Appeals), shall be served on the contracting officer ——* and the ——**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within 1 day of filing a protest with the GAO. (End of Provision).

**Insert the address of contracting office or refer to the number of the block on the standard Form 33 or 1442, etc., where the address of the contracting office is identified.*

***Insert the full title and address of the appropriate VA Central Office activity designated in 833.102.*

33. In 852.236-88, the introductory paragraph, introductory paragraph (a) and the title to the clause in paragraph (a), and paragraph (b) and paragraph (a) of the clause in paragraph (b) are revised to read as follows:

852.236-88 Contract changes.

The clauses, entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 will be supplemented with the following two clauses. Both clauses shall be included in the contract.The clause in paragraph (a) of this section will apply to negotiated changes exceeding $500,000 and does not provide ceiling rates for indirect expenses. Such expenses will be included as part of the submission of certified cost and pricing data, will be negotiated by the contracting officer and will be audited in accordance with 815.505-5. When the negotiated change will be less than $500,000 the clause specified in paragraph (b) of this section will apply. Proposals over $100,000 and not exceeding $500,000 shall be accompanied by certificates of current cost or pricing data. If cost and pricing data are required for proposals of $100,000 or less, the contracting officer may require that it be certified in accordance with FAR 15.804-2(a)(2). It must be emphasized that the indirect cost rates are ceiling rates only, and the contracting officer will negotiate the indirect expense rates within the ceiling limitations.

(a) Applicable to changes costing over $500,000:

Changes—Supplement (for changes costing over $500,000 (July 1985)

* * * * *

(b) Applicable to changes costing $500,000 or less:

Changes—Supplement (for changes costing $500,000 or less) (July 1985)

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an intemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR 15.804 for proposals over $100,000, the cost of pricing data shall be submitted on SF 1411, Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804-6. No itemized breakdown will be required for proposals amounting to less than $1,000.

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[FR Doc. 86-14334 Filed 6-86; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM-188B, Admt. No. 171-87]

Transportation of Hazardous Materials Between the United States and Canada; Response to Petition for Reconsideration

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; Response to petition for reconsideration.

SUMMARY: The Research and Special Programs Administration (RSPA) recently published amendments to the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials between the United States and Canada, with certain conditions and limitations, in accordance with the recently published Canadian Transport of Dangerous Goods Regulations (TDG Regulations). This final rule promulgates a change to those amendments in response to a petition for reconsideration submitted by Air Products and Chemicals, Inc.

EFFECTIVE DATE: July 1, 1986. However, compliance with the amendments published herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Marilyn Morris, Regulations Development Branch, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426-2075.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the RSPA published a final rule in the **Federal Register** under Docket No. HM-188B (50 FR 41516) which permitted, with some conditions and limitations, the transport of hazardous materials between Canada and the United States in conformance with the TDG Regulations recently published by Transport Canada. The amendments to the HMR published in that final rule imposed no requirements on persons offering or transporting hazardous materials and were intended only to grant relief to such persons and to facilitate the transport of hazardous materials between Canada and the United States by allowing, under certain conditions, hazardous materials to be transported within the United States in conformance with the TDG Regulations.

On November 12, 1985, the RSPA received a petition for reconsideration of this final rule filed in accordance with the provisions of 49 CFR 106.35. The petitioner, Air Products and Chemicals, Inc. (APCI), contends that the RSPA's failure to fully recognize the TDG Regulations for certain hazardous materials moving within the United States en route to Canada constitutes an unnecessary burden on United States shippers and requested that the final rule be amended to grant "full reciprocity" to the TDG Regulations by permitting compliance with the TDG Regulations in lieu of the provisions of the HMR for the shipment to Canada of hazardous materials classed in Divisions 2.3 and 2.4 (i.e. poison gases and corrosive gases, respectively) of the TDG Regulations. On December 27, 1985, the RSPA published a notice in the **Federal Register** (50 FR 52925) which requested comments on this petition for reconsideration.

A total of eight comments were received in response to the request for comment on the APCI petition. All of the commenters but one supported the APCI petition for essentially the same reasons stated in the petition.

The majority of the commenters supporting the APCI petition joined APCI in criticizing the RSPA for failing to grant "full reciprocity" to the TDG Regulations in promulgation of the final rule under this docket. The RSPA believes that comments in response to these criticisms are warranted. Webster's Dictionary defines "reciprocity" as follows: "a recognition by one of two countries or institutions of the validity of licenses or privileges issued by the other". This has been RSPA's understanding of the meaning of the word "reciprocity" and this definition is consistent with the

relationship between Canadian and United States hazardous materials transport regulations that existed prior to the implementation of the TDG Regulations. Under this relationship, very simply, the United States recognized the Canadian regulations and Canada recognized the United States regulations.

