

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179****[Docket HM-222A; Admt. Nos. 107-37, 171-140, 172-147, 173-248, 174-82, 175-55, 176-39, 177-86, 178-112, and 179-51]****RIN 2137-AC69****Elimination of Unnecessary and Duplicative Hazardous Materials Regulations****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is removing unnecessary, obsolete, and duplicative regulations contained in the Hazardous Materials Regulations (HMR). In addition, RSPA is eliminating approximately 100 pages of the CFR by reformatting the Hazardous Materials Table and List of Hazardous Substances and Reportable Quantities. The intended effect of this action is to enhance compliance with the HMR by making them shorter and easier to use. This action responds to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

**EFFECTIVE DATE:** October 1, 1996.

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**SUPPLEMENTARY INFORMATION:****I. Background**

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations to eliminate or revise those regulations that are outdated or in need of reform. In addition, the President directed front line regulators to " \* \* \* get out of Washington and create grassroots partnerships" with people affected by agency regulations. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) and associated procedural rules (49 CFR Parts 106, 107 and 110). In April and July, 1995, RSPA published notices in the Federal Register (60 FR 17049 and 60 FR 38888, respectively) that announced public meetings and requested comments on

ways to improve the HMR and the kind and quality of services RSPA's customers expect. RSPA held 12 public meetings and received over 50 written comments in response to the Federal Register notices. Based on its review of the HMR and on written and oral comments received from the public on regulatory reform, RSPA issued a notice of proposed rulemaking (NPRM) on October 13, 1995, under Docket HM-222A (60 FR 53321). The NPRM proposed to eliminate over 100 sections of the HMR and to reformat the Hazardous Materials Table and Hazardous Substances Table. This is one of several rulemakings initiated by RSPA in response to its regulatory review, public meetings, and comments.

**II. Summary of Amendments**

RSPA received approximately 42 comments to the NPRM from chemical manufacturers and distributors, offerors, carriers, and packaging manufacturers, and State enforcement agencies. These commenters were generally supportive of RSPA's proposals in the NPRM. The primary concerns raised by commenters were about proposals to: (1) reformat the § 172.101 Hazardous Materials Table (HMT) and the List of Hazardous Substances and Reportable Quantities; (2) placard holder dimensional specifications; and (3) remove general guidance in Part 177 on emergency response activities for hazardous materials transportation accidents or incidents. Commenters also raised concerns that were beyond the scope of the proposed rule; however, they may be considered in future rulemakings.

RSPA believes this final rule will enhance compliance by reducing the number of regulations in the HMR and making them easier to use. As a result of having fewer pages, RSPA foresees the possibility of consolidating the two CFR volumes into one.

**A. Reformatting the Hazardous Materials Table and Hazardous Substances Table**

Several commenters stated that RSPA's proposal to reformat the label column of the HMT by identifying labels by class/division number rather than class name would make the HMR more difficult to use. One commenter added that adoption of the proposal would complicate the process of determining a label for a material. Commenters opposing this change stated that this proposal makes both teaching and applying the HMR more difficult and may create a significant burden on users of the HMR. One commenter stated that adding a table preceding the HMT to identify which

label corresponds to a label code in Column (6) is impractical, especially for the infrequent user of the HMR. Another commenter added that this proposal would not enhance clarity of the HMR or the HMT because users of the HMR often overlook the instructions to the HMT and would be forced to flip between the two tables to determine the required labels. Some commenters claimed this proposal would increase the likelihood of errors. One commenter recommended that RSPA place the "numerical identifier table" within the margins of each page of the HMT for the reader's convenience. Another commenter suggested that if RSPA modifies the HMT, the agency should focus on reducing the size of the columns and adjusting the format. Another commenter stated that use of Roman numerals to distinguish poisons may be confused with Packing Group numerals.

Some commenters supported RSPA's proposal but recommended that RSPA inform and educate all affected persons, including emergency responders, of this change to ensure compliance with the HMR. One commenter recommended that RSPA revise the proposed heading of Column (6) to read "Label code(s)" to indicate that more than one label code may be specified for certain shipping descriptions.

RSPA disagrees with those commenters who stated that label codes would create confusion and lead to non-compliance and is reformatting the HMT to remove and replace Column (6) that specifies label names with a new Column (6) that specifies label codes. The numerical label codes directly correspond to numerical hazard classes and divisions which have been in place in the HMR for over five years. If a person is properly trained in accordance with subpart G of Part 172, there should be no confusion as to the class or required label for a given shipping description. In addition, through the distribution of more than four million Emergency Response Guidebooks, emergency responders have been informed of the UN hazard class system, and what the respective codes represent. RSPA believes that the benefits of eliminating over 80 pages of the CFR outweigh the minor inconvenience of using a label code rather than a label name. In the new Column (6) of the HMT, RSPA identifies the labels required by class or division number instead of spelling out the class name. For example, the POISON and KEEP AWAY FROM FOOD labels are identified as "6.1" and FLAMMABLE LIQUID label is identified as "3". Also, RSPA is adding a table to the

instructions to the HMT that clearly states which label is required for each numerical identifier.

