

pounds per inside container is inconsistent with the 1-pound limitation per inside container for wooden boxes; (3) details of the service experience, i.e., one 10-pound bag per box or five 10-pound bags per box, are unknown. With respect to the first comment, the Board considers it unlikely that the difference between the two types would be significant. With respect to the second comment, the authorized capacity of the polyethylene bag is based on satisfactory experience gained under special permit conditions. It may be that, consistent with this amendment, a larger capacity would be warranted for inside containers when wooden boxes are used. However, this is beyond the scope of this rule making action. With respect to the third point, the service experience under special permit has been satisfactory, as previously mentioned. The number of inside bags could vary depending on the size of the bags used, up to the maximum of 10 pounds, and subject to the overall limits of 65 pounds.

In the notice, the Board proposed to amend paragraph (a) (3) of § 173.157. However, it has been decided to add this authorization as a separate paragraph, both for the sake of simplicity and to make it clear that the authorized gross weight is 65 pounds. This is the weight that was authorized in the special permit under which the experience was gained justifying the change and there was no intention to authorize the higher weight specified in paragraph (a) (3).

In consideration of the foregoing, 49 CFR Part 173 is amended effective December 30, 1969, by adding a new paragraph (a) (5) to § 173.157 to read as follows:

§ 173.157 Benzoyl peroxide, chlorobenzoyl peroxide (para), cyclohexanone peroxide, dimethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide; wet.

(a) \* \* \*

(5) Specification 12B (§ 178.205). Fiberboard boxes having inside polyethylene bags constructed of material having minimum thickness of 0.004 inch. The capacity of each bag must not exceed 10 pounds. Each bag must be surrounded by asbestos, or other fire-resistant cushioning material which will protect the contents with equal efficiency. Gross weight must not exceed 65 pounds. Authorized only for benzoyl peroxide.

(Sec. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

Issued in Washington, D.C., on November 17, 1969.

SAM SCHNEIDER,  
Board Member, for the Federal  
Aviation Administration.

F. C. TURNER,  
Federal Highway Administrator.

CARL V. LYON,  
Acting Administrator,  
Federal Railroad Administration.

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[Docket No. HM-4, Amdt. 174-5, 175-3, 177-9]

**PART 174—CARRIERS BY RAIL  
FREIGHT**

**PART 175—CARRIERS BY RAIL  
EXPRESS**

**PART 177—SHIPMENTS MADE BY  
WAY OF COMMON, CONTRACT,  
OR PRIVATE CARRIERS BY PUBLIC  
HIGHWAY**

**Miscellaneous Restrictions Against  
Loading and Transporting Poisons  
(Class A or B) With Foodstuffs**

The purpose of these amendments to the Hazardous Materials Regulations is to modify certain restrictions on the loading and transporting of poisons (class A or B) with foodstuffs, feed, or other material intended for consumption by humans or animals.

On May 8, 1969, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-4; Notice No. 69-12 (34 F.R. 7456) proposing to modify the existing restrictions against commingling poisons and foodstuffs during shipment. The comments in response to the notice for the most part supported the proposed changes. Several comments raised questions that indicated that the intent of both the present and proposed requirements could be further clarified. One commenter raised numerous objections to both the present and proposed restrictions, most of which had been previously submitted to, and considered by, the Board. The most significant comments and changes to the regulations are as follows:

One commenter indicated that there was still some confusion as to the intent of the words "foodstuffs, feeds, or any other material intended for consumption by humans or animals". This commenter questioned whether these words could be interpreted to cover any materials that normally might come in contact with the human body or did they exclude " \* \* \* clothing, cosmetics, and other consumer items capable of transmitting poisons." as indicated in an advance notice of proposed rule making published by the Director of the Office of Hazardous Materials on May 9, 1969 (34 F.R. 7545). The intent of these words is to cover edibles and the language of the regulation has been clarified in this regard. The Board recognizes that there are many items such as clothing that could become a hazard to human life if contaminated by certain poisons. However, these items were not included in the original amendment adopted in December of 1967 or in the proposal upon which this amendment is based. The need for further rule making in this regard is still being considered based on the response to the aforementioned advance notice of proposed rule making.

