

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

49 CFR Part 107

[Docket No. HM-794; Notice No. 84-13]

**Designation of Testing Laboratories;
United Nations Packagings**

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a procedure by which MTB may designate third-party packaging testing laboratories for the purpose of certifying conformance of packaging designs with United Nations standards. Third-party testing is proposed as a means through which shippers and container manufacturers may voluntarily demonstrate the adequacy of their packagings, and thereby promote acceptance of their use in international transportation. This procedure should remove a potentially harmful impact that could result from delays of, or impositions against, U.S. exports transported in packagings that are not specifically approved by the Materials Transportation Bureau (acting as the National Competent Authority).

DATE: Comments must be received on or before November 13, 1984.

ADDRESSES: Comments should be addressed to the Docket Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket number and should be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8420 of the Nassif Building, 409 7th Street, SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except for holidays.

FOR FURTHER INFORMATION CONTACT: Thomas C. Allen, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION:

Background

Many nations that regulate packagings for the transportation of hazardous materials are adjusting their regulatory systems to recognize the performance-oriented packaging

standards adopted by the United Nations (UN) in Chapter 9 of the Recommendations prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods (UN Recommendations). Such a proposal is under consideration in the United States under Docket No. HM-181 (47 FR 18288, April 15, 1982).

Individual nations and groups of nations are engaged in this effort. In addition, UN-affiliated organizations such as the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) are adjusting their dangerous goods codes to conform with Chapter 9 standards.

Within Europe, the regulatory bodies for road and rail (ADR and RID, respectively) are very advanced in this process, and UN packaging will be required in Europe for shipments of all flammable liquids (to 141 °F), corrosive materials and poisons as early as May 1, 1985, unless authorized transitional packaging is used. The new packagings require prescribed UN markings. Unlike certain other regulatory bodies, such as ICAO, which "grandfathered" all existing packaging specifications, the RID and ADR grandfather clause would not accommodate U.S. packaging specifications unless they are tested and marked in accordance with the previous RID and ADR requirements, or with the UN Recommendations.

Of particular concern in our proposed adoption of this procedure is the fact that most European nations will soon require that new packagings not only be tested and marked in accordance with the UN Recommendations, but that they be approved by their own governments on the basis of design testing conducted by a government laboratory or by third-party testing laboratories recognized by those governments. Consequently, those same governments currently either have their own certifying laboratories, or are recognizing third-parties to conduct testing, for the purpose of issuing government approvals of packagings. Should governments refuse to accept packagings marked and self-certified as conforming with UN standards by U.S. shippers or packaging manufacturers, as provided for in 49 CFR 178.0-3, it may become necessary for U.S. shippers or packaging manufacturers to send empty packaging overseas for testing and approval. In order to attempt to avoid such a situation, MTB believes it must provide a viable alternative to packaging self-certification for U.S. packaging manufacturers and shippers that will be more akin to the approval procedures that are, or apparently will be, employed in Europe.

Historically, manufacturers of DOT specification packaging (except for certain cylinders and intermodal portable tanks) have been authorized to engage in testing and self-certification. MTB has no current plan to require third-party testing, or testing by MTB-designated laboratories on a mandatory basis in association with implementation of standards addressed by Chapter 9 of the UN Recommendations; nor does MTB currently intend to require registration or approval of packagings which are successfully tested and certified by a third-party laboratory.

A testing laboratory has filed a petition for rulemaking for establishment of a procedure to provide U.S. Competent Authority recognition of its facility and this rulemaking is in response to that petition. The MTB proposes to adopt amendments to 49 CFR Part 107 whereby qualified testing laboratories can be designated by the U.S. Competent Authority and, therefore, may provide independent certification of conformance with UN Recommendations for each shipper and packaging manufacturer who chooses to seek such certification. This is a strictly voluntary procedure—there is no proposed MTB requirement that such laboratories be used, nor is such a requirement contemplated at this time.

Shippers and packaging manufacturers seeking a recognized third party testing laboratory already face an extremely tight schedule. Delay in rulemaking could mean that the May 1, 1985 deadline is unattainable if anticipated problems become real at that time. Therefore, because of potential difficulties with acceptance of packagings in Europe as of May 1, 1985, it is important that the MTB consider implementation of this program as quickly as possible.

Summary of proposed amendments

Section 107.401 would be revised to expand its scope to include certifications issued for packagings conforming to standards appearing in the UN Recommendations on the Transport of Dangerous Goods. In addition, a new paragraph would be added to clearly indicate that authority delegated to approved agencies is shared with MTB. Accordingly, packaging manufacturers and shippers may apply for certification directly to the Associate Director for HMR, or appeal an adverse determination by a designated approval agency.

Section 107.402 would be amended in paragraphs (b)(3), (b)(4)(ii) and (b)(6) to expand the scope of packagings covered

by this section to include those conforming to UN Recommendations.

Section 107.404 would be amended to indicate that a designated approval agency which examines and tests packagings conforming to UN Recommendations will issue a certification, rather than an approval certificate, which is appropriate only to intermodal portable tanks.

OMB Control Number: 2137-0008

Paperwork Reduction Act:

Information collection requirements contained in this regulation (§§ 107.402 and 107.404) have been approved by the Office of Personnel Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2137-0008. Information collection requirements pertaining to procedures which container manufacturers and shippers must follow in obtaining a certification for their packagings are not yet approved by OMB. The requests for OMB approval will be submitted in the near future.

List of Subjects in 49 CFR Part 107

Hazardous materials transportation, Administrative practice and procedures.

In consideration of the foregoing, 49 CFR Part 107 would be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. Section 107.401 would be revised to read as follows:

§ 107.401 Purpose and scope.

(a) This subpart establishes procedures for the designation of approval agencies to issue approval certificates and certifications for types of packagings designed, manufactured, tested, or maintained in conformance with the requirements of this subchapter, Subchapter C of this chapter, and standards set forth in the United Nations (UN) Recommendations (Transport of Dangerous Goods). Except for certificates of compliance with UN packaging standards, this subpart does not apply unless made applicable by a rule in Subchapter C of this chapter.

(b) The Associate Director for HMR retains the right to also issue approval certificates and certifications addressed in paragraph (a) of this section.

2. In § 107.402, paragraph (b)(6) would be amended by removing the word "specification"; and paragraphs (b)(3) and (b)(4)(ii) would be revised to read as follows:

§ 107.402 Application for designation as an approval agency.

(b) * * *

(3) A listing, by DOT specification (or exemption) number or UN designation, of the types of packagings for which approval authority is sought.

(4) * * *

(ii) A knowledge of the applicable regulations of this subchapter and, when applicable, UN standards;

§ 107.404 [Amended]

3. In § 107.404, paragraphs (a)(2) and (a)(3) would be amended by adding the words "and certifications" immediately following the word "certificate".

(49 U.S.C. 1804, 1805, 1806; 49 CFR 1.53, App. A to Part 1, and paragraph (a)(3) of App. A to Part 108)

Note.—Because the proposals made in this Notice relate to (a) agency practices and procedures or (b) clarifications of existing regulations and policies, the Materials Transportation Bureau determined that this Notice—(1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979); and (3) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). For these same reasons, I certify that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on October 5, 1984.

Alan J. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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