effect, we advised Place Quick that, in accordance with 49 CFR 107.113(i), this matter would be addressed in this docket. We stated that the placard colors (including red) do not fall within prescribed color tolerances. More recently, Place Quick said that it is only concerned with the red and white reflective colors on placards, which would be used by its clients on "dedicated" trucks.

In this NPRM, we are proposing an alternate color standard for labels and placards constructed of retroreflective materials. Specifically, we are focusing on retroreflective red or white conforming to Type V sheeting in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control. This is the standard referenced in 49 CFR 571.108 for conspicuity systems as specified under paragraph (b) and defined in S5.7 of 49 CFR 571.108, applicable to certain truck tractors and trailers. We believe that the retroreflective red or white conforming to Type V sheet in ASTM D 4956, Standard Specification for Retroreflective Sheeting for Traffic Control may enhance nighttime visibility or conspicuity of hazard warning labels and placards in daylight and darkness. Accordingly, we propose to revise §§ 171.7, 172.407 and 172.519 to include provisions for use of red or white Type V sheeting for reflective materials for hazard warning labels and placards, as appropriate. Because other colors in ASTM D 4956 so poorly match the current and proposed color standards for placards and labels, we are not including them in this proposed rule. The Canadian TDG Regulations' "Clear Language Edition" no longer contains a provision that requires the use of a retroreflective placard, or a retroreflective "yellow band" for various hazard classes of hazardous materials in a large freight container or transport vehicle.

#### *C. Organic Peroxide, Subsidiary FLAMMABLE LIQUID Label*

There is an inconsistency between the subsidiary labeling requirements in the UN Recommendations and the HMR. Under the HMR, the additional labeling requirements in § 172.402 specify that each package containing a hazardous material must be labeled with both primary and subsidiary hazard warning labels. In accordance with § 172.402(a)(2), a package containing a Division 5.2 (organic peroxide) material that also meets the definition of Class 3 (flammable liquid) material must be

labeled ORGANIC PEROXIDE and FLAMMABLE LIQUID, except for Class 3 material in Packing Group III (see exception in § 172.402(a)(2)). However, paragraph 5.2.2.1.9 of the UN Recommendations specifies that a subsidiary FLAMMABLE LIQUID label is not required on such a package because the ORGANIC PEROXIDE label is understood to convey the inherently flammable nature of organic peroxides. Therefore, for consistency with the UN Recommendations, and in order to clear up any misunderstanding regarding additional labeling of a Division 5.2 (organic peroxide) material that exhibits a Class 3 (flammable liquid) subsidiary hazard, we propose to adopt this exception in a new paragraph (h) in § 172.402.

#### *D. Cylinder Markings in Accordance With CGA Pamphlet C-7*

Currently, the HMR provide exceptions for labeling certain compressed gases (*i.e.*, Division 2.1 or Division 2.2) carried by private or contract motor carriers if certain conditions as prescribed in § 172.400a(a)(1) are met. In place of a hazard warning label, the markings specified in Compressed Gas Association (CGA) Pamphlet C-7, "Guide to the Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A," may be used to satisfy the labeling requirements in the HMR. CGA petitioned RSPA (P-1285) to amend the HMR to allow common motor carriers to transport Division 2.1 or Division 2.2 gases in cylinders or Dewars marked in conformance with CGA Pamphlet C-7.

Appendix A of CGA Pamphlet C-7 sets forth the CGA marking system for compressed gas cylinders. CGA developed the basic marking to provide immediate identification of cylinder contents. The basic marking, illustrated in Figure 1, Pamphlet C-7, consists of a reduced size square-on-point hazard warning label, indicating the hazard class of the contained gas, combined with a panel containing the proper shipping name and the product identification number of the contained gas. The panel must be located to the left of the square-on-point. For certain gases with additional hazards, multiple labels may be required. For such gases, the basic marking must include an additional square-on-point denoting each secondary hazard. The square-on-point configurations must be adjacent to one another, but the adjoining points may overlap by not more than 10 mm ( $\frac{3}{8}$  inch), as illustrated in Figure 2 of Pamphlet C-7.

