## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

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

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

#### RIN 2137-AC16

#### Marine Pollutants

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

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

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

#### FOR FURTHER INFORMATION CONTACT:

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

## SUPPLEMENTARY INFORMATION:

#### I. Background

On January 31, 1992, RSPA published in the Federal Register a notice of proposed rulemaking (NPRM) (Docket No. HM-211; Notice No. 92-2; 57 FR 3854) which proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) by regulating, in all modes of transportation, those materials that meet the definition of a marine pollutant. This proposal was published in order to comply with MARPOL 73/78 and to address environmentally hazardous materials in domestic commerce. MARPOL 73/78 is the international agreement to prevent and control accidental and operational discharges of pollution from ships. It includes the 1973 International Convention for the Prevention of Pollution from Ships and the 1978 Protocol which modified and incorporated the 1973 Convention. It includes a framework agreement setting forth general obligations, and five annexes that relate to particular sources of marine pollution.

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

Annex III, which is entitled "Regulations for the Prevention of **Pollution by Harmful Substances** Carried by Sea in Packaged Form or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons," sets forth general regulations for the transport of harmful packaged substances. Many of these substances, such as pesticides and herbicides, are known to kill or retard the growth of marine life and to bioaccumulate in marine organisms, causing potential danger to the food chain, including health risks to humans as well as to birds and other wildlife that eat fish or shellfish. Regulation 1.3 of Annex III states, in part, that the Government of each Party to the Convention shall issue detailed requirements on the packaging, marking, labeling, documentation, stowage, quantity limitations and exceptions for preventing or minimizing pollution of the marine environment. Annex III provides that the packaging of harmful substances must be adequate to minimize the hazard to the marine environment posed by their specific contents. Packages must be marked to indicate that the contents are harmful to the environment, and must be stowed so as to minimize the risk to the marine environment. In addition, a shipping paper or manifest setting forth the harmful substances on board must be carried. Finally, parties are permitted to prohibit or impose quantity limitations on the carriage of certain very hazardous substances. As with all other MARPOL 73/78 annexes, parties to Annex III are required to apply their regulations to ships of nonparty countries using their ports or off-shore terminals.

Regulation 1.1, of Annex III states, in part, that the regulations of the Annex apply to "harmful substances" in packaged form. Regulation 1.1.1, of Annex III identifies "harmful substances" as those substances identified as marine pollutants under the

1990 consolidated edition of the International Maritime Dangerous Goods (IMDG) Code. Marine pollutants are identified in the individual schedules and the General Index of the IMDG Code by the letters "P" or "PP". The letters "PP" identify those materials that are regulated as severe marine pollutants when in concentrations of 1% or more. The letter "P" identifies those commodities that are marine pollutants when in concentrations of 10% or more.

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

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

## **II. Discussion of Comments Received**

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

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

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

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

In the NRPM, RSPA proposed to incorporate the list of marine pollutants into a separate appendix (appendix B) to the § 172.101 Hazardous Materials Table (HMT). Numerous commenters were concerned that the listing of marine pollutants in Appendix B would unnecessarily complicate the determination of proper shipping names and markings on packages because of

the need to refer to multiple sources to assure compliance with the HMR. Several commenters encouraged RSPA to incorporate the IMO list of marine pollutants into the existing § 172.101 Appendix (list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) and use "E", "P" and "PP" to distinguish the CERCLA hazardous substances, marine pollutants, and severe marine pollutants, respectively. In addition, commenters requested that tentative reportable quantities (RO) be assigned to marine pollutants until the Environmental Protection Agency (EPA), through scientific evaluation, establishes substantiated RO's. Other commenters requested that the marine pollutant list be incorporated into the HMT. Still other commenters supported the proposal to incorporate the list of . marine pollutants as appendix B to § 172.101.

Determining a material's proper shipping name and whether it is a hazardous substance or a marine pollutant are separate and distinct functions. The HMT is not a list of chemicals; rather, it is a list of proper shipping names. The offeror must determine the appropriate proper shipping name for a material by using a set of guidelines, one of which is knowledge of the material's hazard class or classes. The lists of hazardous substances and marine pollutants are lists of specific chemicals designed to help shippers determine if a material meets the definition of a hazardous substance or a marine pollutant. Any benefit that would result from having a single list would be outweighed by the confusion, and possible non-compliance, of shippers trying to distinguish a marine pollutant from a hazardous substance. Therefore, as proposed, RSPA is adding the list of marine pollutants as appendix B to § 172.101.

