

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-206]

RIN 2137-AB75

Improvements to Hazardous Materials Identification Systems; Corrections and Responses to Petitions for Reconsideration

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

ACTION: Final rule; editorial revisions and responses to petitions for reconsideration.

SUMMARY: In this rule, RSPA is making changes to a final rule published on January 8, 1997, in which RSPA amended the Hazardous Materials Regulations to better identify and communicate the hazards associated with hazardous materials in transportation in commerce. This final rule corrects errors in, and responds to petitions for reconsideration of, the January 8, 1997 final rule. The changes in this final rule include postponement until October 1, 1998, of the effective date of the January 8, 1997 final rule, and October 1, 1999, of the date for compliance with a requirement for new labels on packagings containing materials poisonous by inhalation.

As modified by this final rule, the January 8, 1997 final rule is intended to assist emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and to improve safety to transportation workers and the public.

DATES: *Effective date:* The effective date for the final rule published under this docket at 62 FR 1217 on January 8, 1997, is delayed until October 1, 1998. This final rule is effective October 1, 1998.

Compliance date: Voluntary compliance with the January 8, 1997 final rule has been authorized beginning

February 11, 1997. Voluntary compliance with this final rule is authorized beginning July 22, 1997.

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SUPPLEMENTARY INFORMATION:

I. Background

On January 8, 1997, RSPA published a final rule (62 FR 1217) in the **Federal Register** under Docket HM-206 that amended the hazard communication requirements in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180, to enhance the identification of hazardous materials during their transportation in commerce. This rule was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615), which required the Secretary of Transportation to initiate a rulemaking to, among other matters, determine methods of improving the existing system of placarding vehicles transporting hazardous materials.

RSPA received more than 20 petitions for reconsideration of that rule and other inquiries and comments identifying errors and requesting clarification. The petitions for reconsideration requested changes to: (1) The effective date for parts or all of the final rule, including postponement or withdrawal of new requirements applicable to materials poisonous by inhalation (PIH) until such time as similar requirements are adopted as international standards; (2) the requirements to display identification number markings on transport vehicles and freight containers containing large quantities of hazardous materials in non-bulk packages and on closed vehicles containing bulk packagings; (3) the reduction from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.) of the maximum allowable weight of a mixed load of

“Table 2” hazardous materials for which the alternative DANGEROUS placard may be used; and (4) requirements for marking the transport vehicle with the carrier’s telephone number, or to have the shipping paper and emergency response information readily available on the transport vehicle, when that vehicle is separated from its motive power and parked at a location other than a consignee’s, consignor’s, or carrier’s facility.

II. Summary of Regulatory Changes

In this final rule, RSPA is postponing for one year, until October 1, 1998, the effective date of the January 8, 1997 final rule. RSPA is also postponing for an additional year, until October 1, 1999, the compliance date for use of the new PIH labels for gases and certain liquids that are materials poisonous by inhalation. The compliance date for use of the new PIH placards remains October 1, 2001. RSPA is also making other changes in response to the petitions for reconsideration or to correct and clarify the January 8, 1997 final rule where appropriate. This final rule clarifies the January 8, 1997 final rule and makes certain corrections to carry out its intent. It imposes no significant regulatory burden and, in many cases, relaxes provisions of the January 8, 1997 final rule.

The preamble to the January 8, 1997 final rule included a table summarizing the amendments to the HMR in that rule and the compliance date for each. 62 FR 1224. That table is republished and revised below to summarize the changes made in this rulemaking, as modified by this document. The revised form of this table below corrects a typographical error in the January 8, 1997 final rule, where the table incorrectly listed October 1, 2001 as the date for compliance with the changes to §§ 172.302 and 173.9, concerning the FUMIGANT marking. In the following table, “revised” means there is a change to the rule published on January 8, 1997 (beyond postponement of the compliance date).

Section	Action	Discussion	Compliance date
§ 172.301	ID No. marking on vehicle loaded with only one hazmat in non-bulk packages at one originating facility.	New requirement; revised	Oct. 1, 1998.
§ 172.313	ID No. marking on vehicle for a single PIH material with ≥1,000 kg in non-bulk packages.	New requirement; revised	Oct. 1, 1998.
§ 172.328	ID No. marking display on closed vehicle containing cargo tanks.	New requirement; revised	Oct. 1, 1998.
§ 172.331	ID No. marking display on closed vehicle containing other bulk packagings (e.g. IBCs).	Expansion of current requirement applicable to portable tanks.	Oct. 1, 1998.
§§ 172.416 & 172.429 ...	PIH labels for gases and certain liquids that are materials poisonous by inhalation.	Replaces POISON label and POISON GAS label design; revised.	Oct. 1, 1999.

