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The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

**XI. Regulatory Assessment Requirements**

This final rule establishes a tolerance under section 408 of the FFDCA and is in response to a petition received by the Agency requesting the establishment of such a tolerance. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, because tolerances that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Prior to the recent

amendments to the FFDCA, however, EPA had treated such actions as subject to the RFA. The amendments to the FFDCA clarify that no proposed rule is required for such regulatory actions, which makes the RFA inapplicable to these actions. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact (46 FR 24950, May 4, 1981). In accordance with Small Business Administration (SBA) policy, this determination will be provided to the Chief Counsel for Advocacy of the SBA upon request.

**XII. Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 22, 1997.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a. and 371.

2. By adding a new § 180.508 to subpart C to read as follows:

**§ 180.508 Imazamox; tolerances for residues.**

(a) *General.* Tolerances are being established for residues of the of the herbicide imazamox, [2-[4,5-dihydro-4-methyl-4-(1methylethyl)-5-oxo-1H-imidazol-2-yl]-5-methoxymethyl-3-pyridine-carboxylic acid], (CAS No. 114311-32-9) applied as the free acid or ammonium salt, in or on following food commodity:

Commodity	Parts per million
Soybeans .....	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97-14301 Filed 5-28-97; 1:23 pm]

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**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 171**

[Docket No. RSPA-97-2501 (HM-221B)]

RIN 2137-AD04

**Hazardous Materials: Use of Non-Specification Open-Head Fiber Drum Packagings**

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

**ACTION:** Direct final rule.

**SUMMARY:** RSPA is allowing the transportation of certain liquid hazardous materials in non-specification open-head fiber drums until September 30, 1999, if the fiber drums have been filled before, and are not emptied and refilled after, the expiration of the current authority for the use of these packagings.

RSPA is terminating its rulemakings relating to alternate standards for open-head fiber drums based on the recommendation of the National Academy of Sciences (NAS) that RSPA should not extend authorization for the transportation of liquid hazardous materials in open-head fiber drums that do not meet the performance-oriented packaging standards adopted in RSPA's rulemaking docket No. HM-181. This action completes the rulemakings mandated by Section 406 of the Interstate Commerce Commission Termination Act concerning alternate standards for open-head fiber drums used in the transportation of liquid hazardous materials.

**DATES:** This final rule is effective October 1, 1997, unless an adverse comment or notice of intent to file an adverse comment is received by August 1, 1997. RSPA will publish in the **Federal Register** a timely document confirming the effective date of this direct final rule.

**ADDRESSES:** Address comments to the Dockets Office, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments may also be submitted by E-mail to "rspa.counsel@rspa.dot.gov." In every case, the comment should refer to the Docket Number set forth above.

Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Office is open between 9:00 a.m. and 5:30 p.m., Monday through Friday, except public holidays when the office is closed.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-00001; telephone 202-366-4400.

#### SUPPLEMENTARY INFORMATION:

##### Background

Prior to 1991, the Hazardous Materials Regulations (HMR, 49 CFR Parts 171-180) authorized the use of certain nonspecification packagings (including fiber drums) for shipping certain categories of hazardous materials, such as flammable liquids with a flash point above 73 °F, liquid cleaning compounds and other liquid corrosives, and hazardous wastes and hazardous substances not included in another hazard class. These packagings were required to be only "strong, tight packages" that were "designed and constructed, [with their] contents so limited, that under conditions normally incident to transportation:

(1) There will be no significant release of the hazardous materials to the environment;

(2) The effectiveness of the package will not be substantially reduced; and

(3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase of heat or pressure, or through an explosion, significantly reduce the effectiveness of the packaging.