Commenters were generally supportive of RSPA's proposal to remove the column of synonyms from appendix A to § 172.101. However, one commenter requested that RSPA reevaluate its proposal to remove the synonym column because many shippers refer to this column to determine a proper shipping name for a product. Another commenter recommended that RSPA replace the synonyms with Chemical Abstract System (CAS) Registry numbers because they provide a more reliable cross reference and are accessible to most users of the HMR. The commenter stated that CAS numbers would provide non-chemist shippers with valuable information to identify a hazardous substance. In addition to being beyond the scope of this rulemaking, RSPA believes that adding CAS numbers to the HMT would be of little value to the regulated community and would significantly add to the size of the HMR. RSPA also notes that CAS numbers can be found in the EPA's list of hazardous substances in 40 CFR 302.4. Therefore, RSPA is not adopting the commenter's suggestion.

RSPA recognizes these commenters' concerns that synonyms of hazardous substances provide guidance to shippers in determining hazardous substances. However, because all synonyms are specifically listed as hazardous substances in Appendix A to § 172.101, RSPA is removing the synonym column to simplify the Table and the HMR.

#### *B. Reporting Requirements*

One of the goals of the President's Regulatory Reinvention Initiative was to decrease, as far as practical, the reports that are required to be submitted to the government. As proposed in the NPRM, RSPA is eliminating §§ 173.11 and 177.826, which require carriers and shippers of flammable cryogenic liquids in bulk packagings to register with RSPA. RSPA also is amending, as proposed, § 107.504 by decreasing the frequency that manufacturers of cargo tanks are required to register with RSPA from three years to six years. RSPA also is removing a requirement in § 107.111 that RSPA publish in the Federal Register a list of those persons who request party status to an exemption. This change will enable RSPA to expedite the processing of requests for party status to exemptions.

#### *C. Unnecessary Sections*

##### *Part 110*

*§ 110.30(a)(4) Grant application.* RSPA proposed to remove the requirement that applicants for training and planning grants provide a written statement explaining whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials and whether such fees are used solely to carry out purposes related to the transportation of hazardous materials. Several commenters opposed RSPA's decision to remove the provision in § 110.30(a)(4). The commenters stated that "because of the Congressional mandate to review this information prior to the award of the training segment of the Grants, we believe, at a minimum, that RSPA cannot unilaterally eliminate this requirement without Congressional approval." RSPA believes that the effect on the hazardous materials grants program of removing § 110.30(a)(4) requires further study and, therefore, RSPA is not removing § 110.30(a)(4).

##### *Part 172*

*Appendix C to Part 172 Dimensional Specifications for Recommended Placard Holder.* This appendix provides specific dimensions for a recommended placard holder. Some commenters expressed concern in regard to RSPA's proposal to remove specifications for placard holders from the HMR. Commenters stated that the placard specification is widely used and beneficial in reducing the potential for loss of placards during transportation. Commenters believed that removal of the placard holder dimensional specifications would lead to more confusion and noncompliance, and recommended that RSPA retain the placard holder specifications. RSPA concurs with the commenters and is not removing the specifications for the placard holder and is not revising § 172.516 as proposed.

##### *Part 173*

*§ 173.10 Tank car shipments.* This section contains specific requirements for offerors of tank cars containing certain hazardous materials. RSPA proposed to remove this section because RSPA believed it to be inconsistent with current industry practice. One commenter disagreed with RSPA and stated that additional justification is needed before RSPA removes this section from the HMR. Upon further review, RSPA is not removing § 173.10 from the HMR. Corresponding changes were not proposed in § 174.204 or § 174.304, which contain similar

requirements applicable to rail carriers and it would be inappropriate to remove only § 173.10. RSPA will reevaluate the need for these sections in a future rulemaking action.

*§ 173.324 Ethyl methyl ether.* This section provides non-bulk packaging requirements specific to ethyl methyl ether. Instead of having a specific packaging section for this material, RSPA is revising its packaging reference in Column (8B) of the HMT to read "§ 173.201" for non-bulk packaging authorizations and is removing § 173.324.

*§ 173.451 Fissile materials—general requirements.* This section states that fissile radioactive material packages must comply with requirements of §§ 173.457 through 173.459. RSPA believes this section is unnecessary and is removing it. In addition, a reference to § 173.451 contained in § 173.453 is removed.

*§ 173.477 Approval for export shipments.* This section sets forth procedures for obtaining an approval for export shipments of packages for which an International Atomic Energy Agency certificate of competent authority has been issued. RSPA is removing this section because the requirements for export shipments of hazardous materials, including radioactive materials, are specified in § 171.12.

*§ 173.478 Notification to competent authorities for export shipments.* This section requires shippers who export Type B quantities of Class 7 material to notify the competent authority of each country through which or into which the package is to be transported, prior to the first shipment. The shipper is required to submit copies of all relevant competent authority certificates. RSPA is removing this section because the requirements for export shipments of hazardous materials, including Class 7 material, are specified in § 171.12.

##### *Part 174*

*§ 174.16 Removal and disposition of hazardous materials at destination.* This section prescribes requirements for delivering hazardous materials to non-agency and agency stations and disposing of the materials in the event that they are not removed from a carrier's property by the consignee of the materials. RSPA proposed to remove § 174.16 because it is outdated and unnecessary. Two commenters requested that RSPA retain this section. They stated that removal of this section would increase the likelihood of unauthorized or illegal access to explosives and that the requirements of § 174.16 should be the minimum standard for carriers of explosives.

RSPA believes that the ramifications of removing this section from the HMR need further review and, therefore, has decided against removing § 174.16.