Section	Action	Discussion	Compliance date
§ 172.504(b)	Specific placard required when $\geq 1,000$ kg of one class of Table 2 hazmat on a vehicle.	Reduction of 2,268 kg maximum weight for which the alternate DANGEROUS placard is permitted on mixed loads.	Oct. 1, 1998.
§ 172.606(a)	Carrier must instruct operator of motor vehicle to contact the company in the event of a hazmat incident.	New requirement	Oct. 1, 1998.
§ 172.606(b)	Requiring information with parked (dropped) motor vehicle.	New requirement; revised	Oct. 1, 1998.
§§ 172.302 & 173.9	FUMIGANT marking, applying to all modes	Expansion of existing requirements and adoption of international design.	Oct. 1, 1998.
§ 172.502	Prohibited display of extraneous information on placard and in placard holder.	Expansion of existing requirements; revised	Oct. 1, 2001.
§§ 172.540 & 172.555 ...	PIH placards for gases and certain liquids that are materials poisonous by inhalation.	Replaces POISON and POISON GAS placard design; revised.	Oct. 1, 2001.

Any petition for reconsideration that is not granted in this final rule is denied.

III. Editorial Changes and Responses to Petitions

A. Extension of Effective Date

Approximately half of the petitions for reconsideration objected to RSPA's issuance of new labeling and placarding requirements for PIH materials in advance of adoption of similar requirements by the United Nations Committee of Experts. These requirements included a revised POISON GAS label and placard for Division 2.3 materials and a new POISON INHALATION HAZARD label and placard for Division 6.1 materials in Hazard Zones A or B. (Unless the context indicates otherwise, the terms "PIH labels" and "PIH placards" refer, respectively, to the new labels and placards for materials in both Divisions 2.3 and 6.1.) Except for the hazard class number (and the larger size of placards), all of these new labels and placards are identical in format including, when text is included, the words "Inhalation Hazard."

The Hazardous Materials Advisory Council stated that the United States should not require the distinctive PIH labels and placards until an international standard is developed and adopted. Compressed Gas Association, Inc. (CGA) and the Chlorine Institute asked that the date for mandatory use of the PIH labels be delayed until October 1, 2001, when the new placards are required. They stated that inspection and emergency response personnel would be confused when the old POISON GAS placards (all white background with optional "Poison Gas" wording) were on a vehicle containing cylinders with the revised POISON GAS labels (black background of upper diamond and optional "Inhalation Hazard" wording). These petitioners

also stated that additional time was needed to obtain and affix the new labels and conduct training; according to CGA, cylinders are often out of their owners' control for extended periods of time.

The Vessel Operators Hazardous Materials Association, Inc. asked that the October 1, 2001 compliance date for use of the PIH placard be made applicable to all shipments by all modes, on the ground that this transition period should apply to all intermodal shipments that include transportation by vessel. The National Welding Supply Association (NWSA) and one of its members stated that the October 1, 2001 compliance date for use of the new POISON GAS placard would not provide any relief because placing the identification number on the placard seemed to be the only practical way of meeting the requirement in § 172.313 for marking the identification number on vehicles containing more than 1,000 kg. of PIH materials. These petitioners indicated that it would be impractical to install permanently-mounted "flip-type" placards now and then change to a new set in 2001. The NWSA member asked that, if RSPA decided not to change the marking and labeling requirements for PIH materials, the compliance date for the identification marking and new POISON GAS label be extended by two years until October 1, 1999.

Other petitioners requested that the date for voluntary compliance with the new requirements concerning PIH shipments be postponed to allow additional time for training. The Los Angeles Police Department (LAPD) stated that the January 8, 1997 final rule allowed the removal of the "Inhalation Hazard" marking from a packaging of PIH materials as soon as February 11, 1997, if the packaging had the new PIH label or placard, which, as noted by a LAPD officer, are not required to contain the "Inhalation Hazard"

wording. See §§ 172.405(a), 172.519(b)(3). LAPD asked that shippers not be allowed to remove the "Inhalation Hazard" marking until the next printing of the North American Emergency Response Guidebook, but that a delay of 18 months was the "absolute minimum acceptable time for national responder awareness and training." CGA submitted an additional letter in which it stated that it supports LAPD's petition to allow sufficient time for responders to become familiar with new labels, placards, and markings.

Another petitioner focused on the lowering, from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.), of the upper weight limit for the alternative use of the DANGEROUS placard for mixed loads of hazardous materials listed in Table 2 of § 172.504(e). It stated that, because shippers and their employees are familiar with the English system of measurement, they will have difficulty remembering the "odd number" of 2,205 lbs. as the equivalent to 1,000 kg for the threshold at which the DANGEROUS placard may not be used. On this ground, it requested a delay until October 1, 2001, for compliance with the lowered 1,000 kg threshold, to allow additional time for shippers "to convert to SI units" and for carriers to train their employees.

Other petitioners asked that the effective date of the entire rule be postponed. American Trucking Associations (ATA) stated that eight months was not sufficient for training employees in the changes in the January 8, 1997 final rule, and it recommended that RSPA delay compliance for one year until October 1, 1998, to provide adequate time for training and implementation.

