

long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 F.R. 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective February 7, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 16, 2004.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 04-26943 Filed 12-7-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, 177, and 178

[Docket No. RSPA-98-4952 (HM-223)]

RIN 2137-AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On October 30, 2003, RSPA published a final rule (68 FR 61905) to clarify the applicability of the Hazardous Materials Regulations to loading, unloading, and storage operations. RSPA is delaying the effective date of the final rule from January 1, 2005 until June 1, 2005.

DATES: The effective date of the final rule amending 49 CFR parts 171, 173, 174, 175, 176, 177, and 178 published at 68 FR 61905 on October 30, 2003, and delayed at 69 FR 30588 on May 28, 2004, is further delayed until June 1, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Donna O'Berry (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation (68 FR 61906). The final rule amended the HMR to incorporate the following new definitions and provisions:

- We defined a new term—"pre-transportation function"—to mean a

function performed by any person that is required to assure the safe transportation of a hazardous material in commerce. When performed by shipper personnel, loading of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel and filling a bulk packaging with hazardous material in the absence of a carrier for the purpose of transporting it is a pre-transportation function as that term is defined in this final rule. Pre-transportation functions must be performed in accordance with requirements in the HMR.

- We defined "transportation" to mean the movement of property and loading, unloading, or storage incidental to the movement. This definition is consistent with the definition of "transportation" in Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Transportation in commerce begins when a carrier takes physical possession of a hazardous material for the purpose of transporting it and continues until delivery of the package to its consignee or destination as evidenced by the shipping documentation under which the hazardous material is moving, such as shipping papers, bills of lading, freight orders, or similar documentation.

- We defined "movement" to mean the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel.

- We defined "loading incidental to movement" to mean the loading by carrier personnel or in the presence of carrier personnel of packaged or containerized hazardous material onto a transport vehicle, aircraft, or vessel for the purpose of transporting it. For a bulk packaging, "loading incidental to movement" means the filling of the packaging with a hazardous material by carrier personnel or in the presence of carrier personnel for the purpose of transporting it. Loading incidental to movement is regulated under the HMR.

- We defined "unloading incidental to movement" to mean the removal of a packaged or containerized hazardous material from a transport vehicle, aircraft, or vessel or the emptying of a hazardous material from a bulk packaging after a hazardous material has been delivered to a consignee and prior to the delivering carrier's departure from the consignee facility or premises. Unloading incidental to movement is subject to regulation under the HMR. Unloading by a consignee after the delivering carrier has departed the facility is not unloading incidental to movement and not regulated under the HMR.

- We defined “storage incidental to movement” to mean storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document. However, in the case of railroad shipments, even if a shipment has been delivered to the destination shown on the shipping document, if the track is under the control of a railroad carrier or track is used for purposes other than moving cars shipped to or from the lessee, storage on the track is storage incidental to movement. We revised the definition of “private track or private siding” to make this clear. Storage at a shipper facility prior to a carrier exercising control over or taking possession of the hazardous material or storage at a consignee facility after a carrier has delivered the hazardous material is not storage incidental to movement and is not regulated under the HMR.

- We amended § 171.1 of the HMR to list regulated and non-regulated functions. Regulated functions include: (1) Activities related to the design, manufacture, and qualification of packagings represented as qualified for use in the transportation of hazardous materials; (2) pre-transportation functions; and (3) transportation functions (movement of a hazardous material and loading, unloading, and storage incidental to the movement). Non-regulated functions include: (1) Rail and motor vehicle movements of a hazardous material solely within a contiguous facility where public access is restricted; (2) transportation of a hazardous material in a transport vehicle or conveyance operated by a Federal, State, or local government employee solely for government purposes; (3) transportation of a hazardous material by an individual for non-commercial purposes in a private motor vehicle; and (4) any matter subject to U.S. postal laws and regulations.