CGA suggested several factors that it believes justify this proposal. For example, cylinder neck labels are less subject to abrasions than cylinder body labels and are less likely to loosen and fall off. Further, the smaller markings affixed to the shoulder of cylinders are more visible when cylinders are grouped together than when the information is on a label affixed to the cylinder wall. These markings have been used in Canada since 1985, and thus reciprocity with Canada would be maintained. Furthermore, CGA stated that the CGA Pamphlet C-7 marking enhances industry's ability to meet the Occupational Safety and Health Administration's requirement that precautionary labels not be removed from containers until containers have been emptied.

We believe that the CGA petition has merit. Experience shows that this alternative marking, currently authorized for cylinders carried by private and contract carriers, clearly communicates the degree of hazard associated with Division 2.1 or Division 2.2 gases in cylinders offered for transportation in commerce. The marking prescribed in the CGA Pamphlet C-7, Appendix A, will not detract from a common carrier's ability to segregate and stow cylinders since cylinders shipped individually must be moved individually by employees who are close enough to read the smaller marking and label. In addition, the proper shipping name and identification number of the hazardous material are marked adjacent to the smaller hazard warning label, which makes identification of the products easier. For consistency with international standards, we are proposing to permit the use of the markings specified in Pamphlet C-7 on cylinders containing compressed gases in Divisions 2.1, 2.2, or 2.3, which may be shipped in accordance with the exceptions from labeling prescribed in § 172.400a.

We believe such markings will be equally effective in communicating the hazard of the material being shipped. Safety would not be reduced because shipping papers and placards on the transport vehicles provide hazard warning information that can be used in the event of an emergency. Paragraph 5.2.2.2.1.2 of the UN Recommendations permits cylinders for Class 2 gases to bear labels representative of those specified. The Canadian and European regulations, which are based on the UN Recommendations, authorize labels which have been reduced in size, as appropriate, for display on the non-cylindrical part of the cylinders. Thus, this proposal would enhance

international harmonization of standards. Therefore, in this NPRM, for consistency with provisions in the UN Recommendations and Canadian and European regulations, we are proposing to revise the requirement in § 172.400a(a)(1) to broaden the labeling exception to apply to all modes of transportation, by air, water, rail or highway.

#### *E. Placarding Exception for Class 9 Materials (Domestic)*

Mr. Tom Sever, Hazardous Materials Coordinator, Motor Vehicle Enforcement, Iowa Department of Transportation, requested we rescind an interpretation dated February 25, 1997 pertaining to domestic transportation of Class 9 (miscellaneous) material, change the definition of domestic transportation listed in § 171.8, or eliminate the Class 9 placarding requirements in § 172.504(f)(9) and the placard itself in § 172.560. Mr. Sever said that the requirement should have uniform intent; that is, require use of the CLASS 9 placard when the shipment is passing through the United States and destined for a foreign country.

Our February 25, 1997 letter addressed a highway shipment of 12,440 pounds of "Environmentally hazardous substances, solid, n.o.s., 9, UN 3077, PG III, RQ (Lead)" from Garland, Texas to Alberta, Canada. We stated that for those portions of transportation that occur within the borders of the United States, a shipment in international transportation is eligible for the same placarding exceptions that apply to transportation which is domestic only. For these purposes, the definition of "domestic transportation" includes not only transportation exclusively within the United States, but also that domestic portion of international transportation that occurs between places within the United States. Therefore, CLASS 9 placards are not required to be displayed on a shipment of Class 9 hazardous material while it is within the United States.

We do not agree that the placarding exception in § 172.504(f)(9) should be eliminated, but we do agree that the provision should be clarified to minimize misunderstanding. Therefore, we propose to revise the provision to clarify that the Class 9 placarding exception applies to international shipments of Class 9 material while moving in the United States.

#### *F. Footnote to Table 1 (Placards)—Editorial Correction*

We are proposing an editorial revision in § 172.504(e), Table 1, to correct citations in Footnote 1, pertaining to

placarding for certain shipments of radioactive materials. The footnote would be corrected to read as follows: "Radioactive placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter."

