§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: May 30, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–14608 Filed 6–4–97; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, and 172

[Docket No. HM–224A]

RIN 2137–AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators

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

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to add a specific shipping description to the Hazardous Materials Table for chemical oxygen generators and to require approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported with its means of initiation attached. Oxygen generators currently are transported under several different shipping descriptions which identify chemical constituents but do not identify that the packaged articles are oxygen generators. These changes will facilitate the identification of oxygen generators in transportation, making it easier to comply with and enforce existing prohibitions against the carriage of chemical oxygen generators on passenger aircraft and in inaccessible locations on cargo aircraft, and enhance packaging requirements.

DATES: Effective: The effective date of these amendments is July 7, 1997. The provisions of § 172.101(l)(1)(ii), which otherwise would allow up to one year after a change in the Hazardous Materials Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, 202–366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Following the May 11, 1996 crash of ValuJet flight 592 into the Florida Everglades, where chemical oxygen generators carried as cargo may have caused or contributed to the severity of the accident, RSPA published an interim final rule in the **Federal Register** (61 FR 26418) on May 24, 1996, followed by a final rule on December 30, 1996 (61 FR 68952) prohibiting the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft. This prohibition is responsive to a May 31, 1996 recommendation of the National Transportation Safety Board (NTSB) that RSPA:

> In cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted. (Class I, Urgent Action) (A–96–29).

On December 30, 1996, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 68955)that proposed, in relevant part, several additional changes with respect to chemical oxygen generators: (1) adding a shipping description for ''Oxygen generator, chemical, 5.1, UN 3353, PG-I and PG-II,'' consistent with the recent adoption of this shipping description by the International Civil Aviation Organization (ICAO); (2) indicating in §§ 172.101 (the Hazardous Materials Table), §§ 171.11 and 175.85 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) that chemical oxygen generators may not be transported aboard passenger-carrying aircraft or in inaccessible cargo compartments in cargo aircraft; (3) indicating in §§ 171.11, 171.12, and 171.12a that there are no exceptions from HMR requirements for classification, approval and description of oxygen generators; and (4) specifying packaging requirements for shipment of chemical oxygen generators.

This final rule adopts these proposals from the December 30, 1996 NPRM concerning oxygen generators with minor changes. In §§ 171.11, 171.12 and 171.12a, proposed new paragraphs (d)(14), (b)(17) and (b)(16) have been adopted as new paragraphs (d)(15), (b)(18) and (b)(17), respectively. Additionally, paragraph (d)(15) does not reference the exception in § 175.10 because it is redundant as a result of the entry for ''Oxygen generator, chemical'' and the corresponding special provision.

RSPA's December 30, 1996 NPRM also proposed to prohibit the transportation of oxidizers, including compressed oxygen, on passenger-carrying aircraft (which would also limit oxidizers that are allowed on cargo aircraft only to cargo locations that are accessible to crew members during flight; § 175.85(b)). Docket No. HM–224A, 61 FR 68955. This proposed amendment to the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is consistent with the NTSB recommendation that RSPA:

> In cooperation with the Federal Aviation Administration, prohibit the transportation of oxidizers and oxidizing materials (e.g., nitric acid) in cargo compartments that do not have fire or smoke detection systems. (Class I, Urgent Action) (A–96–30).

In the December 30, 1996 NPRM, RSPA expressed its intent to issue a supplemental NPRM to more fully address proposals pertaining to a prohibition against oxidizers on passenger aircraft and in inaccessible locations on cargo aircraft. RSPA expects to publish the supplemental NPRM in the near future.

RSPA received several requests to extend the comment period on the December 30, 1996 NPRM for either 60 or 90 days. The requests for an extension of time to comment did not relate to the proposals in the December 30, 1996 NPRM concerning the shipping description and packaging of chemical oxygen generators.

II. Oxygen Generators

The international shipment of hazardous materials by air is governed by the International Civil Aviation Organization (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The HMR allow the use of the ICAO Technical Instructions as an alternative to corresponding hazard communication and packaging requirements of the HMR (see 49 CFR 171.11). As explained in the NPRM, ICAO recently adopted a shipping description, ''Oxygen generator, chemical, 5.1, UN 3353, II,'' for chemical oxygen generators. RSPA proposed this description in the NPRM to make it easier to identify chemical oxygen generators and for consistency with the ICAO provisions.