**§ 174.20 Local or carrier restrictions.** This section states that carriers may impose local restrictions when local conditions present an unsafe transportation environment. Also, § 174.20 states that carriers must report all carrier restrictions to the Bureau of Explosives. RSPA stated in the NPRM that it was proposing to remove § 174.20 because it believes that centralizing a list of all rail carrier restrictions should be an industry practice and not a regulatory requirement. Two commenters disagreed with RSPA's proposal to remove § 174.20, stating that the section is necessary for safety and that carriers should be allowed to impose local restrictions. RSPA believes that the effect of removing this section from the HMR on the railroad industry requires further study and, therefore, RSPA is not removing § 174.20 from the HMR.

**§ 174.33 Lost or destroyed labels and placards./§ 176.33 Labels./§ 177.815 Lost or destroyed labels.** These sections require carriers to maintain an adequate supply of labels and placards in case labels or placards become lost or destroyed. Several commenters were concerned that removing these sections would allow carriers to move hazardous materials packages without their proper labels, and recommended that RSPA retain these sections. RSPA disagrees. By removing these sections, RSPA is not allowing carriers to transport hazardous materials that are not in compliance with the HMR. As specified in the HMR, shippers may not offer and carriers may not transport hazardous materials unless they are properly packaged, marked, labeled and placarded. This basic requirement is not eliminated by removal of these sections. Accordingly, §§ 174.33, 176.33, and 177.815 are removed as proposed.

**§ 174.107 Shipping days for Division 1.1 or 1.2 (Class A explosive) materials.** This section prescribes requirements for carriers to designate days in which Division 1.1 or 1.2 materials are accepted and delivered. RSPA proposed to remove this section because it generally applies to a shipment of explosives by a rail express carrier which is no longer a common practice. One commenter stated that, though this is no longer a common practice, this section should be retained as the minimum standard for such shipments by rail. RSPA believes that, by removing unnecessary and redundant regulations, the HMR will be an easier set of regulations to follow, thus increasing

compliance and safety. Section 174.107 is unnecessary because it addresses a type of transportation that is no longer a common practice. Therefore, RSPA is removing § 174.107 from the HMR.

**§ 174.109 Non-agency shipments.** This section provides requirements for Class 1 shipments accepted by a carrier at a non-agency station. RSPA is removing this section because it is no longer necessary.

**§ 174.280 Division 2.3 (poisonous gas) materials with foodstuffs.** This section provides a prohibition from transporting packages labeled POISON GAS with foodstuffs. RSPA proposed to remove this section because Division 2.3 materials present a hazard if inhaled but do not pose a significant hazard to foodstuffs or edible material. One commenter stated that contamination of foodstuffs by Division 2.3 material is possible when the integrity of the packaging is compromised. RSPA is not aware of any Division 2.3 material that would pose a significant hazard to foodstuffs; and this amendment is consistent with the regulations for highway transportation. No incidents have been reported involving the transportation of foodstuffs and Division 2.3 materials in the same motor vehicle. Therefore, RSPA is removing this section from the HMR as proposed.

**§ 174.410 Special handling requirements for matches.** This section provides special handling requirements for strike-anywhere matches. RSPA proposed to remove this section because it believes the section is no longer necessary based on current packaging requirements in Part 173 for strike-anywhere matches. One commenter stated that this section provides a minimum standard for the safe transport of strike-anywhere matches and suggested that it be retained. RSPA believes that this section is no longer necessary and is removing it from the HMR.

**§ 174.450 Fires.** This section addresses disposition of cotton or charcoal which has been damaged in a fire. One commenter opposed the proposed removal of this section and stated that if these mitigation requirements are not retained, carriers will not undertake these measures. RSPA disagrees and believes that the procedures are outmoded and inappropriate as a regulatory standard. Therefore, RSPA is removing this section from the HMR.

**§ 174.510 Special handling requirements for nitrates.** This section prescribes requirements for carriers of nitrates to ensure that the rail car is closed, clean and free of projections before loading the nitrates. RSPA is

removing this section because the requirements of subpart C of part 174 adequately cover the loading of this material in a rail car.

**§ 174.57 Cleaning cars./§ 174.515 Cleaning cars; potassium permanganate./§ 174.615(a) Cleaning cars.** Sections 174.515 and 174.615(a) require that rail cars be cleaned following the carriage of potassium permanganate or Division 6.1 materials, respectively. Section 174.57 requires that rail cars carrying any hazardous material that has leaked from a package be carefully cleaned. RSPA proposed to remove §§ 174.515 and 174.615(a) because it believes that the requirements of subpart C of part 174 adequately cover the cleaning of rail cars that previously contained these materials. Commenters stated that all three of these sections should be retained in order to protect worker safety and cross-contamination of products. RSPA agrees that the general provisions of § 174.57, which require that all rail cars must be cleaned when there is leakage of hazardous materials, should be retained in order to assure proper cleaning of rail cars. However, RSPA believes that retention of § 174.57 makes §§ 174.515 and 174.615 redundant and, therefore, is removing these two sections from the HMR.

**§ 174.840 Special loading and handling requirements for asbestos./§ 175.640 Special requirements for Class 9 (miscellaneous hazardous) material./§ 176.906 Stowage and handling of asbestos./§ 177.844 Class 9 (miscellaneous hazardous) materials.** These sections prescribe requirements for minimization of occupational exposure to asbestos. RSPA proposed to eliminate these sections because it believes that other Federal regulations more than adequately address occupational exposures to workers. Commenters requested that RSPA retain these sections and stated that RSPA is required by Congress to promulgate regulations for the safe transportation of hazardous materials, including the loading, unloading and storage incidental thereto. One commenter stated that "it is inappropriate for RSPA to withdraw its jurisdiction simply because another Federal agency regulation infringes on RSPA's area of responsibility." RSPA continues to believe that other Federal regulations more than appropriately address occupational exposures to workers. Therefore, there is no need for RSPA to maintain these additional requirements and RSPA is removing these sections from the HMR.