After carefully considering these petitions, RSPA is postponing for one year, until October 1, 1998, the effective date of the January 8, 1997 final rule. In a new § 171.14(e), RSPA is also postponing for an additional year, until

October 1, 1999, the compliance date for use of the new PIH labels. RSPA plans to issue in 1999 a new edition of the North American Emergency Response Guidebook, which would be available when the new PIH labels and placards will be required.

These postponements will allow sufficient additional time for shippers, carriers, and emergency response personnel to implement the new requirements and train their employees. The postponement of the compliance date for use of the new PIH label will also allow time for the U.N. Committee of Experts on the Transport of Dangerous Goods to consider the United States' proposals for international adoption of the PIH marking, labeling and placarding requirements adopted in the January 8, 1997 final rule.

The one-year postponement in the effective date (until October 1, 1998) applies to the amendment of § 172.504(b), concerning the upper weight limit for use of the alternative DANGEROUS placard. Beyond that, RSPA is not extending the date for compliance with the reduction in the maximum allowable weight (from 2,268 kg to 1,000 kg) of a mixed load of Table 2 hazardous materials for which the alternative DANGEROUS placard may not be used. The International System of Units ("SI" or metric) has been the HMR "regulatory standard" since October 1, 1991 (the effective date of the final rule in Docket No. HM-181), § 171.10(a), and the postponement of the effective date of this change (until October 1, 1998) should be sufficient time for training.

The October 1, 2001 compliance date is retained for use of the new placards for PIH materials, but RSPA is adding a footnote to the Placard Substitution Table in § 171.14(b) to clarify that, for PIH materials, until October 1, 2001, shippers by all modes have the options of using placards that meet the requirements (1) in effect prior to October 1, 1991 (the effective date of changes made in the rulemaking under Docket No. HM-181), (2) adopted in the final rule in HM-181, or (3) adopted in the January 8, 1997 final rule, as modified in this document. (As discussed in the next section, the entries for Division 6.1 materials in the Placard Substitution Table are also being revised.)

RSPA does not believe it is necessary or appropriate to modify the existing voluntary compliance date. The primary concern raised in this regard is the possible removal of the "Inhalation Hazard" marking when the new PIH label or placard is used. RSPA is addressing this concern by revising § 172.313(a) to allow removal of the

"Inhalation Hazard" marking only when those same words appear on the label or placard, as applicable.

RSPA also believes that, with the additional year for training before the effective date of October 1, 1998, responders will not be confused by small differences between placards on a transport vehicle and labels on cylinders within the vehicle, inasmuch as the words "Inhalation Hazard" will be required on the cylinder or other packaging (either as a marking or on the label). Some variations have always existed between placards and labels, particularly in light of the transitional provisions in § 171.14(b) that have applied since 1991. Moreover, by providing until October 1, 1999, before use of the new PIH labels is required, RSPA has reduced from four years to two years the period when the PIH label is required before the PIH placard must be used.

B. PIH Labels, Placards, and Marking

As published in the **Federal Register**, the graphics of the new PIH labels and placards shown in the January 8, 1997 rule were inaccurate. The shape of the upper diamond (containing a skull and cross-bones on a black background) is square-on-point. Moreover, it is necessary to increase the distance between the lower point of the upper diamond and the horizontal center line of the placard to allow for display of identification numbers, under the option allowed in § 172.332(a). These errors are corrected in this document. See §§ 172.416, 172.429, 172.540, and 172.555.

One petitioner and several persons who telephoned brought to RSPA's attention that certain liquids in Division 6.1, Packing Group II, had been omitted from the PIH materials referenced in the Placard Substitution Table in § 171.14(b), the Label Substitution Table in § 172.101(g), the table of label designations in § 172.400(b), and placarding Table 1 in § 172.504(e). Although these materials do not meet the classification criteria in the UN Recommendations for an inhalation hazard, they are designated as PIH materials in the HMR because they are poisonous by inhalation. Examples of these materials are "Bromoacetone, 6.1, UN 1569, PG II," and "Phenyl Isocyanate, 6.1, UN 2488, PG II."

The four tables in §§ 171.14(b), 172.101(g), 172.400(b), and 172.504(e) are being revised to specify the POISON INHALATION HAZARD label and placard for all materials in Division 6.1 (inhalation hazard, Zone A or B) and to specify the POISON label and placard for materials in Division 6.1 (PG I or II,

other than Zone A or B inhalation hazard).

As already stated, § 172.313(a) is being revised to specify that the "Inhalation Hazard" marking may be omitted only when those words appear on the PIH label or placard, as applicable.

RSPA is also revising § 172.313(c) in response to petitions which expressed concern about possible miscommunication of actual risk to emergency responders resulting from too many identification numbers because of the requirement to mark a transport vehicle or freight container with identification numbers of PIH material in non-bulk packagings which total more than 1,000 kg (2,205 lbs.) aggregate gross weight. As revised in this document, § 172.313(c) requires marking the identification number on a transport vehicle or freight container that contains more than 1,000 kg aggregate gross weight of PIH materials in Hazard Zone A or B having the same proper shipping name and identification number, in non-bulk packagings, that are loaded at a single loading facility. RSPA is denying those petitions that asked for a complete elimination of this marking requirement.