- We amended § 171.1 of the HMR to indicate that facilities at which functions are performed in accordance with the HMR may be subject to applicable standards and regulations of other Federal agencies or to applicable State or local government laws and regulations (except to the extent that such non-Federal requirements may be preempted under Federal hazmat law). Federal hazmat law does not preempt other Federal statutes nor does it

preempt regulations issued by other Federal agencies to implement statutorily authorized programs. The final rule was intended to clarify the applicability of the HMR to specific functions and activities. It is important to note that facilities at which pre-transportation or transportation functions are performed must comply with Occupational Safety and Health Administration (OSHA) and state or local regulations applicable to physical structures—for example, noise and air quality control standards, emergency preparedness, fire codes, and local zoning requirements. Facilities may also have to comply with applicable State and local regulations for hazardous materials handling and storage operations. Facilities at which pre-transportation or transportation functions are performed may also be subject to Environmental Protection Agency (EPA) and OSHA regulations. For example, facilities may be subject to EPA’s risk management; community right-to-know; hazardous waste tracking and disposal; and spill prevention, control and countermeasure requirements, and OSHA’s process safety management and emergency preparedness requirements. Similarly, facilities at which pre-transportation functions are performed may also be subject to regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the handling of explosives.

II. Appeals of the Final Rule

We received 14 appeals of the final rule from Ag Processing Inc. (AGP); Akzo Nobel (Akzo); Archer Daniels Midland Company (Archer Daniels); the Association of American Railroads (AAR); the Dangerous Goods Advisory Council (DGAC); the Dow Chemical Company (Dow); DuPont; Eastman Chemical Company (Eastman); the Institute of Makers of Explosives (IME); Norfolk Southern Corporation (Norfolk Southern); the Spa and Pool Chemical Manufacturers’ Association (SPCMA); the Sulphur Institute; the Utility Solid Waste Activities Group (USWAG); and Vermont Railway, Inc. (Vermont Railway).

Appellants raised a number of issues related to the consistency of the final rule with Federal hazardous materials transportation law; state and local regulation of hazardous materials facilities; the relationship of the HMR to regulations promulgated by OSHA, EPA, and ATF; the definitions adopted in the final rule for “unloading incidental to movement,” “transloading,” and “storage incidental to movement;” and the consistency of the HM-223 final

rule with security regulations adopted in a final rule issued under Docket No. HM-232.

III. Delay of Effective Date

On May 28, 2004, we published a final rule to delay the effective date of the October 30, 2003 final rule until January 1, 2005 (69 FR 30588). In the May 28, 2004 final rule, we explained that the issues raised by appellants concerning the October 30, 2003 final rule were detailed and complex and that delaying the effective date would provide us with sufficient time to fully address the issues raised by the appellants and to coordinate the appeals document fully with the other Federal agencies that assisted us in developing the HM-223 final rule. Unfortunately, we have not been able to coordinate decisions concerning the appeals to the October 30, 2003 final rule as expeditiously as we had hoped. Therefore, we have decided to delay the effective date of the final rule until June 1, 2005.

IV. Continued Applicability of the HMR

The October 30, 2003 final rule is based on long-standing administrative determinations as to the applicability of the HMR to specific functions and activities. These administrative determinations remain in effect even though the effective date of the HM-223 final rule is delayed. Therefore, notwithstanding the action taken in this final rule to delay the effective date of the October 30, 2003 final rule until June 1, 2005, you may generally rely on the preamble discussion for the October 30, 2003 final rule for guidance as to how the HMR apply to functions and activities related to the transportation of hazardous materials in commerce; the relationship of the HMR to standards and regulations issued by OSHA, EPA and ATF; and the preemption provisions of Federal hazmat law as they apply to non-Federal laws and regulations applicable to the transportation of hazardous materials in commerce. Note, however, that because the amendments to § 174.67 of the HMR affecting rail tank car unloading operations conducted by consignees will not become effective until June 1, 2005, the requirements in § 174.67 continue to apply to any person unloading hazardous materials from a rail tank car. Persons holding exemptions applicable to any of the requirements in § 174.67 must continue to maintain such exemptions in effect until June 1, 2005.