#### **V. Training and Emergency Response Information**

##### *A. Emergency Response Telephone Number Requirements*

The HMR require a person offering a hazardous material for transportation to provide an emergency response telephone number (including the area code or international access code) on the shipping paper for use in the event of an emergency involving the material. The emergency response telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the hazardous material being shipped. As an alternative, the number may be of a person who has "immediate access" to a person who possesses such information. The emergency response telephone number must be monitored at all times for as long as the hazardous material is being transported, including during storage incidental to the movement of the hazardous material. Storage that is incidental to movement generally is storage that occurs between the time a hazardous material is offered for transportation and the time it reaches its destination and is delivered to the consignee.

We know that some shippers have misinterpreted "immediate access" as authorizing them to use a "call back" system that requires an emergency responder to wait for a return telephone call. To clarify the requirement for "immediate access," we are proposing to revise § 172.604 to indicate that beeper numbers and call-back systems do not conform to the requirements in § 172.604 and are not acceptable under the HMR.

##### *B. Residues of Class 9 (Miscellaneous) Hazardous Substances, When Less Than RQ Remains*

An "empty" packaging is not subject to any other requirement of the HMR if any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (e.g., RQ) are removed, obliterated, or securely covered in transportation and: (1) The packaging is unused; (2) the packaging

is sufficiently cleaned of residue and purged of vapors to remove any potential hazard; (3) the packaging is refilled with a material that is not hazardous to such an extent that any residue remaining in the packaging no longer poses a hazard; or (4) the packaging contains the residue of certain materials listed in this section. Otherwise, an empty packaging containing the residue of a hazardous material must be offered for transportation and transported in the same manner as when it previously contained a greater quantity of the material.

Bayer Corporation (Bayer) petitioned RSPA (P-1416) to add new paragraphs 172.514(b)(3) and 173.29(h) for empty packagings or packagings that contain residues of hazardous substances that meet the definition of a Class 9 (miscellaneous) material, and do not meet any of the other hazard class definitions. Bayer said the proposed additions would address the residue remaining in a container after it had been unloaded to a quantity less than the reportable quantity (RQ). For example, a rail car loaded with 185,000 pounds of MDI (RQ, 5000 lbs.) would be shipped as a Class 9 (miscellaneous) material because the rail car contains more than the RQ. Once the car is unloaded by the consignee and ready for return to the original shipper, the rail car no longer contains the reportable quantity, would not be subject to the HMR, and would not be shipped as a regulated material. This requires the waybill to be changed and all placards and markings removed for the return shipment. Bayer said that this situation has created a compliance nightmare for shippers, its customers, and the various State and Federal enforcement agencies. The railroads are confused because a loaded car is moved into a facility under the HMR, but is offered for the return shipment as a non-regulated car.

On January 31, 1997, the Federal Railroad Administration (FRA) issued a memorandum (Ref. No. HM-97-4) to its Regional Administrators and Railroad Safety Specialists for hazardous materials. In the memorandum, FRA said a rail car that contains any material (or its mixture) listed in Appendix A to the § 172.101 Hazardous Materials Table in a quantity less than its RQ in one package, is not subject to the requirements of the HMR, provided the material does not meet the criteria for any other hazard class and is not a hazardous waste or a marine pollutant. FRA also said that the determination of whether the package contains an RQ of the hazardous substance is the responsibility of the shipper. Generally,

the shipper is not expected to actually measure the amount remaining after unloading, but can, in good faith, estimate it by using its knowledge of the material, the packaging, and the unloading method. Bayer said that an enormous amount of time is spent in trying to explain to the railroads and various enforcement agencies why a MDI rail car must return as non-regulated when it was originally offered under the HMR.

We believe the petition has merit. Since a Class 9 hazardous substance is only subject to the HMR because of the RQ in one package, an empty packaging containing the residue of a Class 9 hazardous substance below its RQ is not subject to the HMR, including shipping paper requirements. In this rulemaking, we are clarifying that a tank car containing less than a reportable quantity of a Class 9 hazardous substance may be offered for transportation as a regulated material if the residue of this material is offered for transportation with all applicable hazard warning marks, placards and shipping papers. We propose to revise § 172.514(b) to allow the markings and placards, if any, to remain on a returning rail car that contains a residue of a hazardous substance that only meets the definition of a Class 9 material, and is not a hazardous waste or a marine pollutant.