In the January 8, 1997 final rule, RSPA revised §§ 171.11(d)(9)(iii), 171.12(b)(8)(iii), and 171.12a(b)(5)(iii) to replace references to the POISON label and placard with references to the new POISON INHALATION HAZARD label and placard. However, RSPA inadvertently failed to add a reference in § 172.402(e)(1), concerning a Class 1 material that also meets the definition for a material poisonous by inhalation in Division 6.1. RSPA is amending § 172.402(e)(1) to add a reference to the new PIH label as a secondary label. This is simply an editorial change and implements the purpose of this rulemaking to replace the POISON label and placard with the new POISON INHALATION PLACARD for Division 6.1 materials in Hazard Zones A and B that are poisonous by inhalation.

For the reasons set forth in the preamble to the January 8, 1997 final rule, RSPA is denying petitions that opposed adoption of the PIH labels and placards. Since 1985, RSPA has worked toward enhancing safety in the transportation of PIH materials by establishing a complete system of transportation controls for these materials, including an improved communication of their presence. As a continuation of that process, RSPA proposed in the August 15, 1994 Notice of Proposed Rulemaking (NPRM), 59 FR 41848, a distinctive label and placard to provide a distinctive warning to

emergency responders of the unique hazardous (extreme toxicity, high volatility) of PIH gases and liquids. This proposal responded to a petition for rulemaking previously submitted by ATA and a graphic design recommended by a LAPD officer. Earlier this year, RSPA proposed the new PIH labels and placards to the U.N. Committee of Experts as an international standard. See the discussion in the preamble to the January 8, 1997 final rule, 62 FR 1219.

A majority of the commenters to the NPRM supported adoption of the distinctive PIH labels and placards, although many also expressed support for maintaining harmonization with the U.N. Recommendations. Over many years, RSPA has adopted classification, hazard communication and packaging requirements recommended by the U.N. Committee of Experts, but RSPA believes that, in this matter, the United States should not necessarily wait for an international standard to be established. However, the postponement of the compliance dates until October 1, 1999, for use of the PIH labels, and until October 1, 2001, for use of the PIH placards, provides time for the U.N. Committee of Experts to consider and take steps toward adoption of RSPA's proposal. The desirable goal of international harmonization does not outweigh the important safety benefits to be gained by adopting a distinctive label and placard for PIH materials.

One petitioner asked RSPA to add an editorial note to revised § 177.841(e)(1) to clarify that a package bearing a POISON GAS label may be transported in the same motor vehicle with material marked or known to be foodstuffs, feed, or other edible material, without meeting the additional precautions specified in (e)(1)(i) or (ii). RSPA denies this petition because it believes that the present language of § 177.841(e)(1) is clear. As revised in the January 8, 1997 final rule, only Division 6.1 materials labeled POISON or POISON INHALATION HAZARD are subject to this restriction in § 177.841(e)(1), while the next paragraph, (e)(2), (which prohibits certain materials in the driver's compartment) explicitly covers these materials and also Division 2.3 materials required to have a POISON GAS label.

C. Other Identification Number Marking Requirements

1. *Large quantities of non-bulk materials.* Several petitioners asked RSPA to eliminate or modify the identification number marking requirement in § 172.301(a)(3) for large quantities of non-bulk packages in a

transport vehicle. They expressed concern that an increase in identification number displays will cause substantial material and labor costs to industry and create confusion among emergency responders. The petitioners stated that if the requirement is retained, it should be restricted to vehicles fully loaded with a single hazardous material. In addition, several petitioners requested that RSPA except Class 1 materials from the requirement for the identification number display because of safety concerns, and because the North American Emergency Response Guidebook is not cross-referenced by the identification number, but is designed to provide only generic group information for explosives.

In response to these petitions, RSPA is revising § 172.301(a)(3) to apply to a transport vehicle or freight container that is loaded at one loading facility with 4,000 kg (8,820 lbs.) or more of hazardous materials in non-bulk packagings, when all the hazardous materials have the same proper shipping name and identification number. Class 1 and 7 materials are excepted from this requirement. These revisions provide greater consistency with the international standards based on the U.N. Recommendations and the Canadian Regulations on the Transport of Dangerous Goods, without adversely affecting safety.

By applying this identification number marking to transport vehicles and freight containers loaded at one loading facility only with hazardous materials having the same proper shipping name and identification number, in non-bulk packagings, RSPA believes it has adequately addressed the petitioners' concerns with regard to an increase in the number of placards on any single vehicle or container.

