DEPARTMENT OF TRANSPORTATION

MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

23225

HM-166; AMDT. NOS. 171-46, 172-52, 173-130, 176-8

49 CFR Parts 171, 172, 173, 176

Shipment of Hazardous Materials by Water

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The Materials Transportation Bureau is amending the regulations pertaining to the shipment of hazardous materials by vessel. The amendments involve relatively minor changes with respect to preparation of the dangerous cargo manifest; requirements for cargo inspection; specific requirements for certain materials regulated for water shipments only; and several other miscellaneous changes. A new Subpart F of Part 176, Special Requirements for Barges, is also contained in these amendments.

EFFECTIVE DATE: May 21, 1979.

FOR FURTHER INFORMATION CONTACT: John C. Allen, Office of Hazardous M[illegible]ials Regulation, Materials [illegible]ortation Bureau, Research and [illegible]l Programs Administration, Washington, D.C. 20590, (202) 755-4962.

SUPPLEMENTARY INFORMATION: On November 30, 1978, the Materials Transportation Bureau published a Notice of Proposed Rulemaking, Docket HM-166, Notice 78-11 (43 FR 56070) which proposed a number of miscellaneous amendments relating to water shipments of hazardous materials. Notice 78-11 included an extensive discussion of each proposal and invited public comment prior to the closing date of January 29, 1979. Based on comments received on this notice, these proposals are being incorporated as final amendments to the hazardous materials regulations.

Almost every comment received on Notice 78-11 was favorable to the specific proposals in the notice, and to the overall objective of Docket HM-166 to clarify, simplify or eliminate existing regulations which are confusing or unnecessary. A few changes to some of the proposals have been made in response to some of the comments.

One commenter expressed concern that the wording in § 173.1025 could be construed as prohibiting the shipment of [illegible]errous metal borings, shavings, [illegible]s or cuttings" by water. It is pointed out that these materials may be shipped in bulk by water under the provisions of 46 CFR 148.04-13 and that MTB should add specific wording to this effect in § 173.1025 to eliminate any possible confusion. However, there are other hazardous materials which may be shipped as bulk solids under 46 CFR Part 148. The requirements in 49 CFR for these materials do not reference 46 CFR Part 148 and MTB believes there is no necessity for starting this practice.

The National Cargo Bureau suggested that the new requirement in § 176.30(a)(5)(ii) to identify IMCO hazard classes by division name or number on the dangerous cargo manifest be expanded to include Class 3, Flammable liquids. MTB proposed to include only Classes 1, 4, 5 and 6 for this requirement. The National Cargo Bureau maintains that there is a wide range of flash points in Class 3 and that it would be beneficial to the carrier to know the division or flash point "group" in which a particular material falls. For example, Class 3 contains Class 3.1—Low Flashpoint Group (below 0° F), Class 3.2—Intermediate Flashpoint Group, (0° F to 73° F) and Class 3.3—High Flashpoint Group (73° F to 141° F). MTB agrees that these divisions or "groups" represent different degrees of flammability hazard and that it would be helpful not only to carriers but to emergency response personnel, to identify such divisions on the dangerous cargo manifest if the IMCO class designations are used. Also, it is MTB's understanding that many carriers already use the division identification for flammable liquids on the dangerous cargo manifest.

Several commenters noted that the term "nitro carbo nitrate" has been replaced by the term "blasting agent" under Docket HM-143 and this change should be reflected in the amendments to § 176.99 and § 176.415. The term "blasting agent" has therefore been incorporated into the appropriate locations.

There were several commenters who recommended changes to the proposals which the Bureau did not feel appropriate. A large shipper of explosives suggested that MTB consider allowing the use of IMCO class and labeling for Class A and B explosives when imported into or exported from the U.S. under the provisions of 49 CFR 171.12(b). Class A and B explosives and radioactive materials are presently excluded from the use of IMCO class and labeling in accordance with § 171.12(b). The Bureau has no intention of changing these provisions at this time. If and when this topic becomes the subject of a rulemaking it will be addressed as an entirely separate issue and not under a miscellaneous rulemaking docket such as HM-166.