## Part 176

*§ 176.79 Spaces exposed to carbon monoxide or other hazardous vapors.* This section prescribes occupational requirements for personnel exposed to carbon monoxide vapors. In the NPRM, RSPA stated that the provisions of § 176.79 are governed under 46 CFR Part 97. A commenter stated that 46 CFR Part 97 only applies to inspected vessels, i.e., those vessels required to be issued certificates of inspection under the provisions of 46 U.S.C., and not vessels of foreign nations. Therefore, the commenter stated that personnel on non-inspected and foreign vessels, which constitute the vast majority of vessels carrying hazardous materials in the U.S. waters, would not be afforded any protection from carbon monoxide vapors.

RSPA acknowledges that the requirements in 46 CFR Part 97 only apply to inspected vessels, but it is inappropriate to regulate under the HMR worker protection from carbon monoxide vapors being emitted from trucks or other mechanized equipment used aboard vessels. This issue is not unique to hazardous materials transportation. Therefore, RSPA is removing this section from the HMR.

## Part 177

*§ 177.811 Astray shipments.* This section prescribes requirements for a package that has lost its label. The section states that a carrier must place a FLAMMABLE LIQUID label on a package that has lost its label. RSPA is removing the requirements of § 177.811 because current industry practices and compliance with Part 172 of the HMR (e.g., proper shipping name and identification number markings on packages) make it very unlikely that a carrier will have "no knowledge" of the contents of a package of hazardous materials.

*§ 177.813 Inefficient containers.* This section states that experience gained on damaged packages must be recorded by the Bureau of Explosives (BOE) to determine if a packaging should be prohibited from use. This action is no longer taken by the BOE; therefore, this section is removed.

*§ 177.823 Marking and placarding of motor vehicles.* RSPA received comments concerning the proposed removal of provisions for transportation of leaking cargo tanks in part 177. Several commenters stated that relocating the provisions for transportation of leaking cargo tanks from § 177.856 to § 177.823 would cause confusion since the heading of this section refers to marking and placarding

of motor vehicles. RSPA is relocating the provisions for leaking cargo tanks from § 177.856 to § 177.823. However, in order to eliminate any confusion, RSPA is revising the heading of § 177.823 to read "Movement of motor vehicles in emergency situations."

*§ 177.837(a) Class 3 (flammable) liquid materials.* Paragraph (a) of this section requires that the engine of a motor vehicle must be turned off when the vehicle is being loaded with Class 3 materials. RSPA proposed to remove this restriction because it is no longer necessary and often not practical, especially for application to diesel engines during cold weather. Two commenters requested that RSPA retain the requirements stating that an operating motor vehicle engine represents an ignition source. Commenters also stated that National Fire Protection Standards require that the motor of a cargo tank motor vehicle be shut down throughout the transfer operations of flammable liquids. Two commenters supported the proposal and stated that it is very difficult to restart a diesel engine if it becomes too cold and keeping the engine running could facilitate the removal of the trailer in the event of an emergency.

The provision in paragraph (a) of § 177.837 applies to all motor vehicles loading or unloading flammable liquids including those transporting non-bulk packages, not just to cargo tank motor vehicles. Based on this broad application, RSPA believes that it is not necessary to shut off the engine of all motor vehicles loading or unloading non-bulk packages of flammable liquids. However, RSPA agrees with those commenters who stated that the engines of cargo tank motor vehicles carrying Class 3 material should be shut off during loading/unloading operations. Accordingly, RSPA is not removing paragraph (a) but is revising it so that it only applies to cargo tank motor vehicles.

*§ 177.838 Class 4 materials, Class 5 and Division 4.2 materials.* Section 177.838(d) prescribes requirements for "loose or baled nitrate of soda bags" and § 177.838(e) prescribes blocking and bracing requirements for "strike-anywhere matches". RSPA is removing § 177.838(d) because "loose or baled nitrate of soda bags" are no longer routinely transported and, therefore, it is unnecessary. RSPA is removing § 177.838(e) because these modal operational requirements are no longer necessary based on current packaging requirements for strike-anywhere matches.

*§ 177.853 Transportation and delivery of shipments.* RSPA proposed

to remove paragraphs (b) and (c) of this section which prescribe general requirements on the movement of hazardous materials. The provisions of paragraph (a) were proposed to be moved to § 177.800. Two commenters stated that it is premature to remove paragraphs (b) and (c) until RSPA determines when transportation begins and ends. RSPA believes that removing paragraphs (b) and (c) does not impinge on its ability to determine the definition of "in transportation." The provisions found in paragraphs (b) and (c) address areas that should be handled through responsible business practices and not regulatory requirements.

*§ 177.855 Accidents; Class 1 (explosive) materials./ § 177.856 Accidents; Class 3 (flammable liquid) materials./ § 177.857 Accidents; Class 4 (flammable solid) and Class 5 (oxidizing) materials./ § 177.858 Accidents; Class 8 (corrosive) materials./ § 177.859 Accidents; Class 2 (gases) materials./ § 177.860 Accidents or leakage; Division 6.1 (poisonous) or Division 2.3 (poisonous gas) materials./ § 177.861 Accidents; Class 7 (radioactive) materials.* These sections prescribe general guidance on emergency response activities. RSPA proposed to remove these sections because of the addition of the emergency response provisions in Part 172. Several commenters requested that RSPA retain these sections because these provisions should be in addition to, and not in lieu of, the emergency response information of Part 172. One commenter stated that in order to protect the hazardous materials industry from intrusion from other Federal and State agencies into the area of hazardous materials transportation, RSPA should retain these sections. One commenter, who agreed with RSPA's proposal to remove these sections, stated that responders probably do not use the provisions in these sections in an emergency situation.

