

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration**

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket No. HM-221; Notice No. 95-2]

RIN 2137-AC62

Alternate Standards for Open-Head Fiber Drum Packaging

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

ACTION: Supplemental advance notice of proposed rulemaking; reopening of public comment period and announcement of public hearing.

SUMMARY: RSPA is inviting additional proposals and comments concerning alternate standards for open-head fiber drum packagings, for the domestic transportation of liquid hazardous materials. Among the matters on which further comments may be submitted are the alternate standards proposed by the International Fibre Drum Institute; a proposed exception for certain shipments of hazardous wastes; and the factors which RSPA should consider in this rulemaking proceeding.

DATES: *Written comments:* Comments must be received on or before March 13, 1995.

Public hearing: A public hearing will be held on February 17, 1995, beginning at 9:30 a.m.

ADDRESSES: *Comments:* Address comments to Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the Docket (HM-221) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday except Federal holidays.

Public hearing: The February 17, 1995 public hearing will be held at the Federal Aviation Administration's Auditorium, 3rd floor, 800 Independence Avenue, SW., Washington, DC. Any person planning to present an oral statement at the public hearing should notify John Potter or Diane LaValle, by telephone or in

writing by February 15, 1995. Each request must include the identity of the speaker and organization represented, if any; a daytime telephone number; and anticipated length of presentation, not to exceed 10 minutes. Speakers are requested to provide a written copy of their prepared text to the presiding officer prior to making their oral statement. The hearing may conclude before 5 p.m. if all persons wishing to speak have been heard.

FOR FURTHER INFORMATION CONTACT: John Potter or Diane LaValle, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone 202-366-4488.

SUPPLEMENTARY INFORMATION:**I. Background**

On and after October 1, 1996, fiber drums used for the transportation of liquid hazardous materials must meet the performance-oriented standards set forth in Subpart M of 49 CFR Part 178. See 49 CFR 171.14(a)(1)(iii). These consist of the tests and standard prescribed in the following sections of 49 CFR:

§ 178.603—drop test

§ 178.604—leakproofness test

§ 178.605—hydrostatic test

§ 178.606—stacking test

§ 178.608—vibration standard

These performance-oriented standards were adopted in RSPA's rulemaking proceeding No. HM-181. 55 FR 52042 (Dec. 21, 1990); 56 FR 66124 (Dec. 20, 1991); 57 FR 45442, 45446 (Oct. 1, 1992); 57 FR 46624 (Oct. 9, 1992).

On October 7, 1994, RSPA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM), Docket No. HM-221; Notice No. 94-9 (59 FR 51157), soliciting comments and proposals for alternate standards for open-head fiber drum packaging. The ANPRM was issued to fulfill the requirement in Section 122(a) of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311) (the "Act") that DOT initiate a rulemaking proceeding

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 open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under

docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations.

If, as a result of this rulemaking proceeding, DOT determines

That a packaging standard other than the performance-oriented packaging standards referred to in [Section 122(a)] will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented standards were in effect, [DOT] shall issue regulations which implement such other standards and which take effect before October 1, 1996.

Section 122(b). The Act also requires that the rulemaking proceeding be completed before October 1, 1995 (Section 122(c)), but that this rulemaking and any regulations issued "shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation * * *" Section 122(d)(1).

In the ANPRM, RSPA requested "[d]etailed comments and proposals . . . that will assist RSPA in developing an appropriate regulatory proposal consistent with the requirement quoted above." 59 FR 51158. RSPA invited proposals, "preferably in the form of a draft standard, that would assist RSPA in accomplishing the intended effect of this law." *Id.* RSPA also invited comments on whether alternate standards for open head fiber drums should be limited to domestic transportation of liquid hazardous materials. The comment period on the ANPRM closed December 12, 1994.

In response to the ANPRM, RSPA received comments from 17 parties. In addition, RSPA's Administrator and other DOT officials have held two meetings concerning this rulemaking with: (1) Counsel for the International Fibre Drum Institute (IFDI) and officials of Sonoco Products Company (a member of IFDI), on September 30, 1994, and (2) representatives of the Association of Container Reconditioners, the 3M Corporation, USX Corporation, and the Steel Shipping Container Institute (SSCI), on December 16, 1994. Notes of these two meetings have been placed in the public docket file of this rulemaking proceeding.

Only IFDI has proposed alternate standards for open-head fiber drum packaging for the transportation of liquid hazardous materials. Several other commenters expressed opposition to alternate standards, including SSCI which asserted that alternate standards would move the United States away from an international system of hazardous materials regulations, forcing some shippers to stock different packagings for domestic and

international shipments, and compromise transportation safety by authorizing lower quality packagings. Another commenter stated that alternate packagings should be approved only under the provisions of 49 CFR 178.601(h), which authorizes RSPA's Associate Administrator for Hazardous Materials Safety to approve packagings which are "shown to be equally effective, and testing methods used must be equivalent."