Many commenters opposed to the adoption of the list of marine pollutants urged RSPA to establish criteria for the determination of marine pollutants. Some commenters stated that there may be materials that, due to lack of information or unpublished data, are not included in the list. The majority of these commenters believed the criteria should be based on existing criteria from the EPA and the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). One commenter advised RSPA to consider using the rate of biodegradability in determining the hazard of a marine pollutant using guidelines from EPA. Another commenter asserted that if

technical data are presented, a manufacturer of a material should be allowed to add to and delete products from Appendix B. The commenter added that any changes made to the list of marine pollutants by GESAMP should be incorporated into appendix B to § 172.101 in a timely fashion.

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

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

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

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

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

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

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

Several commenters stated that the compliance date of this final rule should be consistent with the transition dates in § 171.14 provided under Docket HM-181. The commenters believed that this would greatly ease the regulated community's efforts to comply with these requirements in the areas of training, hazard classification. maintenance of product data bases, package marking, and shipping paper descriptions. RSPA agrees. Therefore, in § 171.4(d) of this rule, transitional provisions are added to make requirements specific to marine pollutants effective October 1, 1993, except that packagings may conform to the transitional provisions in § 171.14(b)(5). However, it should be noted that for purposes of international vessel transportation, compliance with the provisions in the IMDG Code are likely to be enforced by other countries as in the case for the transport of hazardous materials in general.

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

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

releases exceeding 400 kilograms or 450 liters must be reported immediately to the NRC irrespective of the size of the packaging.

## **III. Review by Section**

## Section 171.1

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

## Section 171.4

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

### Section 171.8

The definition of "Hazardous material" is editorially revised to note that those materials that are designated as hazardous materials are defined in § 171.8 (e.g., hazardous substances), are specified in §§ 172.101 and 172.102 and are those materials that meet the defining criteria for hazard classes and divisions in Part 173. A definition of "Marine pollutant" is added. A mixture or solution containing one or more materials listed in appendix B to § 172.101, is a marine pollutant if the total concentration of the material(s) listed in appendix B to § 172.101 in one package equals or exceeds: (1) Ten percent by weight of the total amount in the package or (2) one percent by weight of the total amount in the package for materials that are identified as severe marine pollutants.

#### Section 171.11

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

## Section 171.12a

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

# Section 172.101

The proper shipping name and hazard class for a material that meets the definition of a marine pollutant, and does not meet the definition of another hazard class, is "Environmentally hazardous substances, liquid, n.o.s., Class 9," for a liquid, or "Environmentally hazardous substances, solid, n.o.s., Class 9," for a solid. These descriptions are the same as those for CERCLA hazardous substances that meet no other hazard class in the HMR. Non-bulk packagings are selected from §§ 173.203 or 173.213, and must withstand the testing criteria for Packing Group III. Bulk packagings are selected from either §§ 173.240 or 173.241, as appropriate. A special provision, "N50", is added to these two shipping descriptions that excepts marine pollutants, that do not meet the definition of a hazardous substance, hazardous waste, or the definition in § 171.140(a), from the labeling requirements of part 172. In addition, in order to easily identify the proper shipping name for a marine pollutant that is properly classified as a Class 9 material, the entry "Marine pollutants, liquid or solid, n.o.s. see Environmentally hazardous substances. liquid or solid, n.o.s." is added to the § 172.101 Hazardous Materials Table.

#### Appendix to § 172.101

The appendix to § 172.101, which identifies CERCLA hazardous substances, is renamed "Appendix A to § 172.101." RSPA is adding an appendix B to § 172.101, entitled "List of Marine Pollutants," to identify those substances designated as marine pollutants. The first column of the list, entitled "S.M.P.," identifies those materials which are severe marine pollutants by the letters "PP". One difference between the list of marine pollutants in appendix B to § 172.101 and those substances identified as marine pollutants in the IMDG Code, is that RSPA is not listing generic shipping names as marine pollutants as is done in the IMDG Code. These commodities are still subject to the requirements for marine pollutants, however, if the material described under the generic entry meets the definition of marine pollutant in § 171.8.

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

added to appendix B of § 172.101 at a later date.

## Section 172.203

Paragraph (1) is added to this section to require the technical name of the material to be added in parentheses when the name of the marine pollutant is not identified in the proper shipping name. In addition, this section requires the words "Marine pollutant" to appear in association with the basic description.