#### *C. Clarification of the Emergency Response Information and Training Requirements for Combustible Liquids*

A combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant is not subject to the requirements of the HMR except those prescribed in § 173.150(f)(3) pertaining to: (1) Shipping papers, way bills, switching orders, and hazardous waste manifests; (2) marking of packages; (3) display of identification numbers on bulk packages; (4) placarding requirements of subpart F of part 172; (4) carriage aboard aircraft and vessels; (5) reporting incidents as specified in § 171.15 and § 171.16; (6) packaging requirements of subpart B of part 173 and, in addition, non-bulk packagings must conform with requirements of § 173.203; and (7) the requirements of §§ 173.1, 173.21, 173.24, 173.24a; 173.24b, 174.1, 177.804; 177.817, 177.834(j), and 177.837(d) of the HMR.

However, the emergency response information and training requirements prescribed in subparts G and H of part 172 of the HMR are currently not specified in the requirements in § 173.150(f)(3), although we did not

intend to exempt such shipments from these requirements. To correct this oversight, we are proposing to revise § 173.150(f)(3) to clarify that the emergency response information and training requirements of subparts G and H of part 172, respectively, apply to a shipment of a combustible liquid in a bulk packaging or to a combustible liquid that is a hazardous substance, hazardous waste, or a marine pollutant.

#### **VI. Security Plans**

On March 25, 2003, we published a final rule under Docket HM-232 (68 FR 14510) that requires persons who offer for transportation and persons who transport in commerce certain hazardous materials to develop and implement security plans. Among the hazardous materials subject to the security plan requirement are infectious substances that are select agents and toxins regulated by the Centers for Disease Control and Prevention under 42 CFR part 73. Since publication of the HM-232 final rule, several carriers have suggested that carrier employees may not know that a package contains a select agent and, therefore, is subject to security plan requirements, unless that fact is communicated to the carrier. To address this potential problem, in this NPRM, we are proposing to add a new paragraph (p) to § 172.203 that would require each person who offers a select agent for transportation in commerce to include the words "Select Agent" in association with the basic shipping description on the shipping paper that accompanies the shipment. Commenters are invited to suggest alternative methods for addressing this issue; we may modify this proposal in the final rule based on comments received.

#### **VII. Regulatory Analyses and Notices**

##### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the August 15, 1994 NPRM and subsequently modified for the January 8, 1997 HM-206 final rule is available in the docket. The implementation of certain provisions of this proposal (*i.e.*, allowances for continued use of the previous PIH placards and labels) reduce or eliminate impacts from the proposed changes. Therefore, the costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant changes to the regulatory evaluation.

*B. Executive Order 13132*

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

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

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

This proposed rule addresses covered subject items 1, 2, and 3 above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

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

*C. Executive Order 13175*

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

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The proposals in this NPRM will impose only minimal new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. I hereby certify that while the proposals in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

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

*Description of Actions.* In this NPRM, we propose to amend the HMR to:

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

In addition, we are proposing several clarifications and editorial revisions to

current hazard communication requirements.

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

*Reporting and recordkeeping requirements.* This NPRM does not propose new reporting or recordkeeping requirements.

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

*Alternate proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazard communication requirements for hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

This NPRM was developed under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this NPRM. For example, the NPRM proposes to minimize the burden associated with the revised PIH labels and placards by providing a lengthy transition period. Other proposed changes provide clarification of certain provisions to eliminate confusion and enhance compliance. In addition, we are proposing several exceptions from current requirements to decrease compliance burdens.

*Conclusion.* We conclude that while this NPRM applies to a substantial number of small entities, there will not be a significant economic impact on

those small entities. The compliance costs associated with proposed requirements in this NPRM are minimal. Moreover, this NPRM should reduce compliance costs for most of the regulated industry by providing for increased flexibility and new exceptions from current regulatory requirements.

#### *E. Paperwork Reduction Act*

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

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

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

#### *G. Unfunded Mandates Reform Act*

This proposed rule does not impose unfunded mandates under the

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

#### *H. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The proposed improvements to the hazard communication system in this rule would have a net positive effect on the environment by improving response to and mitigation of incidents involving hazardous materials in transportation. We have determined that there would be no significant environmental impact associated with this proposed rule.