RSPA also explained in the December 30, 1996 NPRM its proposals to require special packaging for a chemical oxygen generator that is shipped with its means of initiation attached. RSPA proposed

to: (1) clarify that oxygen generators must be classed and approved by the Associate Administrator for Hazardous Material Safety (which may include packaging requirements); (2) require oxygen generators to incorporate no less than two safety features that will prevent unintentional activation of the generator; and (3) require that, when transported on a cargo-only aircraft, a generator must be contained in a packaging prepared and originally offered for transportation by the approval holder. Moreover, each offeror of an approved oxygen generator must have a copy of the approval, and the approval number must be marked on the outside of the package.

RSPA received six comments on the proposals dealing with oxygen generators. All of the commenters supported the addition of the new shipping description for chemical oxygen generators. Therefore, RSPA is adding the shipping description ''Oxygen generator, chemical, 5.1, UN 3353, PG–I and PG–II,'' for chemical oxygen generators.

Two commenters suggested that shipping papers for oxygen generators also contain: (1) a certification that safety caps were inspected prior to packaging and were in place when packed; and (2) a statement as to what type of fire extinguisher is effective on the canisters. RSPA notes that § 172.204 currently requires certification as to compliance with packaging requirements by the offeror and subpart G of part 172 has requirements for providing and maintaining emergency response information. Neither of the suggested changes was proposed in the NPRM and RSPA does not believe that the commenters have provided sufficient justification to warrant changing the regulations. However, these suggestions may be considered in a future rulemaking proceeding if either or both of these commenters petition for rulemaking in accordance with 49 CFR 106.31. Section 106.31 requires, in pertinent part, that a petitioner provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner.

One commenter who agreed with the proposal to add Special Provision 57 (adopted as Special Provision 60), which would require an oxygen generator to be shipped with two safety features that will prevent unintentional activation, requested that RSPA clarify the means of compliance with this provision. This commenter also requested RSPA specifically allow the use of protective packaging and insulation as a means of meeting this requirement. Another commenter stated that the proposed language does not make it clear whether the ''two safety features'' are intended to be additional to the existing device on the generator which prevents activation. Two other commenters requested that safety caps be installed on all chemical oxygen generators, and that the approved packagings be designed to prevent its movement.

RSPA is revising special provision 60, for clarity and consistency with the ICAO Technical Instructions, to require that oxygen generators that are shipped with their means of initiation attached incorporate at least ''two positive means of preventing unintentional actuation'' rather than ''two safety features that will prevent unintentional activation.'' Activation mechanisms for oxygen generators are not identical in design or operation. It is not possible to specify detailed methods of preventing activation without an examination of each design. Manufacturers are advised that in order to be approved, current designs must be adapted to provide for two independent means or systems for prevention of activation and that future designs should incorporate this capability. Each means or system must be independent of the other. For example, two hammer retainers or one retainer and a protective cap. Systems which use two features on one preventive system (one hammer pin with a retainer on the pin) or use packaging and insulation to substitute for one system are not acceptable.

RSPA received two comments on the proposal to require approval by the Associate Administrator for Hazardous Materials Safety (AAHMS) for the transportation of chemical oxygen generators. The National Transportation Safety Board (NTSB) stated that ''the Safety Board supports RSPA's proposal to require special approval for chemical oxygen generators to determine if these generators, which have actuators attached, can be safely packaged to prevent initiation during shipping, and to establish a standard for compliance.'' NTSB also stated that it ''understands that Title 49 CFR currently requires chemical oxygen generators to have an RSPA approval, or a previously authorized Bureau of Explosives approval, to be transported because the generators contain an explosive actuator.'' Another commenter stated that the use of device-specific approval is needlessly burdensome and in many respects is a step backwards to the era of specification, rather than performance-oriented, requirements.

