

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Burbank, Channel 256C1 and by removing Channel 246C, Channel 256C2, and Channel 265A and adding Channel 246C0 at Walla Walla.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 171

[Docket No. PHMSA-00-7762 (HM-206C)]

RIN 2137-AD29

### Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without change the April 1, 2005, mandatory compliance date for the notification and record retention requirements for aircraft operators transporting hazardous materials, as adopted in an interim final rule in this proceeding published on September 1, 2004.

**DATES:** *Effective Date:* The effective date of these amendments is February 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 25, 2003, the Research and Special Programs Administration (RSPA, the predecessor agency of the Pipeline and Hazardous Materials Safety

Administration (PHMSA)) published a final rule under this docket (68 FR 14341) amending the Hazardous Materials Regulations (HMR) to require an aircraft operator to: (1) Place on the notification of pilot-in-command (NOPC) or in the cockpit of the aircraft a telephone number that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; (2) retain and provide upon request a copy of the NOPC, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and (3) make readily accessible, and provide upon request, a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The March 25, 2003, rule which became effective October 1, 2003, required compliance on October 1, 2004.

On June 22, 2004, the Air Transport Association (ATA) requested that RSPA extend the compliance date from October 1, 2004, to April 1, 2005, to allow its member air carriers additional time to prepare for and implement these new requirements. In response to this request, RSPA published an interim final rule (IFR) on September 1, 2004, delaying the compliance date to April 1, 2005. We invited interested parties to participate in this rulemaking by submitting comments on the IFR.

We received two comments. Neither comment addressed the issue of delayed compliance discussed in this IFR. One commenter submitted comments dealing with issues discussed in the NPRM; the other commenter questioned the length of the retention period for the NOPC (*see* § 175.33(c)) in comparison to the retention period for shipping papers in § 172.201. Both comments are outside the scope of this rulemaking, and are not addressed here. PHMSA is adopting the amendments as presented in the IFR.

##### II. Regulatory Analyses and Notices

###### A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Title 49 United States Code

§ 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous material by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

###### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule adopts without change a compliance date adopted in an interim final rule published on September 1, 2004. The compliance date extension adopted in this final rule does not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the March 25, 2003, final rule.

###### C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rulemaking preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject item (3) above and preempts State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. This final rule does not change the effective date of Federal preemption of the March 25, 2003, final rule, which was October 1, 2003.

#### *D. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply.

#### *E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to businesses, some of whom are small entities, that transport hazardous materials by air. This final rule provides an extension of the compliance date for notification and record retention requirements for air carriers. The compliance date extension assures that air carriers have sufficient time to reprogram their systems to meet the new requirements, test the reprogrammed system, develop training materials and train their employees. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### *F. Paperwork Reduction Act*

This final rule does not impose new information collection requirements. We currently have an approved information collection under OMB No. 2137-0034, "Hazardous Materials Shipping Papers & Emergency Response Information." The March 25, 2003, final rule resulted in an increase in the annual paperwork burden and costs. These revisions regarding the maintenance of copies of notification of pilot-in-command were submitted under the NPRM to OMB for review and approval.

PHMSA estimated that the new total information collection and recordkeeping burden for OMB No. 2137-034 would be as follows: "Hazardous Materials Shipping Papers & Emergency Response Information" OMB No. 2137-0034.

*Total Annual Number of Respondents:* 250,000.

*Total Annual Responses:* 260,000,000.

*Total Annual Burden Hours:* 6,523,611.

*Total Annual Burden Cost:* \$6,925,000.

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. OMB approved the revised information collection requirement on February 27, 2003.

#### *G. 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.

#### *H. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more, in the aggregate, to any of the following: State, local or tribal governments, or to the private sector.

#### *I. Environmental Assessment*

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. Improving emergency response to aircraft incidents will reduce environmental damage associated with such incidents. There are no significant environmental impacts associated with this final rule.

#### *J. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or you may visit <http://dms.dot.gov>.

#### **List of Subjects in 49 CFR Part 171**

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

■ Accordingly, the interim final rule amending 49 CFR part 171 which was published at 69 FR 53352 on September 1, 2004, is adopted as a final rule without change.

Issued in Washington, DC, on February 3, 2005, under the authority delegated in 49 CFR part 1.

**Elaine E. Joost,**

*Acting Deputy Administrator.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**Docket No. 041202338-4338-01; I.D. 021805A]**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.