#### **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*

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

##### *49 CFR Part 173*

Shippers—general requirements for shipments and packagings.

In consideration of the foregoing, 49 CFR parts 171, 172 and 173 would be amended as follows:

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

1. The authority citation for part 171 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR part 1.53.

2. In § 171.7, in paragraph (a)(3), a new entry would be added in numerical order under the entry for American Society for Testing and Materials; and in paragraph (b), a new entry would be added in alphabetical order to read as follows:

##### **§ 171.7 Reference material.**

(a) *Matter incorporated by reference.*

\* \* \*

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

| Source and name of material                                                            |   |   |   |   |   | 49 CFR reference |
|----------------------------------------------------------------------------------------|---|---|---|---|---|------------------|
| *                                                                                      | * | * | * | * | * |                  |
| American Society for Testing and Materials                                             |   |   |   |   |   |                  |
| *                                                                                      | * | * | * | * | * |                  |
| ASTM D 4956–95 Standard Specification for Retroreflective Sheeting for Traffic Control |   |   |   |   |   | 172.407, 172.519 |
| *                                                                                      | * | * | * | * | * |                  |

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

\* \* \*

| Source and name of material                                                                                         |   |   |   |   |   | 49 CFR reference |
|---------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|------------------|
| *                                                                                                                   | * | * | * | * | * |                  |
| Pantone Incorporated, 590 Commerce Boulevard, Carlstadt, New Jersey, 07072–3098; PANTONE ® Formula Guide, 2000–2001 |   |   |   |   |   | 172.407, 172.519 |
| *                                                                                                                   | * | * | * | * | * |                  |

\* \* \* \* \*

3. In § 171.14, paragraphs (a) and (b) would be removed, and new paragraphs (a) and (b) would be added to read as follows:

##### **§ 171.14 Transitional provisions for implementing certain requirements.**

(a) *Continued use provisions and transition dates for PIH labels.* Notwithstanding §§ 172.416 and 172.429 of this subchapter, when labels are required by subpart E of part 172 of this subchapter to be affixed to the

surface of a package containing a material poisonous by inhalation—

(1) A non-permanent label (adhesive, paper, etc.), that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2004, whichever comes first; and

(2) A permanent label that conforms to the specifications in effect on October 1, 2002, that was printed, embossed, stamped, or permanently-mounted on the surface of a package prior to October 1, 2003, may continue to be used for its useful life.

(b) *Continued use provisions and transition dates for PIH placards.* Notwithstanding §§ 172.540 and 172.555 of this subchapter, when placards are required by subpart F of part 172 of this subchapter to be affixed to a bulk packaging, rail car, transport vehicle or freight container containing a material poisonous by inhalation—

(1) A non-permanent placard (*e.g.*, adhesive, tagboard) that conforms to the requirements of this subchapter in effect on October 1, 2002, may continue to be used until stocks have been depleted, or until October 1, 2006, whichever comes first; and

(2) A permanent type placard (*e.g.*, metal) that conforms to the specifications in effect on October 1, 2002 and is installed prior to October 1, 2003, may continue to be used for its useful life.

\* \* \* \* \*

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

4. The authority citation for part 172 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

5. In § 172.203, paragraph (p) would be added to read as follows:

#### **§ 172.203 Additional description requirements.**

\* \* \* \* \*

(p) *Infectious substances.* If an infectious substance is a select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73, the words “Select Agent” must be entered in association with the basic description.

6. In § 172.301, paragraph (f) would be added to read as follows:

#### **§ 172.301 General marking requirements for non-bulk packagings.**

\* \* \* \* \*

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

7. In § 172.326, paragraph (d) would be added to read as follows:

#### **§ 172.326 Portable tanks.**

\* \* \* \* \*

(d) *NON-ODORIZED marking on portable tanks containing LPG.* No person may offer for transportation or transport a portable tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section.

8. In § 172.328, paragraph (d) would be added to read as follows:

#### **§ 172.328 Cargo Tanks.**

\* \* \* \* \*

(d) *NON-ODORIZED marking on cargo tanks containing LPG.* No person may offer for transportation or transport a cargo tank containing liquefied petroleum gas (LPG) that is unodorized as authorized in § 173.315(b)(1) unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (b)(1) of this section.

