

Safety or other authorized officials in written form within seven days of a written request.

(b) A hazmat employer must keep a record of the radiation dose that each hazmat employee has received and provide it to the employee in reasonable time following a request during employment and no more than three months after end of employment.

(c) Each hazmat employer must notify the Associate Administrator for Hazardous Materials Safety, in writing, if a hazmat employee receives a dose exceeding 12.5 mSv (1250 mrem) in any calendar quarter or 50 mSv (5,000 mrem) in one year, or if a member of the general public is likely to receive a dose exceeding 5 mSv (500 mrem) in one year as a result of the hazmat employer's transportation activities. Such a notification must be made as soon as practicable following awareness of the occurrence.

(d) If an offeror or carrier of Class 7 (radioactive) materials is not required to establish a radiation protection program, they must develop and keep records which demonstrate why a program is not required (i.e., either the total TI of packages transported in any 12 month period is less than 200, or that the current Class 7 (radioactive) materials transport activities are the same as the activities that were reviewed by a competent radiation protection specialist whose evaluation demonstrated that no worker will receive a dose exceeding 5 mSv (500 mrem) in one year).

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1997.

PART 174—CARRIAGE BY RAIL

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

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

4. Section 174.705 is reinstated to read as follows:

§ 174.705 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by rail unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 175—CARRIAGE BY AIRCRAFT

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

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

6. Section 175.706 is reinstated to read as follows:

§ 175.706 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by aircraft unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 176—CARRIAGE BY VESSEL

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

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

8. Section 176.703 is reinstated to read as follows:

§ 176.703 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by vessel unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

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

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

10. Section 177.827 is reinstated to read as follows:

§ 177.827 Radiation protection program.

Unless otherwise excepted, a carrier shall not transport a Class 7 (radioactive) material by motor vehicle unless each of its occupationally exposed hazmat employees is under a radiation protection program that complies with the requirements of subpart I of part 172 of this subchapter.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD14

Hazardous Materials: Radiation Protection Program Requirement

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

ACTION: Final Rule; extension of compliance date.

SUMMARY: RSPA is extending until October 1, 1999, the date for mandatory compliance with the Radiation Protection Program (RPP) requirements adopted in the final rule issued September 28, 1995. During this period, RSPA intends to consider in a separate rulemaking whether the RPP requirements should be withdrawn or revised because of the difficulties and complexities concerning implementation of and compliance with the RPP requirements. RSPA believes that compliance should not be required with requirements that may be withdrawn or substantially revised, and that overall safety in the transportation of radioactive materials will be advanced by reexamining the RPP requirements before requiring compliance with the current requirements.

EFFECTIVE DATE: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Ferate II, Office of Hazardous Materials Technology, 202–366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, 202–366–8553, RSPA, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On September 28, 1995, RSPA published a final rule in the **Federal Register** in this docket as part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, with international standards and to improve safety for workers and the public during the transportation of radioactive materials. (60 FR 50292). One of the substantive regulatory changes in the September 28, 1995 final rule is the requirement to develop and maintain a written radiation protection program (RPP).

The RPP requirements apply, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. The RPP

requirements are set forth in Subpart I of Part 172 of the HMR. Implementation provisions for rail, air, vessel, and highway are contained in §§ 174.705, 175.706, 176.703, and 177.827, respectively. Compliance with the RPP requirements has been required since October 1, 1997.

RSPA's regulatory evaluation prepared in support of the September 28, 1995 final rule considered that carriers would be primarily affected by the RPP requirements. (Some carriers of radioactive materials are already covered by monitoring requirements contained in exemptions from quantity limitations in the HMR.) Many shippers of radioactive material, especially those who are Department of Energy contractors, or Nuclear Regulatory Commission or Agreement State licensees, are already subject to RPP requirements, and the September 28, 1995 final rule provides that the RPP requirements are satisfied by any radiation protection program that has been approved by an appropriate Federal or State agency. 49 CFR 172.803(d)(2).

On May 8, 1996, RSPA published in the **Federal Register** editorial corrections to the September 28, 1995 final rule and a denial of the one petition for reconsideration (from the Radiopharmaceutical Shippers and Carriers Conference [RSCC]) that had been timely filed. [61 FR 20747]. The editorial corrections included changes to § 172.803.

In addition, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements, in response to questions or comments expressing difficulties in implementing or complying with the RPP requirements. Notice 96-7 (61 FR 17349). In Notice 96-7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements.

