

(8) A hospital or health care institution holding a license to operate a radio station under this part may operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

(9) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within degrees of azimuth shall be directional and have a front to back ratio of at least 15 dB.

(i) No limit shall be placed on the length or height above ground level of any commercially manufactured radiating transmission line when the transmission line is terminated in a non-radiating load and is routed at least 7 meters (20 feet) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure, including antenna structures.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA-01-10568 (HM-207B)]

RIN 2137-AC64

Hazardous Materials: Retention of Shipping Papers

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing to amend the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

DATES: Comments must be received by November 13, 2001.

ADDRESSES: You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400

Seventh Street SW., Washington, DC 20590-0001. You should identify the docket number (RSPA-01-10568 (HM-207B)) and submit your comments in two copies. If you want to confirm that we received your comments, you should include a self-addressed, stamped postcard. You may submit comments by e-mail by accessing the Dockets Management System website at: <http://dms.dot.gov>. Click on "Electronic Submission" to obtain instructions for filing a document electronically. The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif building) at the above address. You may review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You may also review comments on-line at the DOT Dockets Management System web site at: <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation.

SUPPLEMENTARY INFORMATION:

I. Background

Any person who offers a hazardous material for transportation in commerce must describe the hazardous material on a shipping paper in the manner required in 49 CFR part 172, subpart C. A shipping paper includes "a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204." 49 CFR 171.8 (definition of "shipping paper"). A hazardous waste manifest "may be used as the shipping paper" if it contains all the information required by 49 CFR part 172, subpart C. 49 CFR 172.205(h).

Since 1980, generators and transporters of hazardous waste have been required to retain a copy of the hazardous waste manifest "for three years from the date the waste was accepted by the initial carrier." 49 CFR 172.205(e)(5), adopted in RSPA's May 22, 1980 final rule, 45 FR 34560, 34698. See also regulations of the U.S. Environmental Protection Agency at 40 CFR 262.40(a), 263.22(a). In 1994, Congress amended Federal hazardous material transportation law to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or electronic image thereof for a period of 1 year to be accessible through their respective

principal places of business." 49 U.S.C. 5110(e), added by Pub. L. 103-311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations."

RSPA proposes to amend the HMR to conform with § 5110(e). A paper copy of the shipping paper must accompany a hazardous material during transportation. We propose to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. For purposes of the 375-day retention requirement, an electronic image includes an image transmitted by a facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine.

The statute requires that each shipper and carrier of a hazardous material retain the shipping paper or electronic image thereof for a period of one year after the hazardous material is no longer in transportation. However, the shipper may not know the exact date when transportation ends, nor will an originating or intermediate carrier know when transportation ends if it does not deliver the hazardous material to the consignee. Therefore, we are proposing that the 375-day retention period begin from the date the shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. (49 CFR 172.205(e)(5)). Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carrier. Thus, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of shipping documents for one year after transportation ends. For the small percentage of shipments that take longer than 10 days to deliver, especially those shipments involving interlining and international transportation, the shipper and initial and intermediate carriers will likely not know the delivery date for the shipment and will therefore be uncertain about the retention period if the retention period begins with the delivery date. To require shippers and carriers to determine an exact delivery

date would impose an unreasonable recordkeeping and reporting burden that was not intended by the statute.

In order to facilitate compliance with and enforcement of the requirement, we propose that the copy be dated. For shippers, the shipping paper copy must include the date that the shipment is accepted for transportation by the initial carrier. For carriers, the shipping paper copy must include the date that the carrier accepts the shipment for transportation. The shipping paper may be electronically filed; however, it must be made available on paper if requested by an authorized federal, state, or local government official.

The shipping paper copy or its electronic image must be accessible at or through the principal place of business of each person required to prepare or maintain it during transportation. (For a motor carrier, "principal place of business" has the same meaning as in § 390.5 of the Federal Motor Carrier Safety Regulations.) In this context, "accessible" means readily and easily obtained, i.e., with the same speed of availability as that required to retrieve a paper record from a filing cabinet holding records of the business.

Except for hazardous waste manifests, see 49 CFR 172.205(a), the HMR do not require a shipping paper to be in any specific form or format. We understand that different types of documents are used by offerors of hazardous material to meet the requirement to describe the hazardous material on a "shipping paper." Some private motor carriers use the same shipping paper for multiple shipments of a hazardous material. Typically, these permanent shipping papers are used by private motor carriers who transport a single hazardous material on a regular basis over an extended period, such as one cargo tank of gasoline. We are proposing to permit operators to retain a single copy of such permanent shipping papers for the period in which the shipping paper is used and 375 days thereafter to meet the shipping paper retention requirements in this NPRM provided that the operator also retains a record of each shipment made under the shipping paper. The record must include shipping name, identification number, quantity transported, and date of shipment.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of

Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

This proposed rule implements a statutory requirement that has been in effect since 1994. We do not anticipate any additional costs on offerors and carriers of hazardous materials, and, therefore, preparation of a regulatory evaluation is not warranted. This determination may be revised based on comments received.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous material transportation law would preempt any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this proposed rule, 49 U.S.C. 5125(b)(1)(B), but this proposed rule would not have 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 materials transportation law provides that, if DOT issues a regulation on the preparation, execution, and use of shipping documents related to hazardous material, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. 49 U.S.C. 5125(b)(2). The 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. We propose that the effective date of federal preemption be 90 days from publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed 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 proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to assess the impact of its regulations on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule implements a statutory requirement that has been in effect since 1994. Therefore, this proposed rule will not impose additional costs on offerors and carriers of hazardous material. I hereby certify that, while the proposed rule would apply to a substantial number of small entities, there would not be a significant economic impact on those small businesses.

E. Unfunded Mandates Reform Act of 1995

This NPRM imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. No new burdens are proposed under this rule. RSPA has a current information collection approval under OMB No. 2137-0034, "Shipping Papers and Emergency Response Information" which includes the shipping paper retention requirement in the burden estimates.

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. Environmental Assessment

This proposed rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this proposed rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR parts 172, 174, 175, 176, and 177 as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

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

2. In § 172.201, the section heading would be revised and a new paragraph (e) would be added to read as follows:

§ 172.201 Preparation and retention of shipping papers.

* * * * *

(e) Each person required to describe a hazardous material on a shipping paper must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. A private motor carrier (as defined in § 390.5 of subchapter B of this title) that uses a shipping paper without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and

identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 would continue to read as follows:

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

4. Section 174.24 would be revised to read as follows:

§ 174.24 Shipping papers.

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by rail unless that person receives a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 would continue to read as follows:

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

6. In § 175.30, paragraph (a)(2) would be revised to read as follows:

§ 175.30 Accepting and inspecting shipments.

(a) * * *

(1) * * *

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by § 171.11

of this subchapter. Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 would continue to read as follows:

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

8. Section 176.24 would be revised to read as follows:

§ 176.24 Shipping papers.

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 would continue to read as follows:

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

10. In § 177.817, paragraph (a) would be revised and new paragraph (f) would be added, to read as follows:

§ 177.817 Shipping papers.

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter.

* * * * *

(f) *Retention of shipping papers.* Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an

electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. A private motor carrier (as defined in § 390.5 of subchapter B of this title) that uses a shipping paper

without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

Issued in Washington, DC on September 6, 2001, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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