The Hazardous Materials Advisory Council (HMAC) requested, for consistency with the IMDG Code, that the following sentence be added to proposed § 172.203(1)(1): "For pesticide or pesticide preparations, the marine pollutant component indicated in the parentheses may be supplemented by the percent of the active ingredient.' Though RSPA agrees with this commenter, RSPA believes that the inclusion of the percentage of a technical name should not be limited to marine pollutants. Therefore, RSPA is revising § 172.202(d) to allow the inclusion of the percentage of the technical constituent for all hazardous materials descriptions.

#### Section 172.322

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

being blank. Labels and stickers of the mark are allowed in contrasting colors to the packaging.

## Section 173.12

This section is amended to require lab packs containing marine pollutants to comply with the requirements of §§ 172.203(1) and 172.322.

## Section 173.140

This section is amended to add marine pollutants to the definition of Class 9. If a marine pollutant meets the definition of another hazard class, however, the class of the material is determined in accordance with § 173.2a. Marine pollutants that meet no other hazard class are classified as a Class 9 material and are shipped under the proper shipping name of "Environmentally hazardous substances, liquid or solid, n.o.s."

## Section 173.150

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

#### Section 173.154

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

#### Section 173.425

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

#### Section 174.25

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

#### Section 176.70

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

The following sections have been amended to require marine pollutants that are reclassified as ORM-D to be subject to the shipping paper requirements of the HMR: §§ 173.150. 173.151, 173.152, 173.153, 173.154 and 173.155. In addition, the following sections have been amended in accordance with the foregoing preamble discussions: §§ 172.202, 172.324, 173.29, and 173.421–2.

# IV. Federal Preemption Under the HMTA

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

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

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

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

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

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

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

## V. Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

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

## B. Executive Order 12612

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

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

## C. Regulatory Flexibility Act

This regulation has minimal impact on shippers and carriers of marine pollutants, some of whom may be small business entities. Based on limited information received from commenters concerning the size and nature of entities likely affected by this final rule. I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

## D. Paperwork Reduction Act

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

#### List of Subjects

## 49 CFR Part 171

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

## 49 CFR Part 172

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

## 49 CFR Part 173

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

## 49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

## 49 CFR Part 176

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

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

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

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

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

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

## § 171.1 Purpose and scope.

- (a) \* \* \*
- (3) \* \* \*

(iv) Marine pollutants.

\* \* \* \*

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

#### § 171.4 Marine poliutants.

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

(b) The requirements of this subchapter for the transportation of marine pollutants are based on the provisions of Annex III of the 1973 International Convention for Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78).

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

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

#### § 171.8 [Amended]

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3. In § 171.8, the definition of "Hazardous substance" is amended by removing the words "the appendix" and replacing them with the phrase

"Appendix A" in paragraphs (1), (2), and (3)(i). 4. In § 171.8, the definition of

"hazardous material" is revised and the definition of "marine pollutant" is added in appropriate alphabetical order to read as follows:

\*

#### § 171.8 Definitions and abbreviations. \* \*

Hazardous material means a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in this section, materials designated as hazardous under the provisions of §§ 172.101 and 172.102 of this subchapter, and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

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

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

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

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

## § 171.11 Use of ICAO Technical Instructions.

(d) \* \* \*

(13) Transportation of marine pollutants, as defined in § 171.8 of this subchapter, in bulk packagings must conform to the requirements of §§ 172.203(1) and 172.322 of this subchapter.

6. In § 171.12a, paragraph (b)(15) is added to read as follows:

#### § 171.12a Canadian shipments and packagings.

(b) \* \* \*

(15) Transportation of marine pollutants, as defined in § 171.8 of this subchapter, must conform to the requirements of §§ 172.203(1) and 172.322 of this subchapter.

6a. In § 171.15, paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added to read as follows:

## § 171.15 Immediate notice of certain hazardous materials incidents.

(a) \* \* \*

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

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

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

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

## § 172.101 [Amended]

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

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

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

## Appendix A to § 172.101-List of **Hazardous Substances and Reportable** Quantities

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

## Appendix B to § 172.101 [Added]

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

١

## Appendix B to § 172.101—List of Marine Pollutants

1. This appendix lists potential marine pollutants as defined in § 171.8 of this subchapter.

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

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

## Appendix B to § 172.101 List of Marine Pollutants

S.M.P.	Marine Pollutant		
· (1)	(2) Acetone cyanohydrin, stabi- lized		
	Acetylene dibromide Acetylene tetrabromide		
	Acetylene tetrachloride Acraldehyde, inhibited		
······	Acrolein, inhibited		
	Alcohol C-12 - C-15 poly(1-3)		
	ethoxylate Alcohol C-13 - C-15 poly(1-6)		
	ethoxylate Alcohol C-6 - C-17 (secondary)poly(3-6) ethox-		
	ylate Aldicarb		
PP	Aldrin		
	Alkylphenols, liquid, n.o.s. ( <i>In-</i> <i>cluding C2-C8 homo-</i> <i>logues</i> )		
••••••	Alkylphenols, solid, n.o.s. ( <i>in- oluding C2-C8 homo- logues</i> )		
	Allyl bromide		
	ortho-Aminoanisole		
	Ammonium arsenate		
	Ammonium dinitro-o-cresolate		
······································	Arnyl mercaptans		
·····	Arsenates, liquid, n.o.s.		
	Arsenic bromide		
	Arsenic chloride		
	Arsenical pesticides liquid,		
PP	Azenphos-methyl		
PP	Azinphos-ethyl		
••••••••••	n.o.s.		
•••••••••••••••••	Barium cyanide Bandiaparth		
	Benguinox ·		
·····	Benzyl chlorocarbonate		
	Benzyl chloroformate		
rr	Biphenyl phenyl ether and di-		
	phenyl oxide, mixtures		
PP	Brodifacoum Bromino ovanido		
	Bromoallylene		
	ortho-Bromobenzyl cyanide		
	Bromocyane		
	Bromoform		

