

DEPARTMENT OF TRANSPORTATION

**Research and Special Programs
Administration**

49 CFR Parts 171 and 172

[Docket HM-145F, Amdt. Nos. 171-90, 172-108]

**Hazardous Substances; Delay of
Effective Date**

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

ACTION: Final rule; delay of effective
date.

SUMMARY: This document changes the effective date for compliance with the final rule issued under Docket HM-145F, Amendment Numbers 171-90 and 172-108, entitled *Hazardous Substances*, which was published in the Federal Register on Friday, November 21, 1986 (51 FR 42174), by delaying its effective date to afford shippers sufficient time to comply with the rule and to permit continued use, for a limited period of time, of preprinted shipping paper descriptions and package markings which would otherwise be rendered obsolete by the final rule. The effect of

this action is to relieve shippers of some of the costs associated with complying with new requirements for hazardous substances.

EFFECTIVE DATE: July 1, 1987, except as follows: Any material which is subject to the Hazardous Materials Regulations as a hazardous substance under the regulations in effect on December 31, 1986, for which the reportable quantity was not changed by Amendment No. 172-108, may be offered for transportation and transported in accordance with the regulations in effect on December 31, 1986, until January 1, 1988. However, immediate compliance with Amendment Nos. 171-90 and 172-108 is authorized.

The provisions of 49 CFR 172.101(j) do not apply to Amendment No. 172-108.

FOR FURTHER INFORMATION CONTACT: Lee Jackson (202) 366-4488 or George Cushmac (202) 366-4545, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424-9346 or, in Washington, DC (202) 382-3000.

SUPPLEMENTARY INFORMATION: On November 17, 1986, RSPA issued a final rule amending the Hazardous Materials Regulations (HMR) to incorporate into the HMR, as hazardous materials, all substances designated as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action was necessary to comply with the Superfund Amendments and Reauthorization Act of 1986. In the final rule, hazardous substances and their reportable quantities (RQs) were listed in an Appendix to § 172.101. In addition, the final rule contained amendments making the HMR applicable to these hazardous substances. The effective date in the rule was January 1, 1987.

At the time of the adoption of the final rule, there were approximately 300 hazardous substances with their reportable quantities, designated by EPA in 1978 pursuant to section 311 of the Federal Water Pollution Control Act (FWPCA), which were placed in the HMR in 1980. Under CERCLA, additional hazardous substances and reportable quantities were designated, and the original substances that were designated under the FWPCA were retained, but some of their reportable quantities were changed.

The final rule changes the requirements for designating hazardous substances on shipping papers and for

package markings for the original hazardous substances (those designated under the FWPCA), as well as for hazardous substances more recently designated under CERCLA. The final rule under Docket HM-145F allows, under the provisions of § 172.101(j), the continued use of shipping papers prepared, and packages marked, under existing requirements in the HMR (i.e., for the original FWPCA hazardous substances) for up to one year *provided that the RQ designation had not changed* (see discussion at 51 FR 42175).

The RQs for several widely used chemicals, which were hazardous substances under the FWPCA, have been adjusted (changed) by EPA under section 102 of CERCLA. For example, the RQ for calcium hypochlorite has been lowered from 100 pounds to 10 pounds. Other chemicals which were not designated hazardous substances under the FWPCA are designated hazardous substances under CERCLA and would otherwise be subject to the new requirements after January 1, 1987. However, RSPA has learned that many thousands of packages of chemicals, whose RQ's were changed, or which were not designated hazardous substances, have been prepared, overpacked, and palletized. To require compliance with the new requirements by January 1, 1987, would require that these overpacked units be broken down and the individual boxes be marked and re-overpacked. RSPA believes that this burden is unreasonable and is extending until July 1, 1987, the effective date of the final rule adopted under Docket HM-145F for hazardous substances whose RQ's have changed or which are newly designated. However, shipping descriptions for hazardous substances whose RQ's were not changed and which conform to the regulations in effect on December 31, 1986, may be used until January 1, 1988.

These provisions allow shippers to use up existing stocks of preprinted shipping papers and package markings which would otherwise be rendered obsolete. If RSPA were to provide relief only from shipping papers and package marking requirements, similar to that provided under § 172.101(j), then carriers would be faced with the possibility of being offered materials which are regulated as hazardous substances without their being identified as such. For this reason, RSPA believes it necessary to provide temporary relief from all provisions of the final rule that pose a new burden. It should be noted that the effective date permits immediate compliance with the final rule even though not required until the dates specified.

Administrative Notices

1. The relief adopted herein is applicable to regulations mandated by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, October 17, 1986). Because those regulations were to be adopted within 30 days of enactment, I find under 5 U.S.C. 553, that notice and public procedure on the rule and the delay in effective date are contrary to the public interest. In addition, due to the limited time available to prepare the final rule and this delay in effective date, no determinations have been made under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

2. Under the terms of "DOI Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), I have determined that the rulemaking was an emergency rulemaking because it was governed by a short-term statutory deadline, therefore, no determination is made as to whether it is "significant".

3. I certify that neither this rulemaking nor the delay in effective date requires an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*).

Although the provisions of Pub. L. 99-499 provide insufficient time for RSPA to perform required analyses and make required findings under the statutory, regulatory, and executive authorities noted above, the agency is aware that a rulemaking of such broad and immediate applicability may produce significant impacts on industry segments, a substantial number of which may be small enterprises. In order to comply with the mandate of Pub. L. 99-499, RSPA has chosen a regulatory approach which both complies with the purpose of the Congress and presents the least possible disruption to the regulatory scheme of the HMR.

Because RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility, primarily through that agency's determination of reportable quantities, there will be a mechanism for RSPA's oversight of the transportation impacts of these amendments as the agency conducts rulemaking to provide concordance with EPA requirements. As the need for adjustments to these amendments is demonstrated, RSPA will modify the requirements to the extent consistent with the intent of Congress expressed in Pub. L. 99-499.

A number of errors in the List of Hazardous Substances and Reportable Quantities have been brought to RSPA's attention. RSPA is preparing a correction document on the final rule

) which will correct errors in the List and in the regulatory language of the rule. It is planned for publication before the end of January, 1987.

Issued in Washington, DC on December 19, 1986 under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs, Administration.

[FR Doc. 86-29014 Filed 12-23-86; 8:45 am]

BILLING CODE 4910-50-M