A shipper of motor vehicles aboard barges requested that § 176.905(d) be amended to authorize vehicles to be carried aboard unmanned open deck barges when the fuel tanks are full. The present requirements limit fuel tanks to one-fourth of capacity. Although the commenter makes a strong argument for such an amendment, MTB believes this type of regulatory change should be addressed in another rulemaking since there is no mention of such a proposal in Notice 78-11.

Primary drafters of these amendments are John C. Allen, Office of Hazardous Materials Regulation, Exemptions and Regulations Termination Branch, Lt. Larry H. Gibson, United States Coast Guard, Cargo and Hazardous Materials Division, and Evan C. Braude of the Office of the Chief Counsel, Research and Special Programs Administration.

In consideration of the foregoing, 49 CFR Parts 171, 172, 173 and 176 are amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.12, paragraphs (b) and (d) are revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) The requirements of § 171.2 with respect to classification and labeling notwithstanding, a hazardous material (other than Class A or B explosives or radioactive materials) which is classed and labeled in accordance with the IMCO Code and being imported into or exported from the United States or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation and transported within the United States if it is otherwise offered, accepted, and transported in accordance with this subchapter. When a material is transported within the United States by air, highway, or rail under an IMCO class, the entry on the shipping paper required by § 172.202(a)(2) must include a class set forth in this subchapter that most appropriately corresponds to the IMCO class. For example, according to IMCO, the description and class for

ethylene oxide is "Ethylene Oxide, 2" or "Ethylene Oxide, Gas 2". While ethylene oxide in domestic transportation would be classed a flammable liquid, the class in this subchapter that most appropriately corresponds to the IMCO class is "flammable gas". The proper entry would therefore be "Ethylene Oxide, Flammable Gas" or "Ethylene Oxide, 2 Flammable Gas".

* * * * *

(d) Section 171.2 notwithstanding, a hazardous material (other than Class A or B explosives or radioactive materials) being imported into or exported from the United States or passing through the United States in the course of being shipped between places outside the United States may be offered and accepted for transportation and transported by motor vehicle within a single port area (including contiguous harbors) when packaged, marked, classed and labeled in accordance with the IMCO Code, if the hazardous material is offered and accepted in accordance with the requirements of Subparts C and F of Part 172 of this subchapter pertaining to shipping papers and placarding. (See § 176.11 of this subchapter for exceptions applicable to vessels.)

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. In § 172.101, the Hazardous Materials Table is amended by revising the entries for "Lead dross" and "Metal borings, shavings, turning or cuttings" to read as follows:

§ 172.101 Hazardous Materials Table.

(1)	(2)	(3)	(4)	(5) Packaging		Maximum net quantity in one package		(7) Water shipments		
*/ W/ A	Hazardous materials descriptions and proper shipping names	Hazard class	Labels(s) required (if not excepted)	(a) Exception	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirement
	(Change)									
W/	Lead dross (containing 3 percent or more free acid).	ORM-C	None	173.505	173.1010	-	-	1,2	1,2	Segregation same as for corrosive materials
W/	Metal borings, shavings, turnings, or cuttings (ferrous metals only, except stainless steel).	ORM-C	None	173.505	173.1025	-	-	1,2	1,2	Keep dry, not permitted if temperature of material is at or above 130°F.

PART 173—SHIPPERS—GENERAL EQUIREMENTS FOR SHIPMENTS ND PACKAGINGS

3. Section 173.1010 is revised to read as follows:

§ 173.1010 Lead dross or scrap containing 3 percent or more free acid.

Lead dross or scrap containing 3 percent or more free acid, when offered for transportation by water, must be prepared for shipment in compliance with § 173.510 and must be packaged in steel barrels or drums or wooden barrels, boxes, or kegs.

4. Section 173.1025 is revised to read as follows:

§ 173.1025 Ferrous metal borings, shavings, turnings, or cuttings (excluding stainless steel).