The RSPA wishes to emphasize that, in the case of materials classed in Divisions 2.3 and 2.4 of the TDG Regulations, the final rule published under this docket *did* grant full reciprocity to the TDG Regulations, and in fact went beyond granting full reciprocity. These amendments permitted certain northbound shipments to be labeled and placarded in accordance with the TDG Regulations thereby minimizing difficulties that would have been encountered as a result of the need to change labels and placards at the border in order to bring shipments into compliance with the TDG Regulations before entering Canada. The problems cited by APCI in their petition are, therefore, not in the view of the RSPA due to a failure of the United States to grant reciprocal recognition of the Canada regulations, but rather are due to the fact that Transport Canada did not grant full recognition to the United States regulations for all shipments moving into Canada. In this regard it could be argued that the APCI petition should more appropriately have been filed with Transport Canada rather than with the RSPA. In any event, for the foregoing reasons, the RSPA does not accept the arguments forwarded by many of the commenters that the RSPA had failed to grant "full reciprocity" with the TDG Regulations as the basis for taking any positive action on the APCI petition.

While the RSPA accepts the APCI's argument that some burden is placed on a shipper when differences in regulations require additional shipping paper descriptions and additional package markings, the RSPA also agrees with many of the points raised by the Association of American Railroads (AAR) in their comments in opposition to the APCI request. In particular, the AAR notes that granting the APCI petition would make it impossible, or certainly very difficult, for the originating rail carrier to carry out an acceptance check of the cargo since the proper shipping name appearing on the shipping paper would not appear in the Hazardous Materials Table (49 CFR 172.101). Furthermore, the RSPA believes that the situation would be made even more complicated for the originating carrier in the United States if the hazard class shown on the shipping paper did not even exist in the classification system used in the HMR (e.g. Division 2.4—corrosive gas).

With regard to shipping paper entries, the APCI petition, and many of the comments received, suggest that the TDG Regulations provide no recognition whatsoever of the shipping paper required by the HMR for gases classed in Division 2.3 or 2.4 by the TDG Regulations. This is untrue. Part IV, paragraph 4.2 of the TDG Regulations in fact fully recognizes the shipping paper required by the HMR for a gas classed in Division 2.3 or 2.4 by the TDG Regulations provided that the shipping paper also contains the proper shipping name and hazard class prescribed for the gas in the TDG Regulations. While the RSPA acknowledges the need to provide such additional information on the shipping paper, this additional requirement of the TDG Regulations can hardly be considered to impose an unwarranted burden on the shipper. Furthermore, in light of the comments submitted by the AAR, the RSPA believes that retention of the DOT proper shipping name and hazard class is necessary in order for the originating carrier to fulfill his responsibilities in accepting the cargo. For these reasons, the RSPA has decided to make no change to the regulations concerning shipping papers in response to the APCI petition.

Concerning the marking of packagings, the RSPA agrees with the statements in the APCI petition that the application of dual markings, or the need to change markings at the border, does impose an unwarranted burden on shippers. This is particularly true for large transport units such as portable tanks, cargo tanks and tank cars. It was for similar reasons that the RSPA decided in the publication of the final rule to allow gases classed in divisions 2.3 or 2.4 of the TDG Regulations to be placarded and labeled with the Canadian placards and labels from their point of origin in the United States when they are being transported into Canada. The RSPA believes that an authorization to mark packagings with the proper shipping name and identification number required by the TDG Regulations from point of origin in the United States would neither compromise safety nor result in confusion for the originating carrier provided that the shipping paper contains an indication that the markings have been applied for the purposes of transport to Canada. The final rule previously published provided that such a statement be included on the shipping paper when the Canadian corrosive and poison gas labels and placards were applied at point of origin in the United States and the RSPA notes that none of the comments submitted took issue with that provision.

The RSPA believes that authorizing use of the required Canadian marking from point of origin in the United States would not compromise safety because the DOT Emergency Response Guide (ERG) already includes the proper shipping names and identification numbers for these gases and would enable appropriate emergency response actions to be initiated based on package markings. Although the shipping paper would contain both the DOT and Canadian proper shipping names and identification numbers, the Canadian information will be clearly identified as being included for the purposes of shipment to Canada which should alleviate any possible confusion on the part of emergency responders. Furthermore, the RSPA believes that even if the Canadian information on the shipping paper is used to initiate response actions, the format and content of the ERG will ensure that the recommended response actions will be no less appropriate than those that would be recommended if the DOT proper shipping name and identification number are used in accessing information in the ERG.

With regard to the issues raised by the AAR in their comments, the RSPA is of the opinion that the authorization to use the Canadian proper shipping name and identification number in package markings will not preclude the originating carrier from performing an acceptance check of the cargo. As long as the shipping paper includes both the basic description required by the DOT regulations and the proper shipping name and hazard class as required in the TDG Regulations, the carrier will still be able to verify the correctness of the packaging, marking, labeling and placarding of the shipment.