As noted by NTSB, the HMR already require a chemical oxygen generator, or any other device, that contains an explosive to be approved by the AAHMS. The addition of the approval requirement into Special Provision 60 clarifies that chemical oxygen generators that are shipped with their means of initiation attached must be approved by the AAHMS. The approval provision also would apply to non-explosive means of ignition, if employed. RSPA disagrees that device-specific approval is needlessly burdensome, believing that the degree of hazard posed by chemical oxygen generators with means of ignition attached warrants individual approval. Therefore, Special Provision 60 (originally proposed as Special Provision 57), requiring that an oxygen generator that is shipped with its means of initiation attached must be approved by the AAHMS, is adopted in this final rule.

RSPA received one comment on the proposal to require, for transportation by cargo-only aircraft, that an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the approval holder. The commenter stated that adoption of this requirement, and the proposal that each offerer of an approved oxygen generator must have a copy of the approval, will needlessly impede shipments. The commenter stated that these provisions will delay shipments of these ''lifesaving devices'' and have little, if any, impact on transportation safety.

In order to assure their safe transport aboard cargo aircraft, RSPA believes that chemical oxygen generators may only be transported in a packaging prepared and originally offered for transportation by an approval holder. RSPA believes that by requiring a generator to be packaged by the approval holder, the level of safety for the transportation of oxygen generators aboard cargo aircraft will be increased because the approval holder, the party most knowledgeable about the shipment, can be confident that the packaging is in compliance with the approval. RSPA also believes that, by requiring each offerer of an approved generator to have a copy of the approval, the offerer will be assured that: (1) The generator has been approved; (2) the shipping description is correct; and (3) the offerer has knowledge of all relevant packaging requirements. RSPA does not believe that a shipper can be aware of all these things without a copy of the approval. Therefore, RSPA is adopting in this final rule requirements that: (1) For transportation by cargo aircraft, an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the

approval holder; (2) each offerer of an approved oxygen generator must have a copy of the approval for that generator; and (3) that the approval number must be marked on the outside of the package. Although originally proposed as part of Special Provision 60, the requirement that an oxygen generator must be contained in a packaging prepared and originally offered for transportation by the approval holder is moved to Special Provision A51. Language is added to clarify that the oxygen generator must conform to the provisions of the approval. Special Provision A51 effectively precludes the shipment by aircraft of an oxygen generator unless it is repacked in its original packaging. For example, an oxygen generator which is removed from an aircraft by a repair facility because the generator is beyond its service life could not be transported by cargo aircraft unless the repair facility has approved procedures for repackaging the generator.

The provisions being adopted into the HMR for oxygen generators generally are consistent with those provisions in the ICAO Technical Instructions for the shipment of oxygen generators. However, ICAO has also adopted additional provisions which require: (a) A 1.8 meter drop test on an unpackaged oxygen generator; and (b) that an oxygen generator be transported in a package that, when one generator in the package is actuated, the other generators will not actuate, the packaging material will not ignite, and the outside surface temperature of the completed package will not exceed 100 degrees C. Though these provisions have not been adopted into this final rule, RSPA may propose to add them in a future rulemaking.

III. Costs and Benefits

A preliminary regulatory evaluation for the December 30, 1996 NPRM, addressing the proposed prohibition of oxidizers in Class D cargo compartments, is available for review in the public docket. It estimates costs of $25 million ($17 million, discounted), in 1995 dollars, over the next ten years to aircraft operators. The potential safety benefits for the NPRM, i.e., the added assurance that an accident does not take place as the result of oxidizers enhancing a cargo compartment fire that would result in the loss of life or property damage, are estimated to exceed costs if the proposed rule prevents 9 accidental deaths or approximately 150 injuries over that ten year period. RSPA anticipates revising the preliminary regulatory evaluation prior to issuing a supplemental NPRM under Docket HM–224A and issuing a final regulatory evaluation when a final rule is issued on the prohibition of oxidizers aboard passenger aircraft.

RSPA does not believe it to be necessary to separate the costs and benefits in this final rule concerning shipping descriptions and packagings for chemical oxygen generators from the total costs and benefits estimated in the preliminary regulatory evaluation. On a qualitative basis, the rule enhances safety by ensuring that chemical oxygen generators are properly packaged and identified in transportation, thus reducing the risks posed by them. Also, the costs of this rulemaking are minimal: Chemical oxygen generators already are subject to RSPA approval provisions; minimal added costs will be incurred by a small number of shippers for changing package markings and shipping paper descriptions for relatively small numbers of shipments of oxygen generators.