Two commenters suggested that the Board require foodstuffs to be marked as such. The Board recognizes that the marking of foodstuffs would greatly enhance both the problems of compliance and the safety benefits resulting from the subject regulation. However, the

Hazardous Materials Regulations Board has no jurisdiction directly over the transportation of foodstuffs. Similarly, the Board does not have the authority, as suggested by one commenter, to prescribe requirements for the safe disposal of the poisonous products resulting from any decontamination.

One commenter suggested that with respect to the car cleaning requirements it would be helpful if acceptable contamination levels could be prescribed. The Department of Health, Education, and Welfare (Public Health Service and Food and Drug Administration) is presently working actively in this field and the Board intends to make use in future regulatory changes of any significant information developed from these studies.

Two commenters suggested that foodstuffs and poisons could be shipped in the same vehicle provided they are separated by airtight and nonpermeable partitions. Such a provision would appear to have all of the inherent problems and confusion that arose from the use of the terms "airtight" and "nonpermeable" in the original amendment. For rail cars and highway vehicles, the Board believes that it is not too much of a burden, considering the potential dangers, to make the prohibition against commingling apply to each car.

One commenter suggested that the inspection of aircraft cargo compartments should only be carried out if a package has been found to be leaking or damaged. The Board has been concerned, however, with the number of instances of contamination of other goods by poisons when it was not immediately known that a package had leaked. By the time the package leakage was noticed; the other freight had been transhipped in many different directions. Therefore, the Board does not consider it appropriate to limit the inspection requirement to cases of known leakage.

One commenter protested the application of the prohibition against mingling to all classes A and B poisons. This commenter indicated that the Board should single out and limit the restriction only to the most dangerous items, such as parathion and other organic phosphates. The Board does not agree. While there is necessarily a difference in the degree of hazard among classes A and B poisons, the Board believes that the leakage of any class A or B poison on edible foodstuffs is so potentially hazardous that no effort should be made at this time to determine "safe" class A or B poisons insofar as shipments with foodstuffs are concerned. This commenter also suggested that the restriction should be imposed only on liquid poisons and not on solid poisons. The Board believes that the restriction should be total regardless of state of the poisonous material. Many food products are shipped in packaging that could be penetrated by dry materials, or which could retain deposits of dry material in or near discharge openings.

One commenter pointed out an inconsistency existing in the present regulations that results from the present exemptions for small quantities of class B poisons when transported by highway.

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The Board recognizes that there is no justification for permitting a small quantity of a class B poison in a motor vehicle carrying foodstuffs while the same quantity of class B poison would be barred from a railroad car carrying foodstuffs. The Board is presently reconsidering in toto the authorized small quantity exemptions and intends to include this item for consideration in that study.

One commenter suggested that the rule could be averted by shippers who fail to mark the edible nature of the contents on the package and by originating carriers who fail to carry forward the "poison" notation on the interchange forms. The Board recognizes that these restrictions are not foolproof and that the effectiveness of its regulation is directly related to the ease of identifying foodstuffs. However, as indicated above, solution of this problem is to some extent outside the scope of the Board's authority. This rule, as is any rule, is effective only if complied with. That persons may render regulations ineffective by ignoring them is not valid reason against regulating.

One commenter stated that both the present rule and the proposed changes would disrupt the marketing and distribution of class B poisons by grocery warehouses that reship along with edibles. This commenter made this same point earlier with respect to the Board's first action in this regard in December 1967. The present regulation has been in effect now for over 18 months and the Board has received no evidence that commerce of any kind has been adversely affected thereby to any significant degree. Nor has the Board received any specific evidence that this amendment will have such an effect. Therefore, the Board must conclude that neither the present rule nor the changes adopted herein will adversely affect the grocery industry in the United States.

In consideration of the foregoing, 49 CFR Parts 174, 175, and 177, are amended as follows:

**I. Part 174 is amended as follows:**

(A) In § 174.532 paragraph (m) is amended to read as follows:

**§ 174.532 Loading other dangerous articles.**

(m) Material marked as or known to be poison (class A or B) must not be transported in the same car with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(B) In § 174.566 paragraph (a) (1) is amended to read as follows:

**§ 174.566 Cleaning cars.**

(a) \* \* \*

(1) A car which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination before reuse. A car which has been contaminated must not be returned to service until such contamination has been removed. This subparagraph does not apply to cars used solely for transporting such poisons so long as they are used in that service.