S.M.P.	Marine Pollutant	S.M.P.	Marine Pollutant	S.M.P.	Marine Pollutant
(1)	(2)	(1)	(2)	(1)	(2)
PP	Bromophos-ethyl		Cyanide mixtures	PP	Diphenylchloroarsine, solid or
	3-Bromopropene		Cyanide solutions	· · .	liquid
	Bromoxynil		Cyanides, inorganic, n.o.s.		Disulfoton
	2-Butenal, inhibited		Cyanogen bromide		DNOC
	Butyl benzenes		Cyanogen chloride, inhibited	[	DNOC (pesticide)
	Butyl benzyl phthalate		Cyanophos	PP	Dodecylphenol
	Butylphenols, liquid	PP	Cyhexatin		Drazoxolon
	Butylphenols, solid	PP	Cypermethrin		Edifenphos
	para-tertiary-butyltoluene		2,4-D	PP	Endosulfan
PP	Cadmium compounds	PP	DDT	- PP	Endrin
•••••••••••••••••••••••••••••••••••••••	Cadmium sulphide		Decyl acrylate	PP	EPN
	Calcium arsenate		DEF	PP	Ethion
	Calcium arsenate and calci-		Di-allate		Ethoprophos
•	um arsenite, mixtures, solid		Di-n-Butyl phthalate		Ethyl acrylate, inhibited
	Calcium cyanice	PP	Diairtos		Etnyl chlorothioformate
	Calcium naphthenate	PP	Diazinon		
PP	Campnechior	•••••••••••••••••••••••••••••••••••••••	1,2-Dibromethene		5-Ethyl-2-picoline
	Carbanyi	DD .	Disblofonthion	••••••	2 Ethyl 2 propulaciolain
	Carbon bisulphide	FF	Dichloroapilines		Ethyl tetraphosphate
***************************************	Carbon tetrabromide		o-Dichlorobenzene		Ethyldichloroarsine
	Carbon tetrachloride		p-Dichlorobenzene		Ethylene chloride
PP	Carboohenothion	•••••••	1 3-Dichlorobenzene		Ethylene dibromide and
	Cartap hydrochloride		1.2-Dichlorobenzene		methyl bromide mixtures.
PP	Chlordane		1,4-Dichlorobenzene	· ·	liquid
	Chlorfenvinphos		Dichlorobenzene (meta:		Ethylene dichloride
	Chlorinated paraffins (C-10 -		ortho; para)		2-Ethylhexenal
	C-13)		2,2-Dichlorodiethyl ether		Ethylidene dichloride
	Chlorine		Dichloroether		Fenaminphos
	Chlorine cyanide, inhibited	*****	Dichloroethyl ether	PP	Fenitrothion
······	Chlormephos		Dichloroethyl oxide	PP	Fenpropathrin
	4-Chloro-2-nitrotoluene		1,1-Dichloroethylene, inhibited		Fensulfothion
	Chloro-ortho-nitrotoluene	·····	1,6-Dichlorohexane	PP	Fenthion
	2-Chloro-5-		Dichlorophenols, liquid	PP	Fentin acetate
	trifluoromethylnitrobenzene		Dichlorophenols, solid	PP	Fentin hydroxide
	para-Chlorobenzyl chloride,		2,4-Dichlorophenoxyacetic		Ferric arsenate
	liquid or solid	•	acid (see also 2,4D)		Ferric arsenite
	Chlorobenzyichlorides	•••••••	2,4-Dichlorophenoxyacetic		Ferrous arsenate
	Chiorodinitrobenzenes	-	acid diethanolamine salt	PP	Fonotos
	1-Chloroheptane	•••••••••••••••••••••••••••••••••••••••	2,4-Dichlorophenoxyacetic		Formetanate
	Chloronexane		acid dimethylamine salt	PP	gamma-BHC
	Chloropitrotoluopos <i>liquid</i>	••••••	2,4-Dichiorophenoxyacetic	00	Hastashar
	Chloropitrotoluenes solid		Disbloreshoputrisbloresitese	PP	Heptachior
	1-Chiomoctane	PP	Dichloryos		normal-Hentyl chloride
PP	Chlorophenates, liquid	* *	Dicrotophos	PP	Hexachlorobutadiene
PP	Chlorophenates, solid	PP	Dieldrig		1.3-Hexachlorobutadiene
	Chlorophenois, liquid		Diisopropylbenzenes		Hexaethyl tetraphosphate
	Chlorophenols, solid	PP	Dimethoate		liquid
	Chlorophenyltrichlorosilane		Dimethylarsinic acid		Hexaethyl tetraphosphate,
	alpha-Chloropropylene		Dimethylphenols, liquid or		solid
	1-Chloropropylene		solid		normal-Hexyi chloride
	2-Chloropropylene		Dinitro-o-cresol, solid		Hydrocyanic acid, anhydrous,
	Chlorotoluenes		Dinitro-o-cresol, solution		stabilized
PP	Chlorpyriphos		Dinitrochlorobenzenes, liquid		Hydrocyanic acid, anhydrous,
۳۳	Chiorthiophos		or solid	}	stabilized, absorbed in a
•••••••••••••••••••••••••••••••••••••••	Cool to:		Dingrophenol, dry or wetted	1	porous inert material
	Coal tar peopths		with less than 15 per cent		solutions of more than
•••••••••••••••••••••••••••••••••••••••	Cocculue		Mator, by mass	ł .	20% hydrocyanic acid
•	Coppor acategrapite	•••••••••••••••••••••••••••••••••••••••	Dinitrophenol wotted with not		Hydrogen cyanida anby-
	Cooper arcenite	••••••	less then 15 per cont		drous stabilized
••••••••••••••••••••••••••••••••••	Copper chloride		water hy mass		Hydrogen cyanide anhy-
PP	Copper cyanide		Dinitrophenolates alkeli		drous, stabilized, absorbed
	Cournachlor		metals, dry or wetted with	,	in a porous inert material
PP	Coumaphos		less than 15 per cent		Hydroxydimethylbenzenes,
	Creosote (coal tar)		water, by mass		liquid or solid
	Creosote (wood tar)		Dinitrophenolates, wetted		loxynil
	Cresols (o-; m-; p-)		with not less than 15 per		Isoamyl mercaptan
PP	Cresyl diphenyl phosphate		cent water, by mass		Isodecyl acrylate
	Cresylic acid	······	Dinobuton		Isodecyl diphenyl phosphate
·····	Cresylic acid sodium salt	•••••••	Dinoseb		Isofenphos
••••••	Crotonaldehyde, inhibited	••••••	Dioxacarb		Isooctyl nitrate
	Crotonic aldehyde		Dioxathion		Isoprocaro
	Cumono		Diphond		Isopropenyl chloride
			Diphenyl othor	•••••	Isopropul chlorido
	Cupric chloride		Diphenyl ovide		Isopropylenzene
PP	Cupric cvanide		Diphenyl oxide and hiphonyl	PP	Isoxathion
	Cupriethylenediamine solution		phonyl ether mixtures		Lead acetate
	Cuprous chloride	PP	Diphenylamine chloroarsine		Lead arsenates

