



# DEPARTMENT OF TRANSPORTATION

MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

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## Title 49—Transportation

### CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-103; HM-112; Amdt. Nos. 171-32, 172-29, 173-94, 174-26, 175-1, 176-1, 177-35]

#### CONSOLIDATION OF HAZARDOUS MATERIALS REGULATIONS

##### Extension of Mandatory Compliance Dates

On April 15, 1976, the Materials Transportation Bureau (MTB) published a final consolidation of hazardous materials regulations (41 FR 15972). That amendment becomes effective July 1, 1976. Under the terms of the effective date provision appearing in the April 15, 1976 publication, compliance with certain portions of the amendment was not required until January 1, 1977, July 1, 1977, or July 1, 1979 (the latter date applicable to the use of preprinted shipper's certifications).

Since the April 15 publication, 36 petitioners have addressed the effective date provision in 51 separate submissions, either directly requesting reconsideration of the provision or noting some difficulty in the application of that provision. Based upon the discussions provided in support of such petitions and other comments, and upon further consideration by the MTB, it appears appropriate to amend the effective date provision as it relates to portions of the amendment subject to delayed mandatory compliance. These alterations are accomplished herein by substituting a new effective date provision in place of the one originally appearing in the April 15 publication.

Requests for relief included recommendations in some cases as to compliance dates for specific problem areas, and in other cases as to the time and mechanics necessary to implement HM-112 in its entirety. Of those dealing with the matter of total implementation, comments fell into two general categories. One group of comments favored use of a single mandatory compliance date, usually preceded by a period of voluntary compliance. The single dates recommended were generally January 1, 1978, July 1, 1977, or July 1, 1978, in rough order of frequency. Those recommending a single date frequently suggested that it be twelve or eighteen months after any final corrections to HM-112 are published. The order of the listing above is based on MTB publication of those corrections by July. A document for that purpose is presently nearing completion within the Office of Hazardous Materials Operations.

A second group of comments favored retaining the "phased" implementation approach that was followed in the original effective date provision but recommended changes in timing and mechanics.

That group generally recommended a period of voluntary compliance

commencing July 1, 1976, be followed by a January 1, 1977 mandatory compliance date for marking, labeling and packaging requirements, and that shipping paper and placarding requirements be made mandatory January 1, 1978. The second group also recommended a "grandfather" provision allowing packages filled before January 1, 1977, to be shipped under the old regulations until January 1, 1978.

In general, comments placed in the docket since publication of the final HM-112 amendment take issue with the original effective date provision in several areas. The provision is said to provide insufficient time to retain shipper and carrier personnel; to allow persons affected by the amendment to adequately analyze it; to allow the MTB itself to evaluate and act on petitions for reconsideration; to allow depletion of old stocks of shipping paper and merchandise; and to allow preparation of tariff amendments reflecting the new regulatory requirements. Those complaints have been exacerbated by apparent delays in the availability of additional copies of the April 15 FEDERAL REGISTER publication.

Discussions provided in support of requests for relief from the effective date provision have tended to be somewhat conclusory in nature. While the implementation of the provisions of HM-112 in some cases may prove burdensome, requiring those subject to it to undergo training, to alter old equipment or acquire new equipment, and in some cases to alter manner of shipment, the MTB continues to believe that an expedited implementation schedule is in the best interest of the public. Whenever two differing sets of regulatory requirements may apply to the same situation, obvious difficulties exist which should be minimized as far as possible. It is for this reason that proposals for a single mandatory compliance date, preceded by a year or more of optional voluntary compliance, have been rejected. However, a general six-month period of optional voluntary compliance has been provided in recognition of the need for some degree of latitude for persons subject to the amendment to reach full compliance in a deliberate but timely manner. Delayed compliance beyond that six-month period has been provided for certain specific requirements of the amendment for which additional time appears justified. In general, those requirements for which additional voluntary compliance has been authorized are the same that appeared in the original effective date provision, although a "grandfather" provision for stocks of merchandise and packagings has been added. That provision allows packages filled, marked or labeled before July 1, 1976, in accordance with regulations in effect on June 30, 1976 (old regulations), to be shipped until July 1, 1977. July 1, 1976, has been selected as the cut-off date for package qualification under