V. Effect of Delay on Revised Incident Reporting Requirements

On December 3, 2003 (68 FR 67745), we published a final rule under docket HM-229 revising the incident reporting requirements in §§ 171.15 and 171.16 of the HMR and the Hazardous Materials Incident Report Form. On May 26, 2004 (69 FR 30113), we published a final rule making several corrections to the December 3, 2003 final rule and extending its effective date until January 1, 2005. We extended the effective date of the incident reporting final rule to provide sufficient time for development and testing of the software to enable electronic reporting of incidents and for outreach to the regulated community.

Several persons have suggested that, because the HM-229 final rule references definitions adopted in the HM-223 final rule, the effective date for the HM-229 final rule must coincide with the effective date for the HM-223 final rule. We do not agree. As stated above, the HM-223 final rule adopts definitions that are based on long-standing administrative determinations as to the applicability of the HMR to specific functions and activities. These administrative determinations remain in effect even though the effective date of the HM-223 final rule is delayed.

The HM-229 final rule expands the incident reporting requirements to each person who is in physical control of a hazardous material while it is being transported in commerce. Generally, the person in physical control of the hazardous material during transportation will be either the carrier or the person having physical control of the hazardous material for the time that it may be stored during transportation. The HM-229 final rule states, "Consistent with the definitions adopted in the HM-223 final rule, storage incidental to movement is storage by any person of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material until the package containing the hazardous material is physically delivered to the destination indicated on a shipping document." (68 FR 67751) The HM-223 definition for "storage incidental to movement" is consistent with previously issued preemption determinations and letters of clarification concerning the applicability of the HMR to storage operations (see preamble discussion to the NPRM published under docket HM-223 on June 14, 2001; 66 FR 32434-36). Thus, notwithstanding the delay in the effective date of the HM-223 final rule,

the incident reporting requirements adopted in HM-229 apply to persons in physical possession of a hazardous material between the time that the hazardous material is offered for transportation to a carrier and the time it reaches its intended destination and is accepted by the consignee "that is, to carriers and to owners or operators of facilities at which the hazardous material may be stored during transportation.

Issued in Washington, DC, on December 1, 2004, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04-26852 Filed 12-7-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 585, 586, 589, 590, 596, and 597

[Docket No. NHTSA-04-18726]

RIN 2127-AI91

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document adopts NHTSA's proposal to require all designated seating positions in rear seats, other than side-facing seats, be equipped with Type 2 integral lap/shoulder safety belts. Side-facing seats may be equipped with either a Type 1 lap belt or a Type 2 belt. This final rule responds to a Congressional mandate that the agency begin to phase-in requirements for lap/shoulder belts for all rear seating positions, wherever practicable, not later than September 1, 2005.

DATES: *Effective Date:* The amendments made in this rule are effective September 1, 2005. *Petitions:* Petitions for reconsideration must be received by January 24, 2005.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Sanjay

Patel, Office of Crashworthiness Standards, at 202-366-4583.

For legal issues, you may call Christopher Calamita, Office of the Chief Counsel, at 202-366-2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 4, 2002, the President signed into law "Anton's Law", Public Law 107-318 (December 4, 2002; 116 Stat. 2772), which provides for the improvement of child safety devices when installed in motor vehicles. One of the provisions of Anton's Law mandates the installation of lap/shoulder belts in rear seating positions. Specifically, section 5(a) of the law directs the Secretary of Transportation, through NHTSA, to issue a final rule by December 2004 that would:

require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement.

Section 5(b) of the statute further specifies that the final rule be implemented in phases on a production year basis, beginning with the first production year after the year the final rule is published.¹ The rule is to be

¹ "The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule."