

mark is air eligible, regardless of whether it is preprinted or not.

One commenter incorrectly questions why we except dry ice from the air eligibility mark when the ICAO Technical Instructions do not provide the exception. The ICAO Technical Instructions contain the same exception in the dry ice packing instruction (see ICAO Technical Instruction 904).

One commenter opposing the incorporation of the air eligibility mark is concerned that currently marked shrink-wrapped packages will be required to be remarked. As discussed earlier in this preamble, we are providing an extended transition period, until October 1, 2004, which will allow sufficient time for such packages to be transported as they are currently marked.

One commenter believes there is not enough space for another marking and states that if the package has been tested under UN certification, "it is fit for air." We disagree. The size requirement specifies only that mark be visible. Meeting the UN packaging test requirements is not an assurance that the package is suitable for its contents or that it complies with the applicable air transport requirements.

Several commenters are opposed to the air eligibility marking stating that our interpretation of what the air eligibility mark certifies is too broad or that the mark is unnecessary because the certification statement on the shipping paper is sufficient. We disagree. The air eligibility mark communicates the certification directly on the package. In addition to consistency with the ICAO Technical Instructions, we believe that the use of an air eligibility mark will be beneficial in heightening shipper awareness and responsibility for meeting the additional air transport package requirements. Adoption of this requirement will reduce the inadvertent acceptance for transportation by aircraft of packages that conform only to highway, rail or vessel requirements.

Based on the above discussion, we are incorporating the air eligibility marking requirement into the HMR for all non-bulk packages offered for transportation or transported by aircraft with certain exceptions. The shipper is responsible for the application of the marking, but is not required to physically place it on the package. The marking can be applied by using a durable sticker or label, preprinting it on the packaging, or drawing it on the package by hand. The marking must be durable, legible, and of such size relative to the packaging as to be readily visible. Preprinting by the packaging manufacturer requires the

manufacturer and the shipper to closely coordinate to ensure that the package meets the applicable air transport requirements. The shipper is responsible for ensuring that the package meets the applicable air transport requirements.

A number of changes to the proposed text are made in this final rule to clarify the purpose of the marking and requirements. The text of paragraph (a) is revised to more clearly identify the purpose of the mark as certification by the person offering a package that the package meets requirements for air transportation and to provide examples of those requirements. A sentence is added to § 172.321(a) to clarify that the air eligibility mark does not eliminate a requirement for a certification on a shipping paper. Paragraph (b) is reformatted and a sentence is added to clarify that an overpack or outer packaging containing a cylinder must be marked rather than the cylinder. Paragraph (c) is revised editorially and to clarify that packagings which are excepted from marking requirements are not subject to the air eligibility marking. A new paragraph (d) is added to clearly indicate that the air eligibility marking may not be displayed on a package which does not meet requirements for air transportation.

Section 172.411. We are revising the section heading and paragraphs (b) and (d), and adding new paragraphs (e) and (f). In the June 21, 2001 HM-215D final rule, we removed the requirement to differentiate between primary and subsidiary labels by requiring the class number to be displayed on both types of labels. The primary explosive label, but not the explosive subsidiary label, required the appropriate division number and compatibility group to be displayed. This disparity was an oversight, and we are correcting this section by adding the pictorial of the explosive subsidiary label and revising the text accordingly.

Section 172.504. Based on an oral comment we received from a shipper, paragraph (g) is editorially revised to explain the distinction between the words "explosive articles" and "explosive substances." The commenter stated that the paragraph is often misinterpreted because the two phrases are not understood as having different meanings.

Part 173

Section 173.2a. In paragraph (b), the second line of the title of the Precedence of Hazard Table is editorially revised to include the word "division." In addition, the Table is revised for the first three entries by inserting "4.3"

under the Division 4.3 column to indicate that Division 4.3 takes precedence over Class 3 when classifying a material having more than one hazard.

Section 173.21. In paragraph (f)(3)(ii), we are updating the location reference to the control temperature requirements in the IMDG Code to its current location in Chapter 7.7.

Section 173.22. We are revising paragraph (a)(4) to clarify that, in addition to complying with the Part 178 requirements, the shipper is responsible for ensuring that packages comply with the Part 173 requirements. This revision is consistent with the new amendments to § 173.24a relative to closures, and to § 173.27 relative to packages intended for air transport.

Section 173.24. Certain comments that we received are beyond the scope of this rulemaking and will not be addressed in this final rule. In the NPRM we proposed to add a new paragraph (b)(4) and revise paragraph (f)(1). Paragraph (b)(4) proposed general requirements applicable to the integrity of packagings. It also proposed to specify that packagings must be closed in accordance with the closure instructions provided by the manufacturer. Prior to this final rule, § 178.2 required packaging manufacturers to provide closure instructions. Although implied under the requirements of §§ 173.22a(2) and 173.24(d) and (f)(2), there was no specific requirement that shippers follow closure instructions. Also in the NPRM, paragraph (f)(1) proposed to revise requirements for the construction and design of closures.

The National Solid Wastes Management Association (NSWMA) submitted a comment supporting the requirement that packages be closed in accordance with the manufacturer's instructions. The Reusable Industrial Packaging Association (RIPA) also supported the proposal, but requested a revision to permit shippers to close packages in a manner that differs from the closure instructions in § 173.28 provided such procedures are fully documented. RIPA states that the word "must" is restrictive for the requirement that packages must be closed in accordance with the manufacturer's instructions and suggests the word be replaced with "should." The commenter further stated that it is impossible for a packaging manufacturer to anticipate every climatic and work condition in which filling may take place and that the manner in which packages are closed often varies from plant to plant. The commenter recommends that closure procedures varying from the