

cylinders are authorized for use as fire extinguishers.

Issued in Washington, DC on September 23, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

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49 CFR Part 173

[Docket HM-207C, Amdt. No. 173-249]

RIN 2137-AC63

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

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

ACTION: Final rule; Revision made in response to petition for reconsideration.

SUMMARY: In response to a petition for reconsideration, this final rule deletes a requirement that, when the provisions of an exemption require that a copy be in a carrier's possession during transportation, the carrier must maintain a copy of the exemption in the same manner as required for shipping papers. This amendment will allow the carrier to use any appropriate method for making the exemption available, unless otherwise specified by the provisions of the exemption.

EFFECTIVE DATE: The effective date of this final rule and the final rule published under Docket HM-207C on May 9, 1996 (61 FR 21084) is October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Stokes Molinar, Office of the Chief Counsel, (202) 366-4400, or Diane LaValle, Office of Hazardous Materials Standards, (202) 366-8553, RSPA, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590-0001.

SUPPLEMENTARY INFORMATION: On May 9, 1996, RSPA published a final rule under docket HM-207C (61 FR 21084) that revised and clarified RSPA's procedures and requirements for its exemption, approvals, registration, reporting, preemption, and enforcement procedures and programs. These revisions and clarifications included addition of a new paragraph (c) to 49 CFR 173.22a. The last sentence of this paragraph states: "When the provisions of the exemption require it to be in the possession of a carrier during transportation in commerce, the carrier shall maintain the copy of the exemption in the same manner as required for a shipping paper."

On June 3, 1996, United Parcel Service (UPS) filed a petition for reconsideration, requesting that RSPA delete the last sentence of paragraph (c) to 49 CFR 173.22a. UPS claimed that the new requirement is not practicable, is both unreasonable and unnecessary, and was issued without notice and opportunity for comment.

UPS contended that the requirement would cause major operational difficulties within its system, especially in ensuring that a copy of the exemption when detached from the package "tracks" with the package. UPS stated that its daily business operations include transporting thousands of DOT exemption packages. Typically, UPS stated, an exemption package may be transported aboard up to five UPS vehicles, and subjected to as many sorting and transferral operations. UPS stated that, prior to the publication of HM-207C, when an exemption contained language mandating that the exemption must be carried by the carrier, UPS physically attached a copy of the exemption to each exemption package, thus facilitating the transportation of the exemption with the package through the myriad of sorting, transfer, and transportation operations necessary to deliver the package to its destination. UPS stated that requiring a driver to detach the exemption from the package, place it with the shipping papers, and transfer it each time the package was rerouted would render it extremely difficult to ensure that each exemption document was able to "track" its attendant package to the package's final destination.

UPS further stated that this new requirement would achieve little, if anything, in terms of improved safety and cannot be justified in light of the increased administrative and paperwork burdens associated with the new requirement. Further, UPS claimed that the new requirement was adopted without proper notice and without affording the public an opportunity for comment.

RSPA adopted the new requirement in the May 9, 1996 final rule as a clarification, with the understanding that the provision would impose no additional costs and that the vast majority of carriers already conform to the new requirement, as the most practicable way to ensure that the exemption is available during transportation. RSPA did not consider that some companies, such as UPS, may use other methods of ensuring that an exemption is on the transport vehicle and that costs would be incurred by them in conforming to the new requirement. Based on the comments

presented by UPS, RSPA agrees that there may be operational burdens imposed on UPS and others which were not considered in the May 9, 1996 final rule and that the requirement may entail costs which would exceed its benefits. RSPA notes that if there is a need to ensure that an exemption is immediately accessible during transportation, such as where an exemption contains information related to the safe handling of a shipment, RSPA can specify the manner of maintaining the exemption in specific provisions in the exemption.

Based on the foregoing, RSPA is deleting the requirement as requested by UPS. Because this revision is within the scope of the rulemaking under docket HM-207C, lessens the requirements placed upon a carrier in the May 9, 1996 final rule, imposes no new regulatory burden on any person, and does not adversely impact emergency response, additional public notice and comment are unnecessary. Because the requirement was to go into effect on October 1, 1996, and to ensure publication of this amendment in the 1996 Code of Federal Regulations, there is "good cause," under the Administrative Procedure Act, to make the amendment effective on the same effective date as the May 9, 1996 final rule, i.e., October 1, 1996, without the usual 30-day delay following publication.

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 (OMB). The rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not result in any additional costs to persons subject to the HMR. Therefore, preparation of a regulatory impact analysis or regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials 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, labeling, marking, and placarding of hazardous material;
- (iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;
- (iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that 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 following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption for this final rule is January 1, 1997. Because RSPA lacks discretion in this area, preparation of a Federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule merely deletes a requirement scheduled to go into effect on October 1, 1996, and it does not impose any new requirements. Thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

Information collection requirements applicable to exemptions are unchanged by this final rule in substance and amount of burden from those currently approved by the Office of Management and Budget (OMB) under OMB control number 2137-0051. Under the Paperwork Reduction Act of 1995, no person is required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

E. Regulation Identification Number (RIN)

A regulation identification 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 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read as follows:

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

§ 173.22a [Amended]

2. In § 173.22a, paragraph (c), as added at 61 FR 21102 effective October 1, 1996, is amended by removing the last sentence.

Issued in Washington, D.C., on September 20, 1996, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Deputy Administrator.

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National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. 96-097; Notice 1]

RIN 2127-AG57

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's regulations establishing procedures for decisions on whether a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation into the United States, by adding an appendix that lists all vehicles that have been decided to be eligible for importation.

DATES: The amendment established by this final rule will become effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle

that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.—certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made “on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].” The Secretary’s authority to make these decisions has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator initially redelegated to the Associate Administrator for Enforcement (now Safety Assurance) the authority to grant or deny petitions for import eligibility decisions submitted by motor vehicle manufacturers and registered importers, and subsequently transferred this authority to the Director, Office of Vehicle Safety Compliance (49 CFR 501.8(l)). Thus far, a number of import eligibility decisions have been made on the Administrator’s own initiative, and the Associate Administrator and Office Director have granted many petitions for such decisions submitted by registered importers.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the Federal Register. NHTSA has previously published these lists on four occasions, at 57 FR 29553 (July 2, 1992), 59 FR 8671 (February 23, 1994), 60 FR 8268 (February 13, 1995), and 61 FR 8097 (March 1, 1996). To ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public, NHTSA is now publishing the list as an appendix to its regulations at 49 CFR Part 593 that establish procedures for decisions on