IV. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is so minimal that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

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

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

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

This final rule concerns the classification, shipping description and packaging of chemical oxygen generators. RSPA lacks discretion in the preemptive nature of this final rule, and preparation of a federalism assessment is not warranted.

Title 49 U.S.C. 5125(b)(2) provides that 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 September 3, 1997.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to persons who transport chemical oxygen generators and who offer these generators for transportation, most of whom are not small entities.

Paperwork Reduction Act

This final rule does not propose any additional information collection burdens. Information collection requirements contained in Special Provision 60 in this final rule are currently approved under OMB control number 2137–0557 with regard to approvals for new explosives under 49 CFR 173.56. A reference to Special Provision 60 will be included in the next revision of the OMB approval. Shipping paper requirements are currently approved under OMB control number 2137–0037. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number.

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. The amendments adopted in this final rule were originally proposed in the December 30, 1996, NPRM with RIN 2137–AC92.

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 Parts 171, and 172 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

2. In § 171.11, paragraph (d)(15) is added to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(15) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

3. In § 171.12, paragraph (b)(18) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(18) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

* * * * *

4. In § 171.12a, paragraph (b)(17) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(17) An oxygen generator (chemical) must be classed, approved, and described in accordance with the requirements of this subchapter.

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

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

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

§ 172.101 [Amended]

6. In the § 172.101 Hazardous Materials Table, the following entry is added in appropriate alphabetical order:

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging authorizations (§173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail-car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* *		*		*	*		*		*			
	Oxygen generator, chemical	5.1	UN3353	I	5.1	60, A51	None	211	None	Forbidden.	15 kg	(1)	56, 58, 69, 106
				II	5.1	60, A51	None	212	None	Forbidden.	25 kg	(1)	56, 58, 69, 106
	* *		*		*	*		*		*			

7. In 172.102, in paragraph (c)(1), Special Provision 60 is added, and in paragraph (c)(2), Special Provision A51 is added to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

* * * * *

60 An oxygen generator, chemical, that is shipped with its means of initiation attached must incorporate at least two positive means of preventing unintentional actuation of the generator, and be classed and approved by the Associate Administrator for Hazardous Materials Safety. Each person who offers an oxygen generator for transportation shall: (1) ensure that the shipment conforms to the conditions of the approval; (2) maintain a copy of the approval at each facility where an oxygen generator is prepared for transportation, and (3) mark the approval number on the outside of the package.

* * * * *

(2) * * *

A51 When transported by cargo-only aircraft, an oxygen generator must conform to the provisions of an approval issued under Special Provision 60 and be contained in a packaging prepared and originally offered for transportation by the approval holder.

* * * * *

Issued in Washington, DC on May 30, 1997, under the authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 97–14739 Filed 6–4–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE10

Endangered and Threatened Wildlife and Plants; Change in Listing Status of Steller Sea Lion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) is reclassifying the Steller sea lion (*Eumetopias jubatus*) population segment west of 144° W. longitude (a line near Cape Suckling, AK) as endangered and the remainder of the Steller sea lion population will remain threatened on the List of Endangered and Threatened Wildlife. This measure, authorized by the Endangered Species Act of 1973 (Act), corresponds with a determination to reclassify this species based on biological information indicating that there are two distinct population segments, as authorized under the Act, by the National Marine Fisheries Service (NMFS) which has jurisdiction for this species.

DATES: Effective June 4, 1997.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Steller sea lion under the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The FWS is responsible for the actual addition of a species and changes in reclassification to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination for a reclassification of the Steller sea lion on May 5, 1997 (62 FR 24345). Accordingly, the FWS is now making this change to the List of Endangered and Threatened Wildlife. This change is effective as of June 4, 1997, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (October 4, 1995; 60 FR 51968), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the FWS's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by removing the existing entry for Sea-lion, Stellar (=northern) and by adding the following entries, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Sea-lion, Steller (=northern).	*Eumetopias jubatus.*	U.S.A. (AK, CA, OR, WA), Canada, Russia, North Pacific Ocean.	Entire, except the population segment west of 144° W. Long.	T	384E, 408, 614	226.12	227.12