

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 171**

[Docket No. HM-221A; Notice No. 96-1]

RIN 2137-AC77

Extension of Authority for Open-Head Fiber Drum Packaging for Liquid Hazardous Materials**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: In accordance with Section 406 of the "Interstate Commerce Commission Sunset Act" (the Act), RSPA is proposing to extend for one year, until September 30, 1997, the authority to ship certain liquid hazardous materials in open-head fiber drums that do not meet performance-oriented packaging standards for hazardous materials in Packing Group III. The Act provides that a final rule must be issued by February 27, 1996.

DATES: Comments must be received on or before February 5, 1996.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Office of Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket (Docket No. HM-221A) and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5:30 p.m., Monday through Friday except Federal holidays, when the office is closed.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-00001; telephone 202-366-4400.

SUPPLEMENTARY INFORMATION: A central tenet of DOT's regulation of hazardous materials is the assurance that packagings will retain their contents during normal conditions of transportation. Prior to 1991, the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-180) generally specified the use of packagings manufactured to design specifications. However, the HMR also authorized the

use of certain non-specification packagings (including fiber drums) for shipping certain categories of hazardous materials, such as flammable liquids with a flash point above 73° F, liquid cleaning compounds and other liquid corrosives, and hazardous wastes and hazardous substances not included in another hazard class. In general, these specific authorizations had been added to the HMR when a material posing a low or moderate hazard, which had not been previously regulated, was first included within the HMR's classification of hazardous materials. In these cases, DOT had permitted the continued use of packagings then being used for shipping the material. These packagings were required to be only "strong, tight packages" that were "designed and constructed, [with their] contents so limited, that under conditions normally incident to transportation:

- (1) There will be no significant release of the hazardous materials to the environment;
- (2) The effectiveness of the package will not be substantially reduced; and
- (3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase of heat or pressure, or through an explosion, significantly reduce the effectiveness of the packaging.

49 CFR 173.24(a), (b) (1990 ed.)

On December 21, 1990, RSPA issued a final rule in Docket No. HM-181 (55 FR 52401; revisions and response to petitions for reconsideration, 56 FR 66124 [Dec. 20, 1991]; further corrections and amendments, 57 FR 45442, 45446 [Oct. 1, 1992], 46624 [Oct. 9, 1992]). In this rulemaking, RSPA adopted performance-oriented packaging standards for non-bulk packagings (up to 450 liters [119 gallons] capacity or 400 kg [882 lbs.] net mass). Hazardous materials have been assigned to Packing Groups I, II, or III, based on their level of hazard (with Packing Group I indicating those materials posing the greatest hazards), and minimum levels of performance were established for each Packing Group. These "HM-181 performance standards" are intended to simulate the normal transportation environment and to achieve international uniformity.

In the HM-181 rulemaking, RSPA eliminated most instances where the HMR previously authorized the use of non-specification packagings, including packagings for more than 200 environmentally hazardous substances (such as polychlorinated biphenyls (PCBs)). In addition, RSPA classified as hazardous materials certain lower

toxicity poisons that had not previously been regulated.

To allow for an orderly transition to the HM-181 rules, RSPA authorized packagings meeting the HM-181 performance standards to be used immediately but provided a five-year phase-out period (ending on September 30, 1996) for previously authorized packagings. RSPA specified that on

October 1, 1996, requirements in parts 172 and 173 of [49 CFR] for maintenance and use of packagings that were not previously in effect are effective * * *. [P]ackaging authorizations removed from part 173 of [49 CFR] by [HM-181] may no longer be used in place of new packaging requirements.

49 CFR 171.14(a)(1)(iii), previously located at 49 CFR 171.14(b)(8).

On December 29, 1995, the President signed the Act (Pub. L. 104-88). Section 406 of the Act reads as follows:

SEC. 406. FIBER DRUM PACKAGING

(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as in effect on September 30, 1991; and

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

(b) EXPIRATION.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

(c) STUDY.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall contract with the National Academy of Sciences to conduct a study—

(A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations; and

(B) to determine whether a packaging standard (including such fiber drum industry standards), other than performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

(2) COMPLETION.—The study shall be completed before March 1, 1997, and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

(d) SECRETARIAL ACTION.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).

To carry out the mandate in Sections (a) and (b) of the Act, RSPA is proposing to add a new paragraph (a)(2)(iii) to 49 CFR 171.14. Interested parties are invited to submit comments on this proposal. Comments are specifically invited with regard to the possibility that, under Section (b) of the Act, the transition period for continued use of non-specification open-head fiber drums for certain liquid hazardous materials may extend to a future date (beyond September 30, 1997) that is now uncertain.

RSPA considers that this eventuality may best be dealt with, if necessary, in the "final regulations" to be issued by September 30, 1997, under Section (d) of the Act. At that time, further appropriations for fiscal years beginning after September 30, 1997, may have been authorized, and the transition period would end on September 30, 1997. Otherwise, RSPA and interested parties should have a better appreciation at that time for the date when further appropriations may be authorized. However, RSPA will consider alternatives that commenters wish to suggest for handling the uncertain length of this extended transition period for the continued use of non-specification open-head fiber drums for certain liquid hazardous materials.

Because the Act requires the present rulemaking to be completed by February 27, 1996, RSPA is specifying a deadline for comments that is less than the 60 days recommended in Executive Order 12866. To encourage interested parties to submit comments, and somewhat compensate for a shortened comment period, RSPA is mailing a typewritten

copy of this Notice to each person who submitted comments in RSPA's rulemaking proceeding in Docket No. HM-221, Alternate Standards for Open-Head Fiber Drum Packaging (Termination Notice, 60 FR 50714 [Sept. 29, 1995]). Although RSPA will consider late-filed comments to the extent practicable, in accordance with 49 CFR 106.23, the Act's requirement that a final rule be issued within 60 days of enactment will make it extremely difficult for RSPA to consider comments received after February 5, 1996.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking 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. This notice of proposed rulemaking is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

B. Executive Order 12612

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Federal hazardous material 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, marking, and placarding of hazardous material;
- (iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, contents, and placement of those documents;
- (iv) the written notification, recording, and reporting of the unintentional release in transportation; and
- (v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns the packaging authorized for certain hazardous materials. If adopted, this rule would preempt State, local, or Indian tribe requirements concerning this subject unless the non-Federal

requirements are "substantively the same as" the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Section 5125(b)(2) of 49 U.S.C. 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, and not later than two years, following the date of issuance of the final rule. RSPA proposes that October 1, 1996, would be the effective date of Federal preemption for the continued authorization of these fiber drums.

C. Regulatory Flexibility Act

This proposed rule would continue until September 30, 1997, authority for shipment of certain liquid hazardous materials in open-head fiber drums that do not meet the performance standards in the HMR. I certify that the rule proposed in this notice will not have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

There are no new information requirements in this proposed rule.

E. Regulations 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 in 49 CFR Part 171

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

In consideration of the foregoing, 49 CFR part 171 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

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

2. In § 171.14, a new paragraph (a)(2)(iii) would be added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(a) * * *

(2) * * *

(iii) *Non-specification fiber drums.*
Until September 30, 1997, a non-specification fiber drum with a removable head is authorized for a liquid hazardous material in Packing Group III that is not poisonous by inhalation for which this packaging was authorized under the requirements of Part 172 or Part 173 in effect on September 30, 1991.

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Issued in Washington, DC on January 4, 1996, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,
Associate Administrator for Hazardous Materials Safety.

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