RSPA disagrees with commenters who stated that these sections should be retained in order to keep other Federal and State agencies from regulating the actions to be taken in the event of a transportation-related incident involving hazardous materials. RSPA continues to believe that these sections may not provide appropriate required actions to protect the public or the environment. The emergency response information required to be carried with hazardous materials is a much better source of information relative to the initial mitigation actions to be taken. Most of these sections were written prior to current standards addressing emergency response operations. The

means and mechanisms of responding to hazardous materials incidents have evolved greatly since these sections were introduced into the HMR. The Environmental Protection Agency and the Occupational Safety and Health Administration have regulations addressing environmental clean-up and emergency response operations and have expertise in this area. Fire departments and other emergency response organizations are better equipped and trained to handle hazardous materials transportation incidents. In addition, these sections apply to motor carriers only. They do not apply to the emergency responders, other than motor carrier personnel, who are called upon to respond to hazardous materials transportation incidents. Based on the foregoing, RSPA is removing the accident mitigation provisions in §§ 177.855–177.861 from the HMR.

#### *D. Duplicative Sections*

The following is a listing of those sections that are removed from the HMR because they are duplicative or refer the reader to a section of general applicability. In removing the sections listed below, RSPA believes that no substantive regulatory requirements are being removed. For example, RSPA is removing §§ 174.480 and 174.580 because these requirements are already covered under § 174.680. Several commenters were confused by RSPA's proposal to remove some of these sections and believed that RSPA was actually removing regulatory requirements. This is not the case. RSPA is merely consolidating provisions of the HMR to make a smaller and less burdensome set of regulations.

#### *List of Affected Sections*

171.13 Emergency regulations.  
173.314(h) Requirements for compressed gases in tank car tanks.  
173.444 Labeling requirements.  
173.446 Placarding requirements.  
173.463 Packaging and shielding-testing for integrity.  
174.7 Compliance and training.  
174.12 Intermediate shippers and carriers.  
174.45 Reporting hazardous materials incidents.  
174.69 Removal of placards and car certifications after unloading.  
174.100 Forbidden Class 1 (explosive) materials.  
174.208 Rail cars, truck bodies, or trailers with fumigated or treated lading.  
174.380 Class 3 (flammable liquid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.

174.430 Special handling requirements for Division 4.2 (pyroforic liquid) materials.  
174.480 Class 4 (flammable solid) materials, with a subsidiary hazard of Division 6.1 (poisonous) materials, with foodstuffs.  
174.580 Division 5.1 (oxidizer) materials, with a subsidiary hazard of Division 6.1 (poisonous materials), with foodstuffs.  
174.615 Cleaning cars.  
174.800 Special handling requirements for Class 8 (corrosive) materials.  
174.810 Special handling requirements for wet electric storage batteries.  
175.45 Reporting hazardous materials incidents. (With applicable change to § 171.15 and 171.16)  
176.76 (f), (g)(1), (4) Transport vehicles, freight containers, and portable tanks containing hazardous materials.  
176.78(g), (4), (5) Use of powered-operated industrial trucks on board vessels.  
176.331 Transportation of Class 3 (flammable) liquids with foodstuffs.  
176.419 Class 4 (flammable solids) or Class 5 (oxidizers and organic peroxides) materials transported with foodstuffs.  
176.800 General stowage requirements. (last sentence)  
177.803 Export and import shipments by domestic carriers by motor vehicles.  
177.805 Canadian shipments and packagings.  
177.806 U.S. Government material.  
177.807 Reporting hazardous materials incidents.  
177.808 Connecting carrier shipments.  
177.809 Carrier's material and supplies.  
177.812 Containers required.  
177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.  
177.821(c) (d)(f) Hazardous materials forbidden or limited for transportation.  
177.825 Routing and training requirements for Class 7 (radioactive) materials.  
177.836 Nonexplosive material.  
178.346–3 Structural integrity.  
178.346–4 Joints.  
178.346–5 Manhole assemblies.  
178.346–6 Supports and anchoring.  
178.346–7 Circumferential reinforcement.  
178.346–8 Accident damage protection.  
178.346–9 Pumps, piping, hoses and connections.  
178.346–12 Gauging devices.  
178.346–14 Marking.