49 CFR 173.24 (a), (b) (1990 ed.)

On December 21, 1990, RSPA issued a final rule in Docket No. HM-181 (55 FR 52401; revisions and response to petitions for reconsideration, 56 FR 66124 [Dec. 20, 1991]; further corrections and amendments, 57 FR 45442, 45446 [Oct. 1, 1992], 46624 [Oct. 9, 1992]). In the HM-181 rulemaking, RSPA adopted performance-oriented packaging standards for non-bulk packagings (up to 450 liters [119 gallons] capacity or 400 kg [882 lbs.] net mass). Hazardous materials have been

assigned to Packing Groups I, II, or III, based on their level of hazard (with Packing Group I indicating those materials posing the greatest hazards), and minimum levels of performance were established for each Packing Group. These "HM-181 performance standards" are intended to simulate the normal transportation environment and to achieve international uniformity.

In the HM-181 rulemaking, RSPA eliminated most instances where the HMR previously authorized the use of nonspecification packagings, including packagings for more than 200 environmentally hazardous substances (such as polychlorinated biphenyls (PCBs)). In addition, RSPA listed as hazardous materials certain lower toxicity poisons that had not previously been regulated.

To allow for an orderly transition to the HM-181 rules, RSPA authorized packagings meeting the HM-181 performance standards to be used immediately but provided a five-year phase-out period (ending on September 30, 1996) for previously authorized packagings for most hazardous materials. RSPA specified that on

October 1, 1996, requirements in parts 172 and 173 of [49 CFR] for maintenance and use of packagings that were not previously in effect are effective. . . . [P]ackaging authorizations removed from part 173 of [49 CFR] by [HM-181] may no longer be used in place of new packaging requirements.

56 FR at 66161. RSPA subsequently extended until October 1, 1999, this transitional period for non-bulk packagings that were authorized for use until October 1, 1996, if filled prior to October 1, 1996, and not emptied and refilled on or after that date. 49 CFR 171.14(a)(2), 62 FR 50622 (Sept. 26, 1996).<sup>1</sup>

On December 29, 1995, the President signed the Interstate Commerce Commission Termination Act (the Act) (Pub. L. 104-88). Section 406 of the Act (49 U.S.C. 5103 note) reads as follows:

##### Sec. 406. Fiber Drum Packaging.

(a) In General.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

(1) The packaging is in compliance with regulations of the Secretary under the

Hazardous Materials Transportation Act as in effect on September 30, 1991; and

(2) The packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

(b) Expiration.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

##### (c) Study.—

(1) In General.—Within 90 days after the date of enactment of this Act, the Secretary shall contract with the National Academy of Sciences to conduct a study—

(A) 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 fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations; and

(B) To determine whether a packaging standard (including such fiber drum industry standards), other than performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

(2) Completion.—The study shall be completed before March 1, 1997, and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

(d) Secretarial Action.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).

To carry out the mandate in Section 406 (a) and (b) of the Act, RSPA issued a final rule on February 29, 1996 (61 FR 7958, 7959), adding the following provision to the HMR:

A non-specification fiber drum with a removable head is authorized for a liquid hazardous material in Packing Group III that is not poisonous by inhalation for which the packaging was authorized under the

<sup>1</sup> In addition, packagings conforming to the pre-HM-181 requirements that were filled prior to October 1, 1991, may be shipped until October 1, 2001, if not emptied and refilled on or after October 1, 1991. 49 CFR 171.14(a)(1).

requirements of Part 172 or Part 173 of [the HMR] in effect on September 30, 1991. This authorization expires on the later of September 30, 1997, or the date on which funds are appropriated to carry out chapter 51 of title 49, United States Code (related to transportation of hazardous materials), for fiscal years beginning after September 30, 1997. Information concerning this funding authorization date may be obtained by contacting the Office of the Associate Administrator for Hazardous Materials Safety.