The requirement in § 172.301(a)(3) for marking the identification number on a transport vehicle or freight container loaded at one loading facility with more than 4,000 kg of one hazardous material in non-bulk packagings is separate from the marking requirement in § 172.313(c) applicable to PIH materials. The combined potential of these two requirements, as modified in this final rule, is less than estimated by a petitioner who provided an example involving a single load of eight different hazardous materials. The addition of § 172.313(c) will require an identification marking to indicate the presence of more than 1,000 kg of a PIH material; otherwise, the revisions to the HMR in this rulemaking will not require any additional placards or markings for the particular combination of hazardous

materials in the example provided by the petitioner.

RSPA denies the petitions to totally eliminate the identification number marking requirement for large quantities of certain hazardous materials in non-bulk packages. Emergency responders should be provided as much immediate specific information as practicable regarding the contents of transport vehicles and freight containers. RSPA is also denying ATA's petition to amend or remove § 172.334(d). That section states that a placard bearing an identification number may not be used to satisfy the *placarding* requirements in subpart F of Part 172 "unless it is the correct identification number for all hazardous materials of the same class in the transport vehicle or freight container on which it is displayed." When different hazardous materials within a hazard class are present in a transport vehicle or freight container, and the identification number of one of the materials must be displayed (e.g., a PIH material), the transport vehicle must bear placards for that hazard class *without* an identification number *plus* either (1) a separate set of placards with the identification number or (2) the separate orange panels or white square-on-point configurations as authorized by § 172.332(a).

2. *Closed transport vehicles or freight containers carrying cargo tanks.* One petitioner requested that RSPA further clarify that the marking requirements in §§ 172.302(a) and 172.328(a)(3) do not require duplicative identification number markings on both the cargo tank and the vehicle, when the markings on the cargo tank would not normally be visible during transportation. The petitioner provided sketches and examples of instances where, in his opinion, no additional information would be communicated by marking the tank portion of the cargo tank motor vehicle, such as when the cargo tank is permanently installed on or within an enclosed vehicle, or when multiple cargo tanks mounted on an open vehicle are so close together that it would be difficult to see the markings on the adjacent sides of cargo tanks.

In response to this petition, RSPA is modifying § 172.328(c) to specify that when a cargo tank is permanently installed within an enclosed cargo body of a transport vehicle or freight container, on the outside of which identification numbers are marked, the identification number marking required on the cargo tank by § 172.302(a) need only be displayed on each side and end of the cargo tank that is visible when it is accessed. At this time, RSPA does not consider it feasible to specify a

minimum distance between cargo tanks, when mounted on an open vehicle and visible during transportation, that would warrant an exception from identification number marking as also suggested by this petitioner.

3. *Identification number marking for organic peroxides.* In the January 8, 1997 final rule, RSPA added materials in Division "5.2 (Organic peroxide, Type B, liquid or solid, temperature controlled," to Table 1 in § 172.504(e), so that placarding is required for any amount. LAPD petitioned RSPA to also require the display of identification numbers for these materials. It stated that the change to the placarding table created a "double meaning" for the ORGANIC PEROXIDE placard, and the emergency responder will not know whether the organic peroxide material within a vehicle is temperature controlled or not.

RSPA is denying LAPD's petition because this change was not proposed in the NPRM, and it is beyond of the scope of this rulemaking. Because this suggestion appears to have merit, RSPA will consider this petition in a future rulemaking.

D. Other Placarding Requirements

1. *DANGEROUS placard.* In the January 8, 1997 final rule, RSPA changed § 172.504(b) by lowering from 2,268 kg (5,000 lbs.) to 1,000 kg (2,205 lbs.) the quantity of one class or division of a hazardous material loaded at one facility for which a specific placard is required. This reduced the upper weight limit for use of the DANGEROUS placard (as an alternative to the specific hazard class placard) for a mixed load of hazardous materials listed in Table 2 in § 172.504(e).

A late-filed petition from a chemical company opposed this reduction in the upper weight limit for use of the alternative DANGEROUS placard. The petitioner stated that the change would result in the use of many additional different placards and would be a financial burden in terms of time spent by company personnel sorting through the numerous shipping papers required on a multi-drop load to determine what combination of placards is required on the outside of the trailer.

For many years, emergency response organizations have expressed concerns that the DANGEROUS placard does not provide sufficient information to identify hazardous materials in a transport vehicle and support elimination of this placard altogether. RSPA rejected total elimination of the DANGEROUS placard, but lowered the upper weight limit for use of the alternative DANGEROUS placard in

order to improve safety communication by requiring increased display of specific hazard class and division warnings. This action is responsive to concerns expressed in a 1993 report of the National Academy of Sciences (NAS), under Section 25 of HMTUSA, on methods to improve the existing system of placarding vehicles transporting hazardous materials, thereby providing more effective information to facilitate response to incidents involving hazardous materials in transportation in commerce.

The permitted use of the alternative DANGEROUS placard under § 172.504(b) is governed by the amount of one category of hazardous material loaded "at one loading facility." The use of different placards for a mixed load of hazardous materials requires only that the placard for each class of hazardous materials be removed when the last package of that class is delivered, similar to the requirement that the DANGEROUS placard must be removed when the last packaging of a mixed load of hazardous materials is delivered (even if non-hazardous materials remain to be delivered at further stops).