this provision, rather than January 1, 1977, the end of the voluntary compliance period, to avoid encouraging continued reliance on the old regulations rather than the amendment. Additionally, authorization for delayed compliance with shipping paper requirements has been widened and is coterminous with the "grandfather" provision. It should be noted that during the period from July 1, 1976, until July 1, 1977, during which time it is possible that packages may be shipped and shipping paper prepared in accordance with either the old regulations or in accordance with the amendment, the labeling and marking of packages must be consistent with the hazard class and description shown on the accompanying shipping paper. This limitation is necessary to insure a consistent presentation of hazard information in the event of an emergency response situation.

(1) *Review and training.* As noted, necessary corrections to the amendment are expected to be published by July. The new effective date provision provides a six-month voluntary compliance period that may be used for a phased implementation program at the discretion of persons subject to the hazardous materials regulations.

(2) *Depletion of stock: packages and shipping paper.* A package which has been filled, marked or labeled before July 1, 1976, may be offered for transportation, or transported, between July 1, 1976, and July 1, 1977, provided that it conforms to old regulations as to the package, marking and labeling.

The provisions of the amendment that specify either the content or format of a shipping paper are not mandatory until July 1, 1977. This mandatory date applies to everything that appears on a shipping paper, including format (except preprinted shipper's certifications). Prior to the mandatory date, format and content may comply with either the old regulations or the amendment. However, entries must be internally consistent (i.e. conform to either old or new requirements). In addition, for any package the hazard class on the package label and the description marked on the package must be the same as that shown on the shipping paper entry. So long as that condition is observed, an entry conforming to either old regulations or the amendment is acceptable.

For example, consider a packaging not yet filled or marked, but labeled on June 1, in accordance with regulations that continued in existence through June 30, 1976. That packaging could be filled, marked and relabeled in accordance with the amendment and shipped. Alternatively, the packaging could be filled and marked in accordance with the old regulations and shipped. In either case, shipping paper format may conform to old regulations or to the amendment, as may

the shipping paper entry (so long as the entry shows the same hazard class as the package label, and the same description as the package marking). Assuming an old or a new shipping paper format will accommodate it, an entry conforming to the old regulations, and an entry conforming to the amendment, can both appear on the same shipping paper.

(3) *Tariffs.* It appears that changes in the effective date provision made effective herein will provide sufficient time for republication of all domestic tariffs pertaining to the transportation of hazardous materials. The International Air Transport Association (IATA) has requested that the HM-112 effective date provision be changed to July 1, 1977, to allow time for the amendment to be incorporated in the IATA Restricted Articles Regulations. In the interest of early implementation of the amendment, that request is denied. The IATA may wish to consider the publication of a supplement containing those changes it determines appropriate and necessary to obtain consistency with the HM-112 amendment.

In connection with this modification of the effective date provision and the overall implementation of the amendment, it is obligatory that the hazardous materials tariffs, which are required to conform to the hazardous materials regulations, also accurately reflect those portions of the new effective date provision that allow voluntary or alternate methods of compliance. This is essential so that the advantages of voluntary phased implementation will not be encumbered or confused by limiting tariff provisions.

(4) *Placarding.* Placarding amendments are not mandatory until July 1, 1977, except for tank car placarding of combustible liquids. The table of equivalent old and new placards is provided to facilitate rail handling requirements for placarded rail cars and to insure appropriate rail car handling from July 1, 1976, to July 1, 1977, when placarding may occur under either old or new requirements (especially after January 1, 1977, when the new requirements for the handling of placarded cars becomes mandatory). The table may not be used in connection with section 174.25 or in connection with provisions outside of Part 174 (such as section 172.203(g)), as consistency between placard and placard notation information should be maintained in the event of an emergency response situation.