49 CFR 171.14(c).

### NAS Report

NAS completed the study required by Section 406(c) of the Act. In its report, NAS concluded that other standards (besides those adopted in HM-181) "could be established that would provide for safety in the transport of liquid hazardous materials as required by Section 5103(b)," but that alternate standards proposed by the International Fibre Drum Institute (IFDI) do "not ensure a level of safety equal to that provided by HM-181." NAS also found that, because of data limitations, the historical safety record of the non-specification fiber drums authorized prior to HM-181 "is not in itself enough to establish beyond reasonable doubt that this [IFDI] packaging can ensure the safe transportation of liquid hazardous materials in accordance with the requirements of Section 5103(b)." NAS recommended that "DOT should not extend the authorization to ship hazardous liquids in nonspecification fiber drums beyond September 30, 1997, subject to the final transitional provisions for performance-oriented packaging standards \* \* \* [footnote omitted]."

### Direct Final Rule

Based on the NAS recommendation and the merits of the final regulations adopted under Docket No. HM-181, RSPA is terminating its consideration of alternate standards for open-head fiber drums used to ship liquid hazardous materials. However, to allow for an orderly transition and accommodate the shipment of packagings that have been filled prior to the expiration of the current authorization in 49 CFR 171.14(c), RSPA is redesignating the current authorization in § 171.14(c) as paragraph (c)(1) and adding a new paragraph (c)(2) to allow the shipment of these liquid hazardous materials until September 30, 1999, if the open-head fiber drum has already been filled prior to, and is not emptied and refilled on or after, the date on which the authority in the redesignated paragraph (c)(1) expires. This action provides the same treatment for open-head fiber drums as

other packagings which were filled prior to the expiration of authorization for their use on October 1, 1996. The transitional provision added by new § 171.14(c)(2) prevents the anomalous situation that would otherwise exist, under which fiber drums filled before October 1, 1996, could be shipped until September 30, 1999, but fiber drums filled on or after October 1, 1996, under the authority in the current § 171.14(c), would not be allowed the same period of time to clear the transportation system.

This direct final rule is being issued under the procedures set forth in 49 CFR 106.39, and it will be effective on October 1, 1997, unless RSPA receives an adverse comment or notice of intent to file an adverse comment by August 1, 1997. Interested parties should refer to § 106.39(c) for a discussion of what constitutes an "adverse comment."

### 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. This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This rule provides relief to shippers who, before the expiration of the current authority for use of non-specification open-head fiber drums, have filled these packagings for transportation. Accordingly, RSPA has not prepared a regulatory evaluation of the costs and benefits of this rule.

#### B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Federal hazardous material 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, marking, and placarding of hazardous material;
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, contents, and placement of those documents;
- (iv) The written notification, recording, and reporting of the

unintentional release in transportation; and

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rule concerns the packagings authorized for certain hazardous materials and, therefore, preempts State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same as" the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Section 5125(b)(2) of 49 U.S.C. provides that if DOT issues a regulation concerning a covered subject, 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, and not later than two years, following the date of issuance of the final rule. RSPA has determined that the effective date of Federal preemption for the continued authorization of these fiber drums will be October 1, 1997.

#### C. Regulatory Flexibility Act

This final rule continues until September 30, 1999, authority for shipment of certain liquid hazardous materials in open-head fiber drums that do not meet the performance standards in the HMR, so long as the fiber drums were filled before (and are not emptied and refilled after) the expiration of the current authority for use of these packagings. In this respect, this rule provides relief to shippers who, before the expiration of the current authority for use of non-specification open-head fiber drums, have filled these packagings for transportation.

Data provided to NAS indicate that the use of non-specification open-head fiber drums for all liquid hazardous materials has declined from the average of approximately 750,000 drums per year prior to 1991 (and the HM-181 rulemaking did not eliminate the authority to use this packaging for combustible liquids [flash point above 100° F] or, of course, nonhazardous materials). RSPA estimates that there are approximately six U.S. manufacturers of fiber drums for liquid hazardous materials, three of whom are small entities. Some of these manufacturers already produce other packagings authorized for the transportation of liquid hazardous materials, and the remainder likely have the capability of producing these other packagings.

RSPA believes that there is a limited number of shippers of liquid hazardous materials in non-specification open-head fiber drums (probably less than 100), and assumes that most of them are small entities. Alternative packagings that meet the HM-181 performance standards include (together with their relative cost as compared to non-specification open-head fiber drums, according to data used by NAS):

- Open-head steel drums (more expensive)
- Closed-head steel drums (less expensive)
- Closed-head plastic drums (about the same)
- Closed-head fiber drums (more expensive).