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S.M.P.	Marine Pollutant	S.M.P.	Marine Pollutant	S.M.P.	Marine Pollutant
(1)	(2)	(1)	(2)	(1)	(2)
19	Lead arsenites	PP	Mercury (I) (mercurous) com-	PP	Organotin pesticides, liquid,
	Lead compounds, soluble,		pounds (pesticides)		toxic, flammable, n.o.s.
	n.o.s.	PP	Mercury (II) (mercuric) com-	PP	Organotin pesticides, liquid,
	Lead cvanide		pounds (pesticides)		toxic, n.o.s.
	Lead nitrate		Mercury iodide	PP	Organotin pesticides, solid,
	Lead perchlorate, solid or so-		Mercury lodide, solution		toxic, n.o.s.
	lution	PP	Mercury nucleate	••••••••••	Onthoarsenic acid
	Lead tetraethyl	PP	Mercury oleate	**********	Osmium tetroxide
	Lead tetramethyl	PP	Mercury oxide	***************************************	Oxamyl
PP	Lindane	PP	Mercury oxycyanide, desensi-		Oxydisulfoton
	London Purple		tized		Paraoxon
·····	Magnesium arsenate	PP	Mercury potassium cyanide	PP	Parathion
·····	Malathion	PP	Mercury potassium iodide	PP	
•••••	Maneb or Maneb prepara-	PP	Mercury salicylate	۳۳	Bestechloroothano
	tions with not less than	PP	Mercury sulfates	00	Pentachiorophenol
	60% maneb	PP	Mercury thiocyanate	17	Pentachiorophenoi
	Maneb or Maneb prepara-		Metaarsenic acid	F1	Peptalin
	uons with not less than 60	·	Metam-sodium		Pertanethiols
	Manah stabilized or Manah		Methamidophos		Perchioroethylene
***************************************	narios stabilized of mariet		Methanethiol		Perchloromethvimercaptan
	anginet coll-hooting	·····	Methidathion		Petrol, leaded
	Mannanasa athviana.1 2ihie	••••••	Methomyl	PP	Phenarsazine chloride
	dithiocarbamate		ortho-methoxyaniline	PP	Phenthoate
	Manaanese ethviene-1.2-his-		Methyl promide and ethylene		1 1-Phenylbutane
	dithiocarbamate. stabilized	· · ·	alpromide mixtures, inquid		2-Phenylbutane
•	against self-heating	••••••	2 Mathyl 5 athidowriding		Phenylethylene, inhibited
	Mephosfolan		Mathy marcantan	PP	Phenylmercuric acetate
	Mercaptodimethur		2-Mothyl-2-phonyloropane	PP	Phenylmercuric compounds,
	Mercarbam		3-Mothyl pyridine		n.o.s.
PP	Mercuric acetate		Mothyl salicylate	PP	Phenyimercuric hydroxide
PP	Mercuric ammonium chloride		3-Methylacroleine, inhibited	PP	Phenyimercuric nitrate
PP	Mercuric arsenate		Methylchlorobenzenes		2-Phenyipropene
PP	Mercuric benzoate		Methvichloroform	PP	Phoneice #
PP	Mercuric bisulphate		Methylene bromide	PP	Disconct
PP	Mercuric bromide		. Methylene dibromide	DD	Bhoshamidon
PP			Methylnephthalenes, liquid	PP	Phosphorus, white or vellow
PD	Mercuric duconete		. Methyinaphthalenes, solid		dry or under water or in
	Mercuric jadide		. Methylnitrophenols		solution
PP	Mercuric nitrate		alpha-Methylstyrene	PP	. Phosphorus white, or yellow,
PP	Mercuric oleate		. Methylstyrenes, inhibited		molten
PP	Mercuric oxide		. Methyltrithion		Pindone (and salts of)
PP	Mercuric oxycyanide, desensi-		Methylvinylbenzenes, Inhibit-		. alpha-Pinene
	tized	00	ed		Pirimicard
PP	Mercuric potassium cyanide	rr	Movecarbato	PP	
PP	.] Mercuric Sulphate		Miroy	PP	
	. Mercuric sulphide		Monocrotophos	PP	liquid or Torobonyls liquid
PP	Mercuric thiocyanate		Motor fuel entidencek mix-	00	- Polyhologonated hiphonyls
PP	Mercurol		tures	FF	solid or Tembenvis solid
PP	Mercurous acetate		Motor fuel anti-knock mix-	DD	Potassium cuprocvanide
DD	Mercurous bisupliate		tures or compounds		Potassium cvanide
PD	Mercurous chloride		Nabam	PP	Petassium cyanocuprate I
PP	Mercurous nitrate		. Naled	PP	Petassium cyanomercurate
PP	Mercurous salicylate		. Naphtha, coal tar		Potassium dihydrogen arse-
PP	. Mercurous sulphate		Naphthalene, crude or refined		nate
PP	. Mercury acetates		. Naphthalene, molten	PP	Potassium mercuric lodide
PP	Mercury ammonium chloride		Naphthenic acids, liquid		Premecarb
PP	. Mercury based pesticides,		I Naphthenic acids, solid		Propapnos
	liquid, flammable, toxic,	PP	Nickel carbonyi	••••••	Propenal, Innoited
	n.o.s.	PP	Nickel totaged bond		Propenyi chionde (cis-, uans-)
۲۲	mercury based pesticides,	<b></b>	Nitrates inorganic 505	]	- Bropylane dichloride
	nquio, toxic, nammable,		Nitrites inorganic n.o.s.	***************************************	Propylidene dichloride
PP	Marcury bacad pacticidan		3-Nitro-4-		Prothoate
f f ,	liquid toxic n.o.s		chlorobenzotrifluoride		Prussic acid, anhydrous, sta-
PP	Mercury based pesticides		Nitrobenzotrifluorides		'bilized
	solid, toxic, n.o.s.	1	Nitrocresols		Prussic acid, anhydrous, sta-
PP	Mercury benzoate		Nitroxylenes, (o-;-m-;-p-)		bilized, absorbed in a
PP	Mercury bichloride		Nonyiphenol	1	porous inert material
PP	Mercury bisulphates	PP	Organotin compounds, liquid,	PP	Pyrazophos
PP	Mercury bromides		n.o.s.		Quinalphos
PP	Mercury compounds, liquid,	PP	Organotin compounds (pesti-		
00	A.O.S.	00		1	
PP	mercury compounds, solid,	{ PP	Urganeun compounds, solid,		Giber monide
	1.0.8. Moreure compounde aduit	00	11.0.8. Organotin posticidos liquid	90	Silver arthogranita
۳ <b>۳</b>	wercury compounds, solid,	FP	flammable toxic cos	PP	Sodium copper cvanide, solid
PP	Mercury cyanide		flash point loss than 22/lon	PP	Sodium copper cvanide solu-
PP	Mercury gluconate		C	1	tion

