

## SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

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

- Sec.
- 171.1 Purpose and scope.
  - 171.2 General requirements.
  - 171.3 Hazardous waste.
  - 171.4 Marine pollutants.
  - 171.6 Control numbers under the Paperwork Reduction Act.
  - 171.7 Reference material.
  - 171.8 Definitions and abbreviations.
  - 171.9 Rules of construction.
  - 171.10 Units of measure.
  - 171.11 Use of ICAO Technical Instructions.
  - 171.12 Import and export shipments.
  - 171.12a Canadian shipments and packagings.
  - 171.14 Transitional provisions for implementing certain requirements.
  - 171.15 Immediate notice of certain hazardous materials incidents.
  - 171.16 Detailed hazardous materials incident reports.
  - 171.17–171.18 [Reserved]
  - 171.19 Approvals or authorizations issued by the Bureau of Explosives.
  - 171.20 Submission of Examination Reports.
  - 171.21 Assistance in investigations and special studies.

AUTHORITY: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

#### § 171.1 Purpose and scope.

(a) This subchapter prescribes requirements of the Department governing—

(1) The offering of hazardous materials for transportation and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, motor vehicle, and vessel (except as delegated at § 1.46(t) of this title).

(2) The representation that a hazardous material is present in a package, container, rail car, aircraft, motor vehicle, or vessel.

(3) The manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold for use in transportation of hazardous materials.

(4) The use of terms and symbols prescribed in this subchapter for the

marking, labeling, placarding and description of hazardous materials and packagings used in their transport.

(b) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of a hazardous material shall be subject to and comply with all provisions of the Federal hazardous materials transportation law, all orders and regulations issued thereunder, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Federal hazardous materials transportation law or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

(c) Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than \$32,500 and not less than \$275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are \$27,500 and \$250, respectively.) When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States

## § 171.1

## 49 CFR Ch. I (10–1–04 Edition)

Code, or imprisoned for not more than 5 years, or both.

[Amdt. 171–150, 62 FR 1215, Jan. 8, 1997, as amended by Amdt. 171–152, 62 FR 2977, Jan. 21, 1997; Amdt. 171–154, 62 FR 49566, Sept. 22, 1997; 65 FR 58618, Sept. 29, 2000; 66 FR 45378, Aug. 28, 2001; 68 FR 52856, Sept. 8, 2003]

EFFECTIVE DATE NOTE: At 68 FR 61937, Oct. 30, 2003, §171.1 was revised, effective Oct. 1, 2004. At 69 FR 30588, May 28, 2004, the effective date was delayed until Jan. 1, 2005. For the convenience of the user, the revised text is set forth as follows:

### § 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

Federal hazardous material transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who perform pre-transportation functions that relate to assuring the safe transportation of hazardous materials in commerce, specifically persons who offer for transportation or otherwise cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain packagings or components of packagings that are represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to anyone who indicates by marking or other means that a hazardous material is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials or a required marking, label, placard, or shipping description. In 49 CFR 1.53, the Secretary delegated authority to issue regulations to the Research and Special Programs Administrator. The Administrator issues the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) under that delegated authority. This section addresses the applicability of the HMR to packagings represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

(a) *Packagings.* Requirements in the HMR apply to each person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in

commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce.

(b) *Pre-transportation functions.* Requirements in the HMR apply to each person who offers a hazardous material for transportation in commerce, causes a hazardous material to be transported in commerce, or transports a hazardous material in commerce and who performs or is responsible for performing a pre-transportation function, including each person performing pre-transportation functions under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government. Pre-transportation functions include, but are not limited to, the following:

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous materials packaging, including a bulk packaging.
- (4) Transloading a hazardous material at an intermodal transfer facility from one bulk packaging to another bulk packaging for purposes of continuing the movement of the hazardous material in commerce.
- (5) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.
- (6) Marking a package to indicate that it contains a hazardous material.
- (7) Labeling a package to indicate that it contains a hazardous material.
- (8) Preparing a shipping paper.
- (9) Providing and maintaining emergency response information.
- (10) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.
- (11) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.
- (12) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.
- (13) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.
- (14) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.

(15) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

(c) *Transportation functions.* Requirements in the HMR apply to transportation of a hazardous material in commerce and to each person who transports a hazardous material in commerce, including each person under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government who transports a hazardous material in commerce. Transportation in commerce begins when a carrier takes possession of a hazardous material for the purpose of transporting it and continues until the package containing the hazardous material arrives at the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, until the car arrives at a private track or siding. For a private motor carrier, transportation in commerce begins when a motor vehicle driver takes possession of a hazardous material for the purpose of transporting it and continues until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Transportation in commerce includes the following:

(1) *Movement.* Movement of a hazardous material by rail car, aircraft, motor vehicle, or vessel (except as delegated at §1.46(t) of this title).