RSPA assumes that both cost and non-cost factors will influence shippers' choice of alternative packagings.

Based on the above, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### *D. Paperwork Reduction Act*

There are no new information requirements in this rule.

#### *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.

#### **List of Subjects in 49 CFR Part 171**

Exports, Hazardous materials transportation, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

#### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

1. The authority citation for part 171 continues to read as follows:

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

2. In § 171.14, the text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1), and a new paragraph (c)(2) is added to read as follows:

**§ 171.14 Transitional provisions for implementing requirements based on the UN recommendations.**

\* \* \* \* \*

(c) *Non-specification fiber drums.* (1)  
\* \* \*

(2) A non-specification fiber drum with a removable head authorized by paragraph (c)(1) of this section may be offered for transportation and transported domestically prior to October 1, 1999, if it—

(i) Was filled with an authorized hazardous material prior to the expiration of the authority in paragraph (c)(1) of this section; and

(ii) Is not emptied and refilled after the expiration of the authority in paragraph (c)(1) of this section.

\* \* \* \* \*

Issued in Washington, DC on May 27, 1997, under authority delegated in 49 CFR Part 1.

**Kelley S. Coyner,**

*Deputy Administrator.*

[FR Doc. 97-14337 Filed 5-30-97; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 660**

[Docket No. 970403076-7114-02; I.D. 052797A]

##### **Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Temporary Closure**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces a temporary closure of the unrestricted primary season for Pacific whiting (whiting) south of 42° N. lat. at noon May 27, 1997, and reimposition of a 10,000-lb (4,536 kg) trip limit until 0001 hours June 15, 1997, at which time the primary season south of 42° N. lat. will resume. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting at levels announced by the Secretary at 62 FR 27519 (May 20, 1997).

**DATES:** Effective from 12 noon (local time) May 27, 1997, until 2400 hours June 14, 1997. Comments will be accepted through June 17, 1997.

**ADDRESSES:** Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional

Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or William Hogarth, Acting Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

#### **FOR FURTHER INFORMATION CONTACT:**

William L. Robinson at 206-526-6140 or Rodney McInnis at 562-980-4040.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR 660.323(a) (3) and (4) (62 FR 27519, May 20, 1997)

established separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery, and announced starting dates for each sector's primary season. The primary season for the shore-based sector is the period(s) when the virtually unrestricted, large-scale target fishery is conducted, and thus when routine trip limits are not in effect. The regulations further divide the shore-based allocation so that no more than 5 percent of the shore-based allocation for whiting may be taken and retained south of 42° N. lat. before the primary season begins north of 42° N. lat. The primary season for the shore-based sector south of 42° N. lat. began in late April, earlier than the northern season which begins on June 15, 1997, because whiting migrate from south to north during the fishing year. (The first large whiting landing south of 42° N. lat. occurred on April 27, 1997, although the fishery could have started on March 1, 1997.) The 5-percent cap is intended to discourage effort shifts to the south area early in the year. The shore-based whiting allocation is 86,900 mt in 1997, and the 5-percent cap on early fishing south of 42° N. lat. is 4,345 mt. When the 5-percent cap is reached, the 10,000-lb (4,536 kg) trip limit that was in place before the start of the southern primary season is reimposed and remains in effect until the start of the northern primary season on June 15, 1997.

The best available information on May 23, 1997, indicates that 4,023 mt of whiting have been taken by the shore-based fishery south of 42° N. lat. through May 21, 1997, and that 4,345 mt are projected to be taken by noon May 27, 1997. Therefore, the 10,000-lb (4,536 kg) trip limit announced in the 1997 annual management measures is resumed until the primary season begins north of 42° N. lat.

#### **NMFS Action**

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4) (i)(B) and (iii)(D), NMFS amends paragraph F. of Section