•

	Adaption Dollutant
5.M.P.	Manne Pollutant
· (1)	. (2)
PP	Sodium cuprocyanide, solid
PP	Sodium cuprocyanide, solu-
	tion
•••••••••••••••••••••••••••••••••••••••	Sodium cyanide
	Sodium dinitro-o-cresolate,
	15 per cent water by mass
	Sodium dipitro-ortho-creso
	late, wetted with not less
	than 15 per cent water, by
	mass
	Sodium metaarsenite
	Sodium orthoarsenate
PP	Sodium pentachlorophenate
•••••••	Strontium orthoarsenite
	Strychnine or Strychnine saits
•••••••••••••••••••••••••••••••••••••••	Sulfaten
PP	Sulprophos
	Sym-Dichloroethyl ether
	Temephos
	TEPP
PP	Terbufos
	1,1,2,2-Tetrabromoethane
••••••	Tetrabromomethane
•••••••••••••••••••••••••••••••••••••••	Tetrachloroethane
•••••••••••••••••••••••••••••••••••••••	1,1,2,2-1 etrachloroethylene
•••••••••••••••••••••••••••••••••••••••	Tetrachioromethane
	Tetraethyl dithionyrophon
	nhate
	Tetraethyl lead, liquid
	Tetramethylead
	Thallium chlorate
	Thallium compounds, n.o.s.
	Thallium compounds (pesti-
•	cides)
	Thallium compounds (pesti-
•	CIGES) Thallium pitroto
	Thallium sulfate
	Thailous chlorate
	Thiocarbonyl tetrachloride
••••••	Triaryl phosphates, isopropy-
	lated
PP	Triaryl phosphates, n.o.s.
••••••	Triazophos
DD	Tributitin compoundo
rr	Tricblorfon
	Trichlorobenzenes liquid
	Trichlorobutene
	Trichlorobutylene
	Trichloromethane sulphurvi
	chloride
	Trichloromethyl sulphochlor-
	ide
	inchioronat
•••••••	than 1% orthologen
PP	Tricresyl phoenbate (net loss
	than 1% ortho-isomer)
	Tricresyl phosphate with
	more than 3 per cent ortho
	isomer
	Triethylbenzene
	Trimethylene dichloride
rr	Triphenyllin compounds
••••••	1% ortho isomethy
PP	Tritolyt phosphate (not loss
	than 1% ortho-isomer)
	Trixvlenvl phosphate
	Turpentine
	Turpentine substitute
	Vinylbenzene, inhibited
	Vinylidene chloride, inhibited
••••••	VinyItoluenes, inhibited mixed
	isomers
	warrann (and saits of )
•••••••••••••••••••••••••••••••••••••••	WITH BISENC