For the foregoing reasons, the RSPA has accepted the suggestions regarding the marking of packagings in the APCI petition, and is amending § 171.12a(c) to allow the transport of packagings marked with the proper shipping name and identification number required by the TDG Regulations from their point of origin in the United States into Canada provided that the shipping paper contains an indication that these markings have been applied for the purpose of transport to Canada.

Administrative Notices

A. Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). The original regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and number of entities likely to be affected, I certify that this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Imports, Incorporation by reference.

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

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

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

2. Paragraph (c) of § 171.12a is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(c) Notwithstanding the requirements of Part 172 of this subchapter, a hazardous material included in Division 3 or 4 of Class 2 of the TDG Regulations may be transported from its point of origin in the United States to Canada, or through the United States en route to a point in Canada, if—

(1) The package is marked with the proper shipping name and identification number, and the freight container is marked, when appropriate, with the identification number, as required by the TDG Regulations;

(2) The package is labeled, and the freight container, motor vehicle or rail car is placarded, as required by the TDG Regulations; and,

(3) The shipping paper contains an indication that these markings, labels and placards have been applied in conformance with this paragraph for the purpose of transport to Canada.

* * * * *

Issued in Washington, DC on June 17, 1986 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-14277 Filed 6-24-86; 8:45 am]

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49 CFR Parts 171, 172 and 174

[Docket No. HM-180, Amdt. Nos. 171-88 172-104 and 174-60]

Placarding of Tank Cars Which Contain Hazardous Material Residue; Disposition of Petitions for Reconsideration

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

ACTION: Final rule; disposition of petitions for reconsideration.

SUMMARY: This final rule amends the Department's Hazardous Materials Regulations (HMR) by changing the definition of "residue" which was promulgated in a final rule under Docket HM-180 on September 26, 1985 [50 FR 39005]. Other changes are also being made to the final rule of HM-180 and the HMR for clarification and to promote compliance. The amendments contained in this rule serve as RSPA's response to eight petitions for reconsideration which were filed as a result of the HM-180 final rule.

EFFECTIVE DATE: October 1, 1986. However, compliance with the regulations as amended herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Standards Division, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 755-4990.

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 1986, RSPA published a notice of proposed rulemaking pertaining to disposition of petitions for reconsideration [51 FR 9079]. This notice was prepared in response to eight petitions for reconsideration which were filed as a result of a final rule issued under Docket HM-180 that was published on September 26, 1985 [50 FR 39005]. That final rule amended by the HMR by changing the placarding and shipping paper requirements for "empty" tank cars which contain residues of hazardous materials. Under the final rule of Docket HM-180, a quantitative definition of what constitutes a residue was adopted. Further, the applicable regulations in Parts 172 and 174 were also revised to reflect other amendments which were made in that final rule.

In the March 17, 1986 notice, RSPA proposed to redefine "residue" by restricting the applicability of the definition to liquids and expanding the quantitative limitation from 3% to 4% with a measurement tolerance of plus or minus one percent. RSPA believed that by raising the percentage of residue which may remain in a tank car and providing a tolerance of plus or minus one percent, shippers should have less difficulty in complying with the rule. RSPA also believed that adopting a quantitative limitation was important in order to make the rule effective. RSPA invited the public to submit comments concerning the expanded "residue" definition. RSPA requested that comments, as a minimum, address the maximum amount of residue which can safely remain in a tank car placarded with the RESIDUE placard.

In addition to requesting comments regarding the definition of "residue", RSPA stated in the notice that some of the comments received from the petitioners pointed out how inconsistent it was to require tank cars which contain combustible liquid residue to remain placarded as full loads. Currently, tank cars which contain residue of hazardous material must display the appropriate RESIDUE placards unless (1) the tank car contains the residue of a combustible liquid, or (2) the tank car is reloaded with a non-hazardous material, or (3) the tank car is sufficiently cleaned of residue and purged of vapor to remove any potential hazard. Tank cars which contain residue of a combustible liquid must continue to display COMBUSTIBLE placards. In view of the comments received by the petitioners and to promote consistency in the regulations, RSPA proposed in the notice to require the use of RESIDUE placards on those tank cars which contain combustible liquid residue. RSPA also proposed to amend § 174.93 so that tank cars containing combustible liquid residue would be excepted from the train placement requirements.

RSPA proposed to revise paragraph (c) of § 172.334 to prohibit the display of identification numbers on subsidiary placards such as the POISON placard required by § 172.505. Commenters were also asked to address the placarding requirements for tank cars that carry residues of hazardous materials which meet the criteria specified in the new