

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 172**

[Docket No. HM-171D; Amendment No. 172-105]

Transportation of Hazardous Materials; IMO Proper Shipping Names**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Emergency final rule.

SUMMARY: This action is being taken to authorize, under approval procedures, the use of current International Maritime Organization (IMO) shipping names which have not as yet been incorporated into the Optional Hazardous Materials Table at 49 CFR 172.102. This action is necessary to allow export and import shipments of hazardous materials to move in commerce in compliance with IMO requirements for shipping names. The intended effect of this action is to facilitate international trade in chemicals by allowing international shipments to move in compliance with the latest amendments of the International Maritime Dangerous Goods Code (IMDG Code).

EFFECTIVE DATE: This amendment is effective July 15, 1986.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Regulations Development Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: Section 172.102 of the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-179) contains the Optional Hazardous Materials Table. The origin of this table is the International Maritime Dangerous Goods Code (IMDG Code) of the International Maritime Organization (IMO). The table contains entries for proper shipping names, hazard classes, identification numbers, labels, packing groups, and vessel stowage requirements. The HMR allow shippers of international shipments which are transported by vessel to use the entries in the § 172.102 Table to describe and label their shipments where the description (proper shipping name, I.D. number, label or hazard class) in the § 172.101 Table differs from the IMO description.

The § 172.102 Table has not been kept current with changes in the IMDG Code. IMO Amendment 22-84 became effective on July 1, 1986. Neither Amendment 22-84 nor the previous Amendment, 21-83, has been entered in the § 172.102 Table. Together these two amendments contain about 200 changes or additions to the IMO list which are not reflected in the current § 172.102 Table. Export shipments which are dispatched using descriptions in the Optional Table may not be in compliance with the IMDG Code. The effect of this non-compliance could be that the shipment would be frustrated by authorities en route to destination.

In order to remedy this situation, RSPA today is issuing an emergency final rule which will amend § 172.102 to allow the Director of the Office of Hazardous Materials Transportation to issue an approval of a hazardous material description (on an interim basis) which is not in the Optional Hazardous Material Table but which is in a current edition of the IMDG Code, to be used as if it were in the Optional Table.

This regulation is a rule of agency procedure. Its effect is not to alter the rights or interest of parties, but simply to permit affected parties to seek approval from the Director of the Office of Hazardous Materials Transportation to use a shipping description listed in the IMDG Code but not listed in the Optional Table. Without this procedural change, a party wishing to do so would have to use a more cumbersome and time-consuming exemption procedure. As a procedural rule, this regulation is exempted from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b) (A)).

This final rule is made effective immediately upon issuance, rather than the typical 30 days following publication. The Administrative Procedure Act permits issuance of an immediately effective final rule for "good cause" (5 U.S.C. 553(d) (3)). This regulation is made effective immediately because amendments to the IMDG effective July 1 create approximately 200 shipping descriptions not listed in the Optional Table. Until such time as the Hazardous Materials Regulations are amended, it is essential to have an expeditious administrative means of harmonizing the two sets of requirements. Requiring affected parties to go through the existing exemption process would slow commerce and place an unreasonable economic burden on the parties. For example, RSPA is

aware of currently pending shipments of materials that could be seriously delayed in the absence of this rule's procedural mechanism. Consequently, RSPA has determined that good cause exists for making the rule effective immediately upon issuance.

Based on the information available, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) will not affect not-for-profit enterprises or small government jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is not necessary due to the minimal impact of this action.

The following terms from the Federal Register Thesaurus of Indexing Terms apply to this emergency final rule.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Shipping papers marking, Labeling and packaging.

In consideration of the foregoing, 49 CFR Part 172 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806, 1808; 49 CFR Part 1.

2. In § 172.102 paragraph (a)(1) is added to read as follows:

§ 172.102 Purpose and use of Optional Hazardous Materials Table for international shipments.

(a) * * *

(1) A shipping description and any associated entry which is listed in the current edition of the IMDG Code but is not listed in the Optional Table may be used as if it was listed in the Optional Table, if approved by the Director, OHMT.

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Issued in Washington, DC on July 11, 1986.

M. Cynthia Douglass,
Administrator, Research and Special Programs Administration.

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