Ferrous metal borings, shavings turnings, or cuttings, other than stainless steel, when offered for transportation by water, must be prepared for shipment in compliance with § 173.510 and must be packaged in a metal barrel or drum.

PART 176—CARRIAGE BY VESSEL

5. In § 176.11, paragraph (a) is revised to read as follows:

176.11 Exceptions.

(a) A hazardous material being imported into or exported from the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation and transported by vessel when in compliance with the requirements of the IMCO Code in place of the corresponding requirements of this subchapter with respect to either packaging, marking, labeling, classification, description, certification or placarding. All hazardous materials must otherwise be stowed and carried in accordance with this Part.

(1) Hazardous materials prepared in compliance with the above requirements may also be offered and accepted for transportation and transported by a motor vehicle used in connection with the discharge or loading of a vessel and not operating on a public street or highway.

(2) This exception does not apply to the following:

(i) A hazardous material classed as Explosive A or B, or Radioactive aterial, or

(ii) A material which is a hazardous material under this subchapter, but which is not a hazardous material under the provisions of the IMCO Code.

* * * * *

6. In § 176.30, the introductory text of paragraph (a), paragraphs (a)(5)(ii), (c) and (d) are revised; paragraph (e) is added to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) Except as provided in paragraph (d), the master of a vessel transporting hazardous materials or his authorized representative shall prepare a dangerous cargo manifest, list, or stowage plan. This document may not include a material which is not subject to the requirements of 49 CFR or the IMCO Code. This document must be kept in a designated holder on or near the vessel's bridge. It must contain the following information:

* * * * *

(5) * * *

(ii) The Inter-Governmental Maritime Consultative Organization's Dangerous Goods Code as follows:

A. For classes 7, 8 and 9, either the class name or numerical designation of the class must be used.

B. For Classes 1, 3, 4, 5, and 6, either the division name or numerical designation of the division must be used.

C. For Class 2, the class name or numerical designation of the Class must be accompanied by the description "Flammable gas", "Nonflammable gas" or "Poison gas", as appropriate.

* * * * *

(c) The master, or a licensed deck officer designated by the master and attached to the vessel, or in the case of a barge, the person in charge of the barge, shall acknowledge the correctness of the dangerous cargo manifest, list, or stowage plan by his signature.

(d) For barges, manned or unmanned, the requirements of this section apply except for the following:

(1) In the case of a manned barge, the person in charge of the barge shall prepare the dangerous cargo manifest.

(2) In the case of an unmanned barge, the person responsible for loading the barge is responsible for the preparation of a dangerous cargo manifest, list, or stowage plan and must designate an individual for that purpose.

(3) For all barges, manned or unmanned, the dangerous cargo manifest must be on board the barge in a readily accessible location and a copy must be furnished to the person in charge of the towing vessel.

(e) Each carrier who transports or stores hazardous materials on a vessel shall retain a copy of the dangerous cargo manifest, list, or stowage plan for at least one year, and shall make that document available for inspection in accordance with § 176.36(b) of this subchapter.

7. In § 176.39 paragraph (a) is revised to read as follows:

§ 176.39 Inspection of cargo.

(a) *Manned vessels.* The master of a vessel transporting hazardous materials shall cause an inspection of each hold, compartment or deck space (on deck and under deck) in which hazardous materials are stowed to be made after stowage is complete, and at least once every 24 hours thereafter, weather permitting, to ensure that the cargo is in a safe condition and that no damage caused by shifting, spontaneous heating, leaking, sifting, wetting, or other cause has been sustained by the vessel or its cargo since loading. However, freight containers or individual barges need not be opened. A vessel's holds equipped with smoke or fire detecting systems having an automatic monitoring capability need not be inspected except after stowage is complete and after periods of heavy weather. The master shall cause an entry to be made in the vessel's deck log book for each inspection of the stowage of hazardous materials performed.

* * * * *

8. Subpart F of Part 176 is deleted, and a new Subpart F is added to read as follows:

Subpart F—Special Requirements for Barges

§ 176.95 Application.