2. *Prohibited Placarding (safety slogans).* In the January 8, 1997 final rule, RSPA amended § 172.502(a)(2) to prohibit any "sign, advertisement, slogan (such as "Drive Safely") or device that, by its color, design, shape or content, could be confused with any placard * * *" RSPA also specified that this prohibition does not apply until October 1, 2001, to a safety sign or slogan which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before October 1, 1996.

RSPA is changing the latter date, in § 172.502(b)(3), to August 21, 1997 to prevent the unintended effect of the final rule with respect to a safety sign or slogan that may have been permanently marked on a transport vehicle, bulk packaging, or freight container between October 1, 1996 and issuance of the January 8, 1997 final rule. Without this revision, a person who had installed a safety sign on his or her vehicles after October 1, 1996, would be in violation on the effective date of the January 8, 1997 final rule (now postponed until October 1, 1998), while a person who had installed such a safety sign before October 1, 1996 would have three additional years, until October 1, 2001, to remove it. This change will carry out RSPA's intent that there be a reasonable cut-off date after which these slogan displays could no longer be newly installed on vehicles.

E. Carrier Information Contact Requirements

In § 172.606(b) (2) and (3), RSPA added alternative requirements for marking the carrier's telephone number, or having the shipping paper and emergency response information readily available, on a highway transport vehicle that is separated from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility. As stated in the preamble to the January 8, 1997 final rule, these requirements are intended to enable emergency responders to obtain more complete information about hazardous materials on an unattended motor vehicle.

An individual petitioner asked RSPA to modify these requirements to provide that (1) the telephone number marked on the vehicle must be visible from 50 feet, and (2) that the shipping paper and emergency response information must be available on the front of the transport vehicle.

ATA and the National Tank Truck Carriers, Inc. (NTTC) petitioned RSPA to eliminate (or not adopt) these two alternative requirements. These petitioners stated they believed there was a risk to emergency responders who would approach a trailer involved in a hazardous materials incident to obtain a shipping paper and emergency response information.

NTTC discussed application of this requirement to "spotting" cargo tank trailers containing a residue of a hazardous material, which is a common occurrence at cargo tank cleaning facilities. NTTC stated that, outside of normal working hours, it would be unlikely that an emergency responder could reach the carrier, and that the carrier would be unlikely to have information about the particular commodity and its hazards. NTTC also stated that, in the event of an incident involving an unattended vehicle carrying hazardous materials, emergency responders should not be encouraged to approach the vehicle to look for paperwork.

ATA also stated that if RSPA retains these alternative requirements, an additional one year extension, until October 1, 1998, should be provided to provide sufficient time for compliance with the requirements of § 172.606 (b)(2) and (b)(3).

As already discussed above, RSPA has extended the effective date of this rule until October 1, 1998. RSPA is also adding a new § 172.606(c) to clarify that the requirements in paragraphs (b)(2) and (b)(3) do not apply to an unattended motor vehicle separated from its motive

power that is marked with each identification number of the hazardous materials loaded therein, on an orange panel, a placard, or a plain white square-on-point configuration, and the markings or placards are visible on the outside of the motor vehicle.

RSPA is not eliminating the information requirements in § 172.606(b) for an unattended motor vehicle disconnected from its motive power. RSPA continues to believe that there must be a method of identifying hazardous materials in an unattended transport vehicle disconnected from its motive power when identification number markings are not displayed on the exterior of the motor vehicle. The presence of a carrier's telephone number marked on a motor vehicle, or a copy of a shipping paper and emergency response information attached to a motor vehicle would provide access to such information. In regard to the concerns of NTTC regarding "spotting" at cargo tank cleaning facilities, the requirements prescribed in § 172.606(b)(1) and (b)(2) are intended to apply to an unattended motor vehicle separated from its motive power when there is no indication on the outside of the motor vehicle as to the contents of the motor vehicle. Bulk packagings, such as a cargo tank, containing a hazardous material or its residue are required to be marked and placarded as prescribed under the HMR.

At this time, RSPA does not consider it necessary to specify a minimum distance from which the carrier's telephone number in § 172.606(b)(2) must be visible, or the location for shipping papers and emergency response information under the option in § 172.606(b)(3).

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

The regulatory evaluation prepared for the August 15, 1994 NPRM was examined and modified for the January 8, 1997 final rule. Both of these documents are available for review in the public docket. This final rule makes relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation. In most cases, the changes clarify and relax provisions of the January 8, 1997 final rule. The other changes that carry out the intent of the January 8, 1997

final rule, such as the inclusion of certain Division 6.1 materials within those for which the new PIH labels and placards are required, will result in only minimal costs to offerors of these materials for transportation in commerce. Accordingly, no additional regulatory evaluation was performed.

B. Executive Order 12612

The January 8, 1997, final rule and this final rule were analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, content, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides 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. That 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. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1998.