S.M.P.	Marine Pollutant
(1) . PP	(2) White phosphorus, dry
PP	White phosphorus, molten
PP	White phosphorus, wet
······	White spirit, low (15-20%) ar- omatic Xytenols
PP	Yellow phosphorus, dry
PP	Yellow phosphorus, molten
PP	Yellow phosphorus, wet
	Zinc bromide
••••••	Zinc cyanide

11. In § 172.102, paragraph (c)(5), special provision "N50" is added in appropriate alpha-numerical order:

#### § 172.102 Special provisions.

- (c) \* \* \*
- (5) \* \* \*

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

#### § 172.200 [Amended]

12. In § 172.200, in the introductory text of paragraph (b), the phrase "hazardous waste or a hazardous substance," is removed and replaced with the phrase "hazardous substance, hazardous waste or marine pollutant,".

#### § 172.202 [Amended]

13. In § 172.202, paragraph (d) is amended by removing the phrase "may be used." and replacing it with the phrase "and/or the percentage of the technical constituent may also be used."

#### § 172.203 [Amended]

14. In § 172.203, paragraph (c)(1)(i) is amended by removing the words "the appendix" and replacing them with the phrase "Appendix A".

15. In § 172.203, paragraph (l) is added to read as follows:

# § 172.203 Additional description requirements.

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

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

16. Section 172.322 is added to read as follows:

#### § 172.322 Marine pollutants.

\* \*

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

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

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

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

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

(d) The MARINE POLLUTANT mark is not required—

(1) On a combination package containing a severe marine pollutant (see appendix B to § 172.101), in inner packagings each of which contains: (i) 0.5 liters (17 ounces) or less net capacity for liquids; or

(ii) 500 grams (17.6 ounces) or less net capacity for solids.

(2) On a combination packaging containing a marine pollutant, other than a severe marine pollutant, in inner packagings each of which contains: (i) 5 liters (1 gallon) or less net capacity for liquids; or

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

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

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

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



(2) The symbol, letters and border must be black and the background white, or the symbol, letters, border and background must be of contrasting color to the surface to which the mark is being affixed. For non-bulk packagings of marine pollutants, each side of the mark must be at least 100 mm (3.9 inches), except in the case of packagings which, because of their size, can only bear smaller marks. For bulk packagings, each side of the mark must be at least 250 mm (9.8 inches).

#### § 172.324 [Amended]

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

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

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

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

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

 $\S~173.12$  Exceptions for shipments of waste materials.

• • • . (d) \* \* •

(3) Packagings containing marine pollutants must be described as required in § 172.203(1) of this subchapter and marked as required in § 172.322 of this subchapter.

#### § 173.29 [Amended]

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

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

§ 173.140 Class 9—Definitions.

\* \* \*

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

§ 173.150 [Amended]

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

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

## § 173.151 [Amended]

23. In § 173.151, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

## § 173.152 [Amended]

24. In § 173.152, paragraph (c) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

## § 173.153 [Amended]

25. In § 173.153, paragraph (c)(3) is amended by removing the phrase "hazardous substance or hazardous waste" and replacing it with the phrase "hazardous substance, a hazardous waste, or a marine pollutant".

## § 173.154 [Amended]

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

## § 173.155 [Amended]

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

#### § 173.421-2 [Amended]

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

29. In § 173.425, paragraph (b)(8) is amended by adding the following sentence to the end of the existing regulatory text:

\*

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

\* \*

(b) \* \* \*

(8) \* \* \* For vessel transportation, packages that contain a marine pollutant must be marked in accordance with § 172.322 of this subchapter.

## PART 174-CARRIAGE BY RAIL

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

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

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

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

\*

(b) \* \* \*

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

#### PART 176—CARRIAGE BY VESSEL

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

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

33. Section 176.70 is added to read as follows:

# § 176.70 Stowage requirements for marine pollutants.

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

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

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

Issued in Washington, DC on October 27, 1992 under authority delegated in 49 CFR part 1.

## Douglas B. Ham.

Acting Administrator, Research and Special Programs Administration.

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