The requirements prescribed in this subpart are applicable to the transportation of packaged hazardous materials on board barges. The requirements prescribed elsewhere in this subchapter for vessels similarly apply, except as provided in this subpart, to the transportation of packaged hazardous materials on board barges.

§ 176.96 Materials of construction.

Unless otherwise approved by the Commandant, U.S. Coast Guard (GMHM, Washington, D.C., 202–426–1577) only barges constructed of steel are permitted to carry hazardous materials.

§ 176.97 Prohibition of dump scows.

Dump scows are barges having cargo carrying compartments of the hopper type and fitted with a bottom dump or a side dump. This type of barge is prohibited from the carriage of any class of hazardous material.

§ 176.98 Stowage of hazardous materials on board barges.

A material for which "on deck" stowage only is required by Column (7) of the Hazardous Materials Table (§ 172.101 of this subchapter) may be stowed "under deck" on unmanned barges.

§ 176.99 Permit requirements for certain hazardous materials.

The permits required by §§ 176.100 and 176.415 for loading, unloading, and handling Class A Explosives, blasting agents, and certain ammonium nitrates must be obtained when these materials are loaded on, unloaded from, or handled on board a barge or barge carrying vessel. However, a barge loaded with these materials being placed on, removed from, or handled on board a barge carrying vessel is not subject to these permit requirements.

9. Section 176.100 is revised to read as follows:

§ 176.100 Permit for Class A explosives.

Before a shipment of Class A explosives may be discharged from, loaded on, handled, or restowed on board a vessel at any place in the United States, its territories, or its possessions (except the Panama Canal Zone), the carrier must obtain a permit from the Captain of the Port or his authorized representative. Exceptions to this permit requirement may be given only by the Captain of the Port or his authorized representative.

10. In § 176.415, paragraph (b)(6) is added; paragraph (c)(2) is revised to read as follows:

§ 176.415 Permit requirements for blasting agents and certain ammonium nitrates.

* * * * *

(b) * * *

(6) Blasting agent, n.o.s. and ammonium nitrate-fuel oil mixtures in a rigid container with non-combustible inside packaging.

(c) * * *

(2) If the material is ammonium nitrate (organic coated) in rigid metal drums with non-combustible inside packagings, an ammonium nitrate mixture containing more than 60 percent ammonium nitrate, or ammonium nitrate-phosphate, in rigid containers with combustible inside packagings, it must be loaded or unloaded at a facility removed from congested areas or high value or high hazard industrial facilities;

* * * * *

11. In § 176.905 paragraph (a) is revised to read as follows:

§ 176.905 Motor vehicles or mechanical equipment powered by internal combustion engines.

(a) A motor vehicle or any mechanized equipment powered by an internal combustion engine is subject to the requirements of this subchapter when carried as cargo on a vessel if the engine or fuel tank contains fuel or if either battery cable is connected. Such vehicles or equipment are excepted from the requirements of this subchapter if the following requirements are met:

(1) For a motor vehicle or mechanical equipment having an internal combustion engine employing fuel classed as flammable by this subchapter, the fuel tank is empty, the engine is run until it stalls for lack of fuel, both battery cables are disconnected, and no hazardous material is stowed in the vehicle or equipment, or

(2) For motor vehicle or mechanical equipment having an internal combustion engine employing liquid fuel classed as combustible by this subchapter, the fuel tank contains 110 gallons of fuel or less, both battery cables are disconnected and no hazardous material is stowed in the vehicle or equipment.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and Appendix A to Part 1.)

The Materials Transportation Bureau has determined that this document will not have a major impact under Executive Order 12044 and DOT implementing procedures (43 FR 9582). A regulatory evaluation is available for review in the docket.

Issued in Washington, D.C. on April 12, 1979.

L. D. Santman,

Director, Materials Transportation Bureau.

[Docket No. HM-166, Amdt. Nos. 171-46, 172-52, 173-130, 176-8]

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