C. Regulatory Flexibility Act

This final rule, which responds to petitions for reconsideration and agency

review, makes editorial and technical corrections, provides clarification of the regulations, and relaxes certain requirements. Although this final rule applies to all shippers and carriers of hazardous materials, some of whom are small entities, the requirements contained herein will not result in significant economic impacts. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137-0035. This final rule does not increase any burden to provide information. 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.

The January 8, 1997 final rule amended § 173.9 to require that a shipping paper contain hazard warning information concerning the fumigant for an international shipment. This information is a current requirement for international shipments by vessel and insignificantly increases the amount of burden imposed by this collection. RSPA believes that this change in burden is not sufficient to warrant revision of the currently approved information collection.

E. 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

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

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

2. In § 171.14, the section heading and introductory text are revised, paragraph (b) is revised, and a new paragraph (e) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

General. The purpose of the provisions of this section is to provide an orderly transition to certain new requirements so as to minimize any burdens associated with them.

* * * * *

(b) *Transitional placarding provisions.* Until October 1, 2001, placards which conform to

specifications for placards in effect on September 30, 1991, or placards specified in the December 21, 1990 final rule may be used, for highway transportation only, in place of the placards specified in subpart F of part 172 of this subchapter, in accordance with the following table:

PLACARD SUBSTITUTION TABLE

Hazard class or division No.	Current placard name	Old (Sept. 30, 1991) placard name
Division 1.1	Explosives 1.1	Explosives A.
Division 1.2	Explosives 1.2	Explosives A.
Division 1.3	Explosives 1.3	Explosives B.
Division 1.4	Explosives 1.4	Dangerous.
Division 1.5	Explosives 1.5	Blasting agents.
Division 1.6	Explosives 1.6	Dangerous.
Division 2.1	Flammable gas	Flammable gas.
Division 2.2	Nonflammable gas	Nonflammable gas.
Division 2.3 ¹	Poison gas	Poison gas.
Class 3	Flammable	Flammable.
Combustible liquid	Combustible	Combustible.
Division 4.1	Flammable solid	Flammable solid.
Division 4.2	Spontaneously combustible	Flammable solid.
Division 4.3	Dangerous when wet	Flammable solid W.
Division 5.1	Oxidizer	Oxidizer.
Division 5.2	Organic peroxide	Organic peroxide.
Division 6.1, (inhalation hazard, Zone A or B) ¹	Poison inhalation hazard	Poison.
Division 6.1, PG I and II (other than Zone A or B inhalation hazard).	Posion	Poison.
Division 6.1, PG III	Keep away from food	(none required).
Class 7	Radioactive	Radioactive.
Class 8	Corrosive	Corrosive.
Class 9	Class 9	(none required).

¹ For materials poisonous by inhalation, by all modes of transportation, until October 1, 2001, placards may be used that conform to specifications for placards (1) in effect on September 30, 1991, (2) specified in the December 21, 1990 final rule, or (3) specified in the July 22, 1997 final rule.

* * * * *

(e) Notwithstanding §§ 172.416 and 172.429 of this subchapter specified in the July 22, 1997 final rule, when labels are required by subpart E of part 172 of this subchapter to be affixed to a material poisonous by inhalation, labels that conform to the requirements of this subchapter in effect on September 30, 1997, may be used on packagings offered for transportation or transported until October 1, 1999.

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

3. The authority citation for Part 172 continues to read as follows:

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

4. In § 172.101(g), as amended at 62 FR 1227 effective October 1, 1998, the

entries for label codes 6.1 in the Label Substitution Table are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(g) * * *

LABEL SUBSTITUTION TABLE

Label code	Label name
* * * * *	
6.1 (inhalation hazard, Zone A or B).	Poison Inhalation Hazard.
6.1 (I or II, other than Zone A or B inhalation hazard) ² .	Poison.
6.1 (III) ²	Keep Away From Food.
* * * * *	

²The packing group for a material is indicated in column 5 of the table.

* * * * *

5. In § 172.301, paragraph (a)(3), as added at 62 FR 1227 effective October 1, 1998, is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(3) *Large quantities of hazardous materials in non-bulk packages.* A transport vehicle or freight container that is loaded at one loading facility with 4,000 kg (8,820 pounds) or more aggregate gross weight of hazardous materials in non-bulk packagings, when all the hazardous materials loaded in the transport vehicle or freight container have the same proper shipping name and identification number, must be marked with the identification number specified for the hazardous material in the § 172.101 Table on each side and each end as specified in §§ 172.332 or 172.336. The requirement in this paragraph (a)(3) does not apply to:

(i) Class 1, Class 7, or ORM–D materials; or

(ii) Limited quantities or small quantities of hazardous materials (see § 173.4 of this subchapter).

* * * * *

6. Section 172.313, as added at 62 FR 1228 effective October 1, 1998, is amended by adding introductory text and by revising paragraphs (a) and (c) to read as follows:

§ 172.313 Poisonous hazardous materials.