Another party, Monsanto Company, expressed general support for the performance-oriented packaging standards adopted in HM-181, but urged RSPA to provide a limited exception to allow the use of non-standard fiber drums for the shipment of liquid hazardous wastes in packing groups II and III to incineration facilities. Monsanto's proposal would apply to the situation when the entire package (with its contents) was to be incinerated, and would allow the one-time use of drums similar in design to former DOT specifications 21C and 21P, under conditions similar to those set forth in 49 CFR 173.12(c) (authorizing the reuse of standard packagings for shipments of hazardous waste, by highway only, when the packaging is packed at least 24 hours in advance of transportation, inspected for leaks, and loaded by the shipper and unloaded by the consignee—or handled only by private or contract carrier). Monsanto would also limit to 90 days the total time the non-standard fiber drum could contain the liquid hazardous waste.

Other commenters stated that any alternate standards adopted should apply to all open-head drums (of whatever construction materials); Russell-Stanley Corp. specifically requested that RSPA expand this rulemaking to include steel and plastic drums "of equal performance," if RSPA issued alternate standards for fiber drums.

In its comments, IFDI stated that open-head fiber drums presently being manufactured meet the stacking test set forth in 49 CFR 178.606 and the vibration standard set forth in 49 CFR 178.608. As alternatives to the other three HM-181 performance standards (drop, leakproofness, and hydrostatic pressure tests), IFDI has proposed, and it discussed in its written comments, a set of six standards entitled as follows:

IFDI Standard 101, Rev. 1—

Compatibility Test

IFDI Standard 110, Rev. 1—Joint

Integrity Test

IFDI Standard 120, Rev. 1—Leakage

Spray Test

IFDI Standard 130, Rev. 1—

Weatherproofing Test

IFDI Standard 140, Rev. 1—Fibre Drum Structure

IFDI Standard 150, Rev. 1—Impact Test

These six proposed standards appear to be identical to standards proposed by IFDI's predecessor organization, the Fibre Drum Technical Council (FDTC), in a June 8, 1992 application for an exemption. RSPA's Associate Administrator for Hazardous Materials Safety denied FDTC's application for an exemption because he found that FDTC's proposed impact test was not equivalent to the 3.9 and 2.6 foot drop tests required for Packing Group II and III packagings, respectively, and that FDTC's other proposed tests did not address the pressure requirements of the leakproofness and hydrostatic pressure tests required for packagings intended for liquid hazardous materials.

RSPA's Acting Administrator affirmed the denial of FDTC's application for an exemption and found that the standards proposed by FDTC would not achieve a level of safety "at least equal to that specified in the regulation from which the exemption is sought." 49 CFR 107.103(b)(9)(1). (Attachment A to IFDI's written comments contains copies of FDTC's application for an exemption to allow the continued use, after October 1, 1996, of open-head fiber drums that do not meet the HM-181 performance-oriented packaging standards; RSPA's denials of that application; RSPA's evaluation form and issue papers; and FDTC's appeal of RSPA's denial of the application for an exemption.)

In a separate letter, which IFDI also included in its written comments (Attachment B), IFDI has asserted that the ANPRM was deficient for failing to specify factors that, according to IFDI,

Congress directed DOT to consider. These factors are set forth in the legislative history and include: (1) DOT's Hazardous Incident Reporting System as it pertains to fibre drums; (2) the fibre drum industry's own safety record; (3) the 30 years of shipping experience associated with use of these drums; and (4) existing industry standards that have led to the industry's "excellent shipping record."

II. Request for Additional Comment

Based on the comments to the ANPRM, RSPA is issuing this supplemental ANPRM and scheduling a public hearing, to allow interested parties to submit additional proposals and comments with regard to alternate standards for open-head fiber drum packaging. Additional comments are requested on the issue of whether the alternate standards proposed by IFDI "will provide an equal or greater level of safety for the domestic transportation

of liquid hazardous materials than would be provided if [the HM-181] performance-oriented packaging standards were in effect," as required by Section 122(b) of the Act, particularly in light of RSPA's prior determination (on FDTC's exemption application) that similar standards did not provide an equal or greater level of safety than the HM-181 performance standards. Comments are also requested on the factors "set forth in the legislative history" of Section 122, as outlined above. Further comments are also invited on whether alternate standards, if adopted, should apply to packagings other than fiber drums, as well as with regard to Monsanto's proposal for an exception to allow non-standard fiber drums to be used for shipping hazardous wastes to incineration facilities.

Interested parties are encouraged to consult the ANPRM and submit any comments relevant to the direction in Section 122 of the Act, including, but not limited to, those matters specified in the preceding paragraph.

To facilitate the submission of further comments, RSPA is mailing to each party that has submitted comments on the ANPRM a copy of IFDI's December 12, 1994 written comments and the text of the six alternative standards proposed by IFDI. Any interested person may obtain a copy of these materials or a copy of RSPA's Action on Appeal affirming the denial of FDTC's application for an exemption, at no cost, from RSPA's Docket's Unit (see the address and telephone number set forth in ADDRESSES above).

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This supplemental advance notice of proposed rulemaking 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 supplemental advance notice of proposed rulemaking is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

B. Executive Order 12612

RSPA will evaluate any proposed rule in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

C. Regulatory Flexibility Act

RSPA will evaluate any proposed rule to determine whether it would have a

significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this advance notice of proposed rulemaking.

E. Regulations 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.

Issued at Washington, DC, on January 19, 1995, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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