**II. Part 175 is amended as follows:**

(A) In § 175.655 paragraph (k) and (l) are amended to read as follows:

**§ 175.655 Protection of packages.**

(k) Material marked as or known to be poison (class A or B) must not be transported in the same car with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(l) A car which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination and must not be returned to service until such contamination has been removed.

**III. Part 177 is amended as follows:**

(A) In § 177.841 paragraph (e) is amended to read as follows:

**§ 177.841 Poisons.**

(e) Material marked as or known to be poison (class A or B) must not be transported in the same vehicle with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(B) In § 177.860 paragraph (a) (1) is amended to read as follows:

**§ 177.860 Accidents or leakage; poisons.**

(a) \* \* \*

(1) *Leakage.* A vehicle which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination before reuse. A vehicle which has been contaminated must not be returned to service until such contamination has been removed. This subparagraph does not apply to vehicles used solely for transporting such poisons so long as they are used in that service.

These amendments are effective December 30, 1969.

(Secs. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

Issued in Washington, D.C., on November 17, 1969.

SAM SCHNEIDER,  
Board Member, for the  
Federal Aviation Administration.

F. C. TURNER,  
Federal Highway Administrator.

R. N. WHITMAN,  
Administrator,  
Federal Railroad Administration.

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[Docket No. HM-25; Amdt. 178-8]

**PART 178—SHIPPING CONTAINER SPECIFICATIONS**

**Special Composite Package for Electrolyte (Acid) or Alkaline Corrosive Battery Fluid**

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to au-

thorize a new type of composite package comprised of a specification 12B fiberboard box and an inside plastic bag for electrolyte acid or alkaline corrosive battery fluid.

On May 28, 1969, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-25; Notice No. 69-15 (34 F.R. 8245) which proposed an amendment of 49 CFR 178.205-37 (Specification 12B fiberboard box) to specify packaging requirements for electrolyte (acid) or alkaline corrosive battery fluid consistent with the terms of special permits in existence for several years.

Interested persons were afforded an opportunity to participate in this rule making. Of the comments received, no objections were taken to the basic proposal. One commenter took exception to the requirement of a top and bottom pad for regular slotted style boxes having capacities of 6 quarts or less on the premise that the special permit issued to him by the Department contained no such requirements. The commenter stated that many millions of units of 6 quarts capacity or less have been shipped without pads and with good experience. Reports of shipping experience under the provisions of this permit have been reviewed and the Board has determined that the experience has been satisfactory. In view of this and in view of the requirement specifying fiberboard having strength greater than that prescribed for general application in § 178.205-16, the Board is withdrawing the requirement for top and bottom pads in regular slotted style boxes having capacities of 6 quarts or less.

Another commenter expressed concern over what material would be considered equivalent to fiberboard pads having at least 200 pound test and thus meet the equivalency proviso set forth in proposed § 178.205-37(b) (1) and (2). It was the Board's intent to allow the use of pads made not only of fiberboard but also of other material such as chipboard having the same protective capability as fiberboard. The proposal was vague in this respect and has been clarified in the amendment.

In consideration of the foregoing, 49 CFR Part 178 is amended as follows:

In § 178.205-37 paragraphs (a), (b), (c) (1) and (2) are amended to read as follows:

**§ 178.205 Specification 12B; fiberboard boxes.**

**§ 178.205-37 Special box; authorized polyethylene or other suitable plastic bags for packaging of electrolyte (acid) or alkaline corrosive battery fluid only.**

(a) Box must comply with this specification except as follows: Box must be one-piece construction of slotted style and may have die-cut areas of minimum size to provide access to an inside closure part. Box must have two polyethylene or other suitable plastic bags, one within the other, and a closure adequate to prevent leakage under conditions incident to transportation. Each bag must be formed from tubing of virgin plastic material not