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Extension of Authority for Open-Head
Fiber Drum Packaging for Liquid
Hazardous Materials; Final Rule

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

[Docket No. HM-221A; Amdt. No. 171-139]

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:** Final rule.

SUMMARY: In accordance with Section 406 of the "Interstate Commerce Commission Sunset Act" (the Act), RSPA is extending 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. This extension expires on the later of September 30, 1997, or the date on which funds are authorized to be appropriated for the hazardous materials transportation program for fiscal years beginning after September 30, 1997.

EFFECTIVE DATE: This final rule is effective on October 1, 1996.

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 20590-0001; telephone 202-366-4400.

SUPPLEMENTARY INFORMATION: On January 9, 1996, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. HM-221A, Notice No. 96-1 (61 FR 688), proposing to extend for one additional year, until September 30, 1997, authority for the transportation of certain liquid hazardous materials in non-specification open-head fiber drums that do not meet the performance-oriented packaging standards in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180.

In the absence of this extension, these open-head fiber drums would not be authorized for shipping these hazardous materials after September 30, 1996. See 49 CFR 171.14(a)(1)(iii). This is because, in a final rule in Docket No. HM-181 (56 FR 66124, Dec. 20, 1991), RSPA eliminated most instances where the HMR had previously authorized the use of non-specification packagings, including packagings for environmentally hazardous substances such as polychlorinated biphenyls.

However, to allow for an orderly transition to the performance-oriented packaging standards for non-bulk packagings also adopted in HM-181, 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.

In the January 9, 1996 NPRM, RSPA proposed to add a new paragraph (a)(2)(iii) to 49 CFR 171.14 to carry out the mandate in paragraphs (a) and (b) of Section 406 of the Interstate Commerce Commission Sunset Act (Pub. L. 104-88, Dec. 29, 1995). Section 406 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).

In the NPRM, RSPA proposed an extension of the transition period for continued use of non-specification open-head fiber drums for certain liquid hazardous materials until September 30, 1997. Recognizing that the transition period might have to be extended beyond that date, RSPA stated its intention to revisit that issue in the 1997 rulemaking required by section (d).

RSPA requested comments on the proposed rule, including the possible extension of the transition period to the later of two dates, September 30, 1997, or the date on which funds are authorized to be appropriated to carry out the Federal hazardous materials transportation program for fiscal years beginning after September 30, 1997. RSPA stated that it would "consider alternatives that commenters wish to suggest for handling the uncertain length of this extended transition period * * *" See 61 FR 689.

In response to the NPRM, RSPA received 13 comments. Several industry commenters opposed the extension itself on safety, fairness and uniformity grounds. Those commenters, however, recognized that RSPA has no discretion and must grant the extension. Some commenters requested similar extensions beyond October 1, 1996, for use of other non-specification packagings (e.g., plastic or steel) for transportation of hazardous materials. Consideration of other extensions is beyond the scope of this rulemaking.

Two of the commenters supported the proposed one-year extension of the transition period. Other commenters, including members of Congress, opposed the unqualified one-year extension and stated that RSPA should follow the mandate in section (c) and recognize an alternative to the

September 30, 1997 date for termination of the fiber drum use extension.

In light of these comments, RSPA is adopting the proposed rule with modifications. It is deleting the phrase, "Until September 30, 1997," from the beginning of the extension language and adding the following separate sentence to address the duration of the extension: "This authorization expires 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 (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997." RSPA is adding the following language to provide a point of contact about the authorization date: "Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator."

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule 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 rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). Because of the minimal economic impact of this final rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule 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 rule concerns the packaging authorized for certain hazardous materials and, therefore, preempts 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 has determined that the effective date of Federal preemption for the continued authorization of these fiber drums will be October 1, 1996.

C. Regulatory Flexibility Act

This final rule extends the 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 this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

E. 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 handling 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, Imports, Reporting and recordkeeping requirements.

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

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.4

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

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

* * * * *

(a) * * *

(2) * * *

(iii) *Non-specification fiber drums.* 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 the packaging was authorized under the requirements of Part 172 or Part 173 of this subchapter in effect on September 30, 1991. This authorization expires 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 (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997. Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator for Hazardous Materials Safety.

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Issued in Washington, DC, on February 22, 1996, under authority delegated in 49 CFR Part 1.

D.K. Sharma,
Administrator.

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