(2) *Loading incidental to movement of a hazardous material.* Loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it, including blocking and bracing a hazardous materials package in a freight container or transport vehicle, and segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo, when performed by carrier personnel or in the presence of carrier personnel. For a bulk packaging, loading incidental to movement is filling the packaging with a hazardous material for the purpose of transporting it when performed by carrier personnel or in the presence of carrier personnel (except as delegated at §1.46(t) of this title), including transloading.

(3) *Unloading incidental to movement of a hazardous material.* Removing a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel, or, for a bulk packaging, emptying a hazardous material from the bulk packaging after the hazardous material has been delivered to the consignee and prior to the delivering carrier's departure from the consignee's facility or premises or, in the case of a private motor carrier, while the driver of the motor vehicle from which the hazardous material is being

unloaded immediately after movement is completed is present during the unloading operation. (Emptying a hazardous material from a bulk packaging while the packaging is on board a vessel is subject to separate regulations as delegated at §1.46(t) of this title.)

(4) *Storage incidental to movement of a hazardous material.* Storage of a transport vehicle, freight container, or package containing a hazardous material by any person between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR with respect to that particular package. Storage incidental to movement includes rail cars containing hazardous materials that are stored on track that does not meet the definition of "private track or siding" in §171.8 of this subchapter, even if those cars have been delivered to the destination shown on the shipping document.

(d) *Functions not subject to the requirements of the HMR.* The following are examples of activities to which the HMR do not apply:

(1) Storage of a freight container, transport vehicle, or package containing a hazardous material at an offeror facility prior to a carrier taking possession of the hazardous material for movement in transportation in commerce or, for a private motor carrier, prior to a motor vehicle driver taking physical possession of the hazardous material for movement in transportation in commerce.

(2) Unloading of a hazardous material from a transport vehicle or a bulk packaging performed by a person employed by or working under contract to the consignee following delivery of the hazardous material by the carrier to its destination and departure from the consignee's premises of the carrier's personnel or, in the case of a private carrier, departure of the driver from the unloading area.

(3) Storage of a freight container, transport vehicle, or package containing a hazardous material after its delivery by a carrier to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a rail car, storage of a rail car on private track.

(4) Rail and motor vehicle movements of a hazardous material exclusively within a contiguous facility boundary where public access is restricted, except to the extent that

## § 171.2

## 49 CFR Ch. I (10–1–04 Edition)

the movement is on or crosses a public road or is on track that is part of the general railroad system of transportation, unless access to the public road is restricted by signals, lights, gates, or similar controls.

(5) Transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state, or local government purposes.

(6) Transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle, including a leased or rented motor vehicle.

(7) Any matter subject to the postal laws and regulations of the United States.

(e) *Requirements of other Federal agencies.* Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies.

(f) *Requirements of state and local government agencies.* (1) Each facility at which pre-transportation or transportation functions are performed in accordance with the HMR may be subject to applicable laws and regulations of state and local governments and Indian tribes, except to the extent that such laws and regulations are preempted under 49 U.S.C. 5125.

(2) Under §5125, a non-Federal law or regulation may be preempted, unless otherwise authorized by another Federal statute, if—

(i) Complying with both the non-Federal law or regulation and a requirement of Federal hazardous materials transportation law or the HMR is not possible;

(ii) The non-Federal law or regulation, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR; or

(iii) The non-Federal law or regulation is not substantively the same as a provision of Federal hazardous materials transportation law or the HMR with respect to—

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of these documents;

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

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(3) Preemption determination procedures are in subpart C of part 107 of this chapter.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or an exemption or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$27,500 and not less than \$250 for each violation. When a violation is a continuing one and involves transporting of hazardous materials or causing them to be transported or shipped, each day of the violation constitutes a separate offense. Each person who knowingly violates a requirement in §171.2(l) of this subchapter or willfully violates a provision of Federal hazardous material transportation law or an order issued under Federal hazardous material transportation law may be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

### § 171.2 General requirements.

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(b) No person may transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable, and the hazardous material is handled and transported in accordance with applicable requirements of this subchapter, or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter.

(c) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter or an exemption, approval or registration issued under this subchapter or subchapter A of this chapter, governing its use in the transportation in commerce of a hazardous material, whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired and retested, as