9. In § 172.330, paragraph (c) would be added to read as follows:

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

\* \* \* \* \*

(c) No person may offer for transportation or transport a tank car or

multi-unit tank car tank containing liquefied petroleum gas (LPG) that is unodorized unless it is legibly marked NON-ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (a)(2) of this section.

10. In § 172.332, paragraphs (c)(5) and (c)(6) would be redesignated as paragraphs (c)(6) and (c)(7), and a new paragraph (c)(5) would be added to read as follows:

#### **§ 172.332 Identification number markings.**

\* \* \* \* \*

(c) \* \* \*

(5) For a POISON GAS or POISON-INHALATION HAZARD placard used to display an identification number, the lower point of the upper black square-on-point configuration above the horizontal center line may overlap, be clipped-off, or impinge on space authorized for display of an identification number on a placard, provided the identification number is legible and visible.

\* \* \* \* \*

11. In § 172.336, new paragraph (b)(2) would be added to read as follows:

#### **§ 172.336 Identification numbers, special provisions.**

\* \* \* \* \*

(b) \* \* \*

(2) For any quantity of an organic peroxide, temperature controlled material required to be placarded in accordance with the requirements in § 172.504(e), Table 1, the identification number specified for the material in the § 172.101 table must be marked on each side and each end of a bulk packaging, unit load device, transport vehicle, freight container, or rail car, as specified in § 172.332.

\* \* \* \* \*

12. In § 172.400, in the table in paragraph (b), the entries for “6.1” would be revised to read as follows:

#### **§ 172.400 General labeling requirements.**

\* \* \* \* \*

(b) \* \* \*

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

13. In § 172.400a, paragraph (a)(1) would be revised to read as follows:

**§ 172.400a Exceptions from labeling.**

(a) \* \* \*

(i) A cylinder or Dewar flask conforming to § 173.320 of this subchapter containing a compressed gas (Divisions 2.1, 2.2, or 2.3) that is—

(i) Carried by highway, rail, aircraft or vessel;

(ii) Not overpacked; and

(iii) Durably and legibly marked in accordance with CGA Pamphlet C-7, Appendix A (incorporated by reference; see § 171.7 of this subchapter).

\* \* \* \* \*

14. In § 172.402, paragraph (h) would be added to read as follows:

**§ 172.402 Additional labeling requirements.**

\* \* \* \* \*

(h) *Division 5.2 (organic peroxide) Materials.* Unless otherwise specified in this subchapter, a Flammable Liquid subsidiary hazard label is not required on a package containing a Division 5.2 material.

15. In § 172.407, paragraph (d)(5) would be revised and paragraphs (d)(6), (d)(7) and (d)(8) would be added to read as follows:

**§ 172.407 Label specifications.**

\* \* \* \* \*

(d) \* \* \*

(5) The following color standards in the Pantone® Formula Guide, as incorporated by reference in § 171.7 of this subchapter, may be used to achieve the required colors on markings and hazard warning labels and placards:

(i) Red—Pantone Color No. 186U

(ii) Orange—Pantone Color No. 151U

(iii) Yellow—Pantone Color No. 109U

(iv) Green—Pantone Color No. 335U

(v) Blue—Pantone Color No. 285U

(vi) Purple—Pantone Color No. 513U

(6) Where specific colors from the Pantone® Matching System, as incorporated by reference in § 171.7 of this subchapter, are applied as opaque coatings, such as paint, enamel, or plastic, or where labels are printed directly on the surface of a packaging, a spectrophotometer or other instrumentation must be used to ensure a proper match with the color standards

in the Pantone® Color Formula Guide for colors prescribed in paragraph (d)(5) of this section.

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

(8) Reflective or retroreflective materials may be used on a label if the prescribed colors, strength and durability are maintained.

Retroreflective white and red Type V sheeting conforming to ASTM D 4956-95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; see § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a label.