(5) *Exemptions.* There are presently outstanding certain exemptions from regulations relocated, renumbered or revoked as part of the Docket HM-112 consolidation. To avoid any possibility that those exemptions may be construed as having been terminated, and also to

facilitate the application of delayed compliance authority contained in the new effective date provision, that provision includes a statement expressly continuing such exemptions. Exemption applications filed before July 1, 1976, and issued or denied after that date will be evaluated and handled as filed.

Accordingly, in FR Doc. 76-9662, appearing at pages 15972-16131 in the FEDERAL REGISTER of April 15, 1976, the effective date provision, appearing at page 16131, is changed to read as follows:

Effective date: This amendment is effective July 1, 1976. However—

(1) Except as provided in paragraphs (2) through (4), compliance with the provisions of this amendment is not mandatory until January 1, 1977.

(2) Compliance with the provisions of this amendment pertaining to the information required to appear on a shipping paper or the format of a shipping paper, is not mandatory until July 1, 1977. (See note to 49 CFR 172.204(a) regarding delayed compliance with that section's required use of a newly worded shipper's certification.)

(3) A package filled, marked or labeled before July 1, 1976, in accordance with regulations in effect on June 30, 1976, may be offered for transportation and transported, even though it does not comply with the package, marking and labeling provisions of this amendment, if it (i) is offered for transportation before July 1, 1977, and (ii) complies with the package, marking and labeling regulations in effect on June 30, 1976.

(4) Compliance with the provisions of this amendment appearing in Subpart F of Part 172 (Placarding) is not mandatory until July 1, 1977, except that compliance with the placarding requirements issued under Docket HM-102 (39 FR 1768, January 24, 1974; 40 FR 57433, December 10, 1975), pertaining to tank cars containing combustible liquids is required on and after January 1, 1977.

(5) Under the authority of any of the preceding four numbered paragraphs:

(1) When a provision of this amendment is not complied with, the comparable provision (if any) of the regulations in effect on June 30, 1976, shall be complied with; however,

(ii) The hazard class and description of a material indicated on a shipping paper must be the same as the hazard class indicated on the label (if any) displayed, and the descriptor marked, on the package containing that material.

(6) For purposes of the application of Part 174 (except § 174.25) to rail cars from July 1, 1976, to July 1, 1977, placards specified in this amendment, and placards specified under regulations in effect on June 30, 1976, may be treated as equivalent according to the following table:

(7) This amendment does not terminate any outstanding exemption issued under 49 CFR, Part 107 or its predecessor authorities. Any exemption from regulatory requirement in effect on June 30, 1976, which is modified or replaced by this amendment, continues in effect:

(i) By its own terms, to the extent that continued compliance with that regulatory requirement is required or authorized by this amendment; and

(ii) For any provision of this amendment which is equivalent to that regulatory requirement.

(18 U.S.C. 834, 46 U.S.C. 170(7), 49 U.S.C. 1472(h)(1), 49 CFR 1.53(f)-(h))

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Hazard class (material)	Placard adopted under Docket No. HM-103/112	Equivalent placard required by pt. 174 on June 30, 1976
Explosives A	EXPLOSIVES A	EXPLOSIVES
Explosives B	EXPLOSIVES B	DANGEROUS
Explosives C	FLAMMABLE	None
Flammable liquid	FLAMMABLE	DANGEROUS
Flammable solid	FLAMMABLE SOLID	DANGEROUS
Oxidizer	OXIDIZER	DANGEROUS
Corrosive liquid	CORROSIVE	DANGEROUS
Nonflammable gas	NONFLAMMABLE GAS	DANGEROUS
Flammable gas	FLAMMABLE GAS	DANGEROUS
Poison A	POISON GAS	DANGEROUS
Poison B	POISON	POISON GAS
Radioactive material	RADIOACTIVE	DANGEROUS - RADIOACTIVE
Organic peroxide	ORGANIC PEROXIDE	MATERIAL, DANGEROUS
Combustible (Chlorine)	COMBUSTIBLE CHLORINE	DANGEROUS
(Oxygen, pressurized liquid)	OXYGEN	DANGEROUS