In addition to any other markings required by this subpart:

(a) A material poisonous by inhalation (see § 171.8 of this subchapter) shall be marked "Inhalation Hazard" in association with the required labels or placards, as appropriate, and shipping name when required. The marking must be on two opposing sides of a bulk packaging. (See § 172.302(b) of this subpart for size of markings on bulk packages.) When the words "Inhalation Hazard" appear on the label, as prescribed in §§ 172.416 and 172.429, or placard, as prescribed in §§ 172.540 and

172.555, the "Inhalation Hazard" marking is not required on the package.

* * * * *

(c) A transport vehicle or freight container loaded at one loading facility with more than 1,000 kg (2,205 pounds) aggregate gross weight of non-bulk packages containing materials poisonous by inhalation in Hazard Zone A and B having the same proper shipping name and identification number shall be marked as required by § 172.332 with the identification number specified for the material, in the § 172.101 Table, on each side and each end of the transport vehicle or freight container.

7. In § 172.328, paragraph (a)(3), as added at 62 FR 1228 effective October 1, 1998, is revised to read as follows:

§ 172.328 Cargo tanks.

(a) * * *

(3) For a cargo tank transported on or in a transport vehicle or freight container, if the identification number marking on the cargo tank required by

§ 172.302(a) would not normally be visible during transportation—

(i) The transport vehicle or freight container must be marked as required by § 172.332 on each side and each end with the identification number specified for the material in the § 172.101 Table; and

(ii) When the cargo tank is permanently installed within an enclosed cargo body of the transport vehicle or freight container, the identification number marking required by § 172.302(a) need only be displayed on each side and end of a cargo tank that is visible when the cargo tank is accessed.

* * * * *

8. In § 172.400(b), the table, as revised at 62 FR 1228 effective October 1, 1998, is amended by revising the entries for Division 6.1 materials to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
* * * * *		
6.1 (inhalation hazard, Zone A or B)	POISON INHALATION HAZARD	172.429
6.1 (PG I or II, other than Zone A or B inhalation hazard)	POISON	172.430
6.1 (PG III)	KEEP AWAY FROM FOOD	172.431
* * * * *		

9. In Section 172.402, paragraph (e)(1) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(e) * * *

(1) Division 6.1, Packing Groups I or II, shall be labeled POISON or POISON INHALATION HAZARD, as appropriate.

* * * * *

10. Section 172.416 is revised to read as follows:

§ 172.416 POISON GAS label.

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

BILLING CODE 4910-60-P



(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 14 mm (0.54 inches) above the horizontal center line.

11. Section 172.429, as added at 62 FR 1229 effective October 1, 1998, is 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:



BILLING CODE 4910-60-C

(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 14 mm (0.54 inches) above the horizontal center line.

12. In § 172.502, paragraph (b)(3), as added at 62 FR 1230 effective October 1, 1998, is revised to read as follows:

§ 172.502 Prohibited and permissive placarding.

* * * * *

(b) * * *

(3) The restrictions in paragraph (a)(2) of this section do not apply until October 1, 2001 to a safety sign or safety slogan (e.g., "Drive Safely" or "Drive Carefully"), which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before August 21, 1997.

* * * * *

13. In § 172.504(e), as revised at 62 FR 1230 effective October 1, 1998, the entries for Division 6.1 materials in Tables 1 and 2 are revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(e) * * *

TABLE 1

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
6.1 (inhalation hazard, Zone A or B)	POISON INHALATION HAZARD	172.555

* * * * *

TABLE 2

Category of material (Hazard class or division number and additional description, as appropriate)	Placard name	Placard design section reference (§)
6.1 (PG I or II, other than Zone A or B inhalation hazard)	POISON	172.554
6.1 (PG III)	KEEP AWAY FROM FOOD	172.553

* * * * *

14. Section 172.540 is revised to read as follows:

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

BILLING CODE 4910-60-P



(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 the lower point of the upper diamond must be 65 mm (2 5/8 inches) above the horizontal center line. The text, class number, and inner border must be black.

15. Section 172.555, as added at 62 FR 1233 effective October 1, 1998, is revised to read as follows:

§ 172.555 POISON INHALATION HAZARD placard.

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



BILLING CODE 4910-60-C

(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 the lower point of the upper diamond must be 65 mm ($2\frac{5}{8}$ inches) above the horizontal center line. The text, class number, and inner border must be black.

16. In § 172.606, as added at 62 FR 1234 effective October 1, 1998, paragraph (c) is added to read as follows:

§ 172.606 Carrier information contact.

* * * * *

(c) The requirements specified in paragraph (b) of this section do not apply to an unattended motor vehicle separated from its motive power when the motor vehicle is marked on an orange panel, a placard, or a plain white

square-on-point configuration with the identification number of each hazardous material loaded therein, and the marking or placard is visible on the outside of the motor vehicle.

Issued in Washington, DC, on July 11, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator.

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