178.346–15 Certification.  
178.347–3 Structural integrity.  
178.347–4 Joints.  
178.347–6 Supports and anchoring.  
178.347–7 Circumferential reinforcement.  
178.347–8 Accident damage protection.  
178.347–9 Pumps, piping, hoses and connections.  
178.347–11 Outlets.  
178.347–12 Gauging devices.  
178.347–14 Marking.  
178.347–15 Certification.  
178.348–3 Structural Integrity.  
178.348–4 Joints.  
178.348–5 Manhole assemblies.  
178.348–6 Supports and anchoring.  
178.348–7 Circumferential reinforcement.  
178.348–8 Accident Damage Protection.  
178.348–11 Outlets.  
178.348–12 Gauging devices.  
178.348–14 Marking.  
178.348–15 Certification.  
179.100–2 Approval.  
179.100–5 Bursting pressure.  
179.100–11 Tank mounting.  
179.100–22 Certificate of construction.  
179.104 Special requirements for spec. 105A200–F tank car tanks.  
179.104–1 Tanks built under these specifications must meet the requirements of §§ 179.100, 179.101, and when applicable §§ 179.102 and 179.104.  
179.104–2 Type.  
179.104–3 Tank mounting.  
179.104–4 Welding.  
179.106 [Reserved]  
179.200–2 Approval.  
179.200–5 Bursting pressure.  
179.200–12 Tank mounting. See § 179.10.  
179.200–20 Interior heater systems.  
179.200–26 Certificate of construction.  
179.202–179.202–22 [Reserved]  
179.220–2 Approval.  
179.220–5 Bursting pressure.  
179.220–12 Tank mounting.  
179.220–21 Interior heating systems.  
179.220–27 Certificate of construction.  
179.300–2 Approval.  
179.300–5 Bursting pressure.  
179.300–11 Tank mounting.  
179.400–2 Approval.  
179.400–6(a) Bursting and buckling pressure.  
179.400–26 Certificate of construction.  
179.500–2 Approval.  
179.500–9 Tank mounting.

#### *III. Regulatory Analyses and Notices*

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

#### *Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) the designation, description, and classification of hazardous material;
- (ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;
- (iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and
- (v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996.

This final rule removes unnecessary, obsolete and duplicative regulations governing the transportation of hazardous materials, and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

#### *Executive Order 12778*

Any interested person may petition RSPA's Administrator for reconsideration of this final rule within 30 days of publication of this rule in the

Federal Register, in accordance with the procedures set forth at 49 CFR 106.35. Neither the filing of a petition for reconsideration nor any other administrative proceeding is required before the filing of a suit in court for review of this rule.

#### *Regulatory Flexibility Act*

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on persons subject to the HMR.

#### *Paperwork Reduction Act*

This final rule does not impose any new information collection requirements.

#### *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### *List of Subjects*

##### *49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

##### *49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

##### *49 CFR Part 172*

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

##### *49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

##### *49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Railroad safety.

##### *49 CFR Part 175*

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

##### *49 CFR Part 176*

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

##### *49 CFR Part 177*

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

##### *49 CFR Part 178*

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

##### *49 CFR Part 179*

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107, 171, 172, 173, 174, 175, 176, 177, 178, and 179 are amended to read as follows:

### **PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

#### **§ 107.111 [Amended]**

2. In § 107.111, paragraph (d) is removed and reserved.

#### **§ 107.504 [Amended]**

3. In § 107.504(a) and (c), the phrase "three years" is removed and replaced with the phrase "six years" each place it appears.

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

4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

#### **§ 171.13 [Removed]**

5. Section 171.13 is removed.

6. In § 171.15, paragraph (b), the introductory text is revised to read as follows:

#### **§ 171.15 Immediate notice of certain hazardous materials incidents.**

\* \* \* \* \*

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical

moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U.S. Public Health Service, Atlanta, Ga. (800) 232-0124, in place of the notice to the Department or (toll call) on 202-267-2675. Each notice must include the following information:

\* \* \* \* \*

7. In § 171.16, paragraph (b) is revised to read as follows:

**§ 171.16 Detailed hazardous materials incident reports.**

\* \* \* \* \*

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

9. In § 172.101, paragraph (g) is revised to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

\* \* \* \* \*

(g) *Column 6: Labels.* Column 6 specifies codes which represent the hazard warning labels required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling by a provision in subpart E of this part, or part 173 of this subchapter. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards. Provisions in § 172.402 may require that a label other than that specified in Column 6 be affixed to the package in addition to that specified in Column 6. No label is

required for a material classed as a combustible liquid or for a Class 3 material that is reclassified as a combustible liquid. The codes contained in Column 6 are defined according to the following table:

**LABEL SUBSTITUTION TABLE**

Label code	Label name
1 .....	Explosive.
1.1 <sup>1</sup> .....	Explosive 1.1. <sup>1</sup>
1.2 <sup>1</sup> .....	Explosive 1.2. <sup>1</sup>
1.3 <sup>1</sup> .....	Explosive 1.3. <sup>1</sup>
1.4 <sup>1</sup> .....	Explosive 1.4. <sup>1</sup>
1.5 <sup>1</sup> .....	Explosive 1.5. <sup>1</sup>
1.6 <sup>1</sup> .....	Explosive 1.6. <sup>1</sup>
2.1 .....	Flammable Gas.
2.2 .....	Non-Flammable Gas.
2.3 .....	Poison Gas.
3 .....	Flammable Liquid.
4.1 .....	Flammable Solid.
4.2 .....	Spontaneously Combustible.
4.3 .....	Dangerous When Wet.
5.1 .....	Oxidizer.
5.2 .....	Organic Peroxide.
6.1 (I) <sup>2</sup> .....	Poison.
6.1 (II) <sup>2</sup> .....	Poison.
6.1 (III) <sup>2</sup> .....	Keep Away From Food.
6.2 .....	Infectious Substance.
7 .....	Radioactive.
8 .....	Corrosive.
9 .....	Class 9.

<sup>1</sup> Refers to the appropriate compatibility group letter.

<sup>2</sup> The packing group for a material is indicated in column 5 of the table.