\* \* \* \* \*

16. Section 172.416 would be revised to read as follows:

**§ 172.416 POISON GAS label.**

(a) Except for size and color, the POISON GAS label must be as follows:



(b) In addition to complying with § 172.407, the background on the Poison Gas label and the symbol must be white. The background of the upper diamond must be black and the lower point of the

upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line.

17. Section 172.429 would be revised to read as follows:

**§ 172.429 Poison Inhalation Hazard label.**

(a) Except for size and color, the POISON INHALATION HAZARD label must be as follows:



(b) In addition to complying with § 172.407, the background on the POISON INHALATION HAZARD label and the symbol must be white. The background of the upper diamond must be black and the lower point of the

upper diamond must be 6.3 mm (0.25 inches) above the horizontal center line. 18. In § 172.504, in paragraph (e), the entry “6.1” in tables 1 and 2, footnote 1 to table 1, and paragraph (f)(9) would be revised to read as follows:

**§ 172.504 General placarding requirements.**

\* \* \* \* \*  
(e) \* \* \*

TABLE 1

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

<sup>1</sup>RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.

TABLE 2

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

(f) \* \* \*

(9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in § 171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display configuration as required by subpart D of this part.

\* \* \* \* \*

19. In § 172.514, paragraph (b) would be revised to read as follows:

**§ 172.514 Bulk packagings.**

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

20. In § 172.519, paragraphs (a)(3) and (d)(3) would be revised to read as follows:

**§ 172.519 General specification for placards.**

(a) \* \* \*

(3) Reflective or retroreflective materials may be used on a placard if the prescribed colors, strength and durability are maintained. Retroreflective white and red Type V sheeting conforming to ASTM D 4956—

95, Standard Specification for Retroreflective Sheeting for Traffic Control (incorporated by reference; see § 171.7 of this subchapter) may be used, as appropriate, for red and white colors on a placard.

\* \* \* \* \*

(d) \* \* \*

(3) Upon visual examination, a color on a placard must fall within the—

(i) Color tolerances displayed on the appropriate Hazardous Materials Label and Placard Color Tolerance Chart (see § 172.407(d)(4)); or

(ii) The Pantone® Color Formula Guide, as incorporated by reference in § 171.7 of this subchapter, as specified for colors in § 172.407(d)(5).

\* \* \* \* \*

21. Section 172.540 would be revised to read as follows:

**§ 172.540 Poison GAS placard.**

(a) Except for size and color, the POISON GAS placard must be as follows:



(b) In addition to complying with § 172.519, the background on the Poison Gas placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower

point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

22. Section 172.555 would be revised to read as follows:

**§ 172.555 POISON INHALATION HAZARD placard.**

(a) Except for size and color, the POISON INHALATION HAZARD placard be as follows:



(b) In addition to complying with § 172.519, the background on the POISON INHALATION HAZARD placard and the symbol must be white. The background of the upper diamond must be black and at least 100 mm (3.9 inches) on each side. The lower point of the upper diamond must be 30 mm (1.2 inches) above the horizontal center line. The text, class number, and inner border must be black.

23. In § 172.604, paragraph (a)(2) would be revised to read as follows:

**§ 172.604 Emergency response telephone number.**

(a) \* \* \*

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

requirements of paragraph (a) of this section; and

\* \* \* \* \*

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

24. The authority citation for part 173 would continue to read as follows:

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

25. In § 173.9, paragraph (e)(1) would be revised to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(1) The fumigated lading is unloaded; or

\* \* \* \* \*

26. In § 173.29, the introductory text at paragraph (c) would be revised and paragraph (h) would be added to read as follows:

**§ 173.29 Empty packagings.**

\* \* \* \* \*

(c) A non-bulk packaging containing only the residue of a hazardous material covered by Table 2 of § 172.504 of this subchapter that is not a material poisonous by inhalation or its residue

shipped under the subsidiary placarding provisions of § 172.505—

\* \* \* \* \*

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

27. In § 173.150, in paragraph (f)(3), the title of the section and paragraphs (vii) and (viii) would be revised and paragraphs (ix) and (x) would be added to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

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

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

(ix) Emergency response information requirements of subpart G of part 172, and

(x) Training requirements of subpart H of part 172 of this subchapter.

\* \* \* \* \*

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**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

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