\* \* \* \* \*

**§ 172.101 [Amended]**

10. In § 172.101, the following changes are made to the Hazardous Materials Table:

a. In Column (5), the heading is revised to read "PG".

b. For the entry "Ethyl methyl ether", in Column (8B), the nonbulk packaging reference is revised to read "201".

c. In column (6) the heading is revised to read "Label codes", and:

(1) The word "EXPLOSIVE" is removed in each place it appears;

(2) The words "FLAMMABLE GAS" are removed and replaced with "2.1" in each place they appear;

(3) The words "NONFLAMMABLE GAS" are removed and replaced with "2.2" in each place they appear;

(4) The words "POISON GAS" are removed and replaced with "2.3" in each place they appear;

(5) The words "FLAMMABLE LIQUID" are removed and replaced with "3" in each place they appear;

(6) The words "FLAMMABLE SOLID" are removed and replaced with "4.1" in each place they appear;

(7) The words "SPONTANEOUSLY COMBUSTIBLE" are removed and replaced with "4.2" in each place they appear;

(8) The words "DANGEROUS WHEN WET" are removed and replaced with "4.3" in each place they appear;

(9) The word "OXIDIZER" is removed and replaced with "5.1" in each place it appears;

(10) The words "ORGANIC PEROXIDE" are removed and replaced with "5.2" in each place they appear;

(11) The word "POISON" is removed and replaced with "6.1" in each place it appears;

(12) The words "KEEP AWAY FROM FOOD" are removed and replaced with "6.1" in each place they appear;

(13) The words "INFECTIOUS SUBSTANCE" are removed and replaced with "6.2" in each place they appear;

(14) The word "RADIOACTIVE" is removed and replaced with "7" in each place it appears;

(15) The word "CORROSIVE" is removed and replaced with "8" in each place it appears;

(16) The word "CLASS" is removed in each place it appears; and

(17) For the entries "Organic peroxide type B, liquid"; "Organic peroxide type B, liquid, temperature controlled"; "Organic peroxide type B, solid"; and "Organic peroxide type B, solid, temperature controlled" the label entries are revised to read "5.2, 1".

**Appendix A to § 172.101—[Amended]**

11. In Appendix A to § 172.101, in "Table 1—Hazardous Substances Other Than Radionuclides", the second column, "Synonyms", is removed.

**§ 172.201 [Amended]**

12. In § 172.201, paragraph (b) is removed and reserved.

13. In § 172.203, paragraph (i)(4) is added to read as follows:

**§ 172.203 Additional description requirements.**

\* \* \* \* \*

(i) \* \* \*

(4) The name of the shipper.

\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

14. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

**§ 173.11, § 173.324, § 173.444, § 173.446, § 173.451, § 173.463, § 173.477, § 173.478 [Removed]**

15. Sections 173.11, 173.324, 173.444, 173.446, 173.451, 173.463, 173.477 and 173.478 are removed.



**§ 173.314 [Amended]**

16. In § 173.314, paragraph (h) is removed and reserved.

**§ 173.453 [Amended]**

17. In the introductory text of § 173.453, the wording “§§ 173.451 through” is revised to read “§§ 173.457 and”.

**PART 174—CARRIAGE BY RAIL**

18. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

**§ 174.7, § 174.12, § 174.33, § 174.45, § 174.69, § 174.100, § 174.107, § 174.109, § 174.208, § 174.280, § 174.380 [Removed]**

**Subpart H (§§ 174.410–174.480)—[Removed]**

**Subpart I (§§ 174.510–174.580)—[Removed]**

**Subpart L (§§ 174.800 and 174.810)—[Removed]**

**Subpart M (§ 174.840)—[Removed]**

19. Sections 174.7, 174.12, 174.33, 174.45, 174.69, 174.100, 174.107, 174.109, 174.208, 174.280, 174.380, Subpart H consisting of §§ 174.410, 174.430, 174.450, and 174.480, Subpart I consisting of §§ 174.510, 174.515, and 174.580, Subpart L consisting of §§ 174.800, and 174.810, and Subpart M consisting of § 174.840 are removed.

**§ 174.615 [Amended]**

20. In § 174.615, paragraph (a) is removed and reserved.

**PART 175—CARRIAGE BY AIRCRAFT**

21. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

**§ 175.45 and § 175.640 [Removed]**

22. Sections 175.45 and 175.640 are removed.

**PART 176—CARRIAGE BY VESSEL**

23. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

**§ 176.33, § 176.79, § 176.331, § 176.419, § 176.906 [Removed]**

24. Sections 176.33, 176.79, 176.331, 176.419, and 176.906 are removed.

**§ 176.76 [Amended]**

25. In § 176.76, paragraphs (f), (g)(1) and (g)(4) are removed, introductory text

of paragraph (g) is redesignated as paragraph (f) introductory text, and paragraphs (g)(2), (g)(3), and (g)(5) are redesignated as paragraphs (f)(1), (f)(2), and (f)(3), respectively and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

**§ 176.78 [Amended]**

26. In § 176.78, paragraphs (g)(4) and (g)(5) are removed and reserved.

27. In § 176.800, paragraph (a) is revised to read as follows:

**§ 176.800 General stowage requirements.**

(a) Each package required to have a Class 8 (corrosive) label thereon being transported on a vessel must be stowed clear of living quarters, and away from foodstuffs and cargo of an organic nature.

\* \* \* \* \*

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

28. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

29. In § 177.800, paragraph (d) is added to read as follows:

**§ 177.800 Purpose and scope of this part and responsibility for compliance and training.**

\* \* \* \* \*

(d) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

**§ 177.803, § 177.805, § 177.806, § 177.807, § 177.808, § 177.809, § 177.811, § 177.812, § 177.813, § 177.814, § 177.815, § 177.825, § 177.826, § 177.836, § 177.844, § 177.853, § 177.855, § 177.856, § 177.857, § 177.858, § 177.859, § 177.860, § 177.861 [Removed]**

30. Sections 177.803, 177.805, 177.806, 177.807, 177.808, 177.809, 177.811, 177.812, 177.813, 177.814, 177.815, 177.825, 177.826, 177.836, 177.844, 177.853, 177.855, 177.856, 177.857, 177.858, 177.859, 177.860, and 177.861 are removed.

**§ 177.821 [Amended]**

31. In § 177.821, paragraphs (c), (d), (e), and (f) are removed.

32. In § 177.823, the section heading is revised and new paragraphs (b) and (c) are added to read as follows:

**§ 177.823 Movement of motor vehicles in emergency situations.**

\* \* \* \* \*

(b) *Disposition of contents of cargo tank when unsafe to continue.* In the event of a leak in a cargo tank of such a character as to make further transportation unsafe, the leaking vehicle should be removed from the traveled portion of the highway and every available means employed for the safe disposal of the leaking material by preventing, so far as practicable, its spread over a wide area, such as by digging trenches to drain to a hole or depression in the ground, diverting the liquid away from streams or sewers if possible, or catching the liquid in containers if practicable. Smoking, and any other source of ignition, in the vicinity of a leaking cargo tank is not permitted.

(c) *Movement of leaking cargo tanks.* A leaking cargo tank may be transported only the minimum distance necessary to reach a place where the contents of the tank or compartment may be disposed of safely. Every available means must be utilized to prevent the leakage or spillage of the liquid upon the highway.

33. In § 177.837, paragraph (a) is revised to read as follows:

**§ 177.837 Class 3 (flammable liquid) materials.**

\* \* \* \* \*

(a) *Engine stopped.* Unless the engine of a cargo tank motor vehicle is to be used for the operation of a pump, no Class 3 material shall be loaded into, or on, or unloaded from any cargo tank motor vehicle while the engine is running.

\* \* \* \* \*

**§ 177.838 [Amended]**

34. In § 177.838, paragraphs (d) and (e) are removed and reserved.

**PART 178—SPECIFICATIONS FOR PACKAGINGS**

35. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

**§ 178.346–3, § 178.346–4, § 178.346–5, § 178.346–6, § 178.346–7, § 178.346–8, § 178.346–9, § 178.346–12, § 178.346–14, § 178.346–15, § 178.347–3, § 178.347–4, § 178.347–6, § 178.347–7, § 178.347–8, § 178.347–9, § 178.347–11, § 178.347–12, § 178.347–14, § 178.347–15, § 178.348–3, § 178.348–4, § 178.348–5, § 178.348–6, § 178.348–7, § 178.348–8, § 178.348–11, § 178.348–12, § 178.348–14, § 178.348–15 [Removed]**

36. Sections 178.346–3, 178.346–4, 178.346–5, 178.346–6, 178.346–7, 178.346–8, 178.346–9, 178.346–12, 178.346–14, 178.346–15, 178.347–3, 178.347–4, 178.347–6, 178.347–7, 178.347–8, 178.347–9, 178.347–11,



178.347-12, 178.347-14, 178.347-15, 178.348-3, 178.348-4, 178.348-5, 178.348-6, 178.348-7, 178.348-8, 178.348-11, 178.348-12, 178.348-14, and 178.348-15 are removed.

#### **Subpart J—[Amended]**

37. In subpart J, § 178.346-10, § 178.346-11, and § 178.346-13 are redesignated as § 178.346-3 through § 178.346-5, respectively; §§ 178.347-5, 178.347-10, and 178.347-13 are redesignated as §§ 178.347-3 through 178.347-5, respectively; and §§ 178.348-9, 178.348-10, and 178.348-13 are redesignated as §§ 178.348-3 through 178.348-5, respectively.

#### **PART 179—SPECIFICATIONS FOR TANK CARS**

38. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

**§ 179.100-2, § 179.100-5, § 179.100-11, § 179.100-22, § 179.104, § 179.104-1, § 179.104-2, § 179.104-3, § 179.104-4, § 179.106-179.106-4, § 179.200-2, § 179.200-5, § 179.200-12, § 179.200-20, § 179.200-26, § 179.202-179.202-22, § 179.220-2, § 179.220-5, § 179.220-12, § 179.220-21, § 179.220-27, § 179.300-2, § 179.300-5, § 179.300-11, § 179.400-2, § 179.400-26, § 179.500-2, § 179.500-9**  
[Removed]

39. Sections 179.100-2, 179.100-5, 179.100-11, 179.100-22, 179.104,

179.104-1, 179.104-2, 179.104-3, 179.104-4, 179.106-179.106-4, 179.200-2, 179.200-5, 179.200-12, 179.200-20, 179.200-26, 179.202-179.202-22, 179.220-2, 179.220-5, 179.220-12, 179.220-21, 179.220-27, 179.300-2, 179.300-5, 179.300-11, 179.400-2, 179.400-26, 179.500-2, and 179.500-9 are removed.

#### **§ 179.400-6 [Amended]**

40. In § 179.400-6, paragraph (a) is removed and reserved.

Issued in Washington, DC on April 1, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

*Acting Deputy Administrator.*

[FR Doc. 96-9555 Filed 4-26-96; 8:45 am]

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