In response to Notice 96-7, RSPA received numerous comments, a new petition for rulemaking from RSCC (that expanded upon its denied petition for reconsideration), and three additional documents purporting to be "petitions for reconsideration" of the September 28, 1995 final rule (which were treated as comments in response to Notice 96-7, rather than petitions for reconsideration, because they were not submitted within 30 days after publication of the September 28, 1995 final rule). After considering these comments and petitions, RSPA decided that the concerns expressed could not all be resolved through guidance. The

concerns were significant enough that RSPA determined it would be preferable to withdraw the RPP requirements completely, and reconsider this matter from the beginning, rather than try to amend Subpart I before the upcoming October 1, 1997 compliance date.

For this reason, RSPA published a direct final rule on September 2, 1997, withdrawing the RPP requirements effective September 30, 1997, unless (in accordance with RSPA's procedural rules at 49 CFR 106.39) an adverse comment or notice of intent to file an adverse comment was received by September 30, 1997. [62 FR 46214]. Because two persons submitted adverse comments on the direct final rule, RSPA is publishing a separate document, revoking the direct final rule and leaving the RPP requirements in effect.

As noted above and in the direct final rule, many shippers of radioactive materials are already subject to an RPP requirement. RSPA considers that it may also be appropriate to establish in the HMR some form of RPP requirement for carriers and any shippers not already covered by other existing requirements, to provide a formal and structured framework for ensuring safety during radioactive material transportation activities. However, RSPA has also concluded that the problems with the current RPP requirements in Subpart I of 49 CFR Part 172 are sufficiently great that compliance with them should not be required while RSPA reconsiders this entire matter.

As a first step, RSPA intends to publish a notice of proposed rulemaking (NPRM) in the near future to address the merits of all the comments and petitions directed to the RPP requirements and to request additional comments concerning the need to withdraw or revise the RPP requirements. To allow this separate rulemaking to proceed in an orderly fashion, without the threat of enforcement or liability based on noncompliance, and in response to a request for a stay of the compliance date from RSCC, RSPA is extending the date for mandatory compliance with the RPP requirements until October 1, 1999. As also discussed below, RSPA has concluded that a lack of approval by the Office of Management and Budget (OMB) for information collection requirements precludes Federal enforcement of the RPP requirements at this time.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule provides relief to persons who offer for transportation, accept for

transportation, or transport Class 7 (radioactive) materials by extending until October 1, 1999, the requirement to develop and maintain a radiation protection program. The effect of this rule is not considered a significant regulatory action under Section 3(f) of Executive Order 12866, and this rule 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)].

RSPA has not prepared a regulatory evaluation that specifically addresses the issue of extending the date for developing and maintaining a radiation protection program. The regulatory evaluation prepared in support of the September 28, 1995 final rule considered that the health benefits to the transportation community of limiting radiation exposures, through a radiation protection program, would be significant. That regulatory evaluation also estimated that the benefits of making U.S. regulations for the transportation of radioactive materials consistent with international standards would exceed the total estimated costs of the September 28, 1995 final rule involved in converting to the international system of units (SI) and meeting the RPP requirements. However, the costs of implementing the RPP requirements will be greatly increased (and overall safety will likely be reduced) if compliance with the current regulations is required, then if these requirements are withdrawn or significantly revised. RSPA, in support of the NPRM, will be preparing a regulatory evaluation to address the issue of removing the radiation protection program requirement from the HMR.

B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous material transportation law contains express preemption provisions at 49 U.S.C. 5125 that preempt State, local, and Indian tribe requirements if

(1) Complying with a requirement of the State, political subdivision, or Indian tribe and Federal hazardous material transportation law or regulations is not possible;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous material transportation law or regulations; or

(3) The requirement of the State, political subdivision, or Indian tribe concerns any of the following "covered subjects" and is not substantially the same as a provision of Federal hazardous material transportation law or regulations:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

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

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. 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.

RSPA is not aware of any State, local, or Indian tribe requirement that would be preempted by an extension of the date for compliance with the RPP requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. In the regulatory evaluation originally prepared to consider RPP requirements, RSPA estimated a total of 497 carriers (primarily motor carriers) would be

subject to these requirements. All but a few of these carriers are thought to meet criteria of the Small Business Administration as "small business," e.g., motor freight carriers with annual revenue less than \$18.5 million.

Extending the date for compliance with the RPP requirements will allow those carriers to continue to transport radioactive materials, until October 1, 1999, without having to develop and implement a written plan (or for those carriers transporting radioactive materials under an exemption, a plan that goes beyond what is now required). Based on the above, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

This rule does not impose any information collection burdens. RSPA has concluded that the information collection approval under OMB control number 2137–0510 (which expires January 31, 1998, unless renewed) does not cover the information collection requirements in the RPP requirements. Because Subpart I of 49 CFR Part 172 does not display a valid OMB control number, no person is required to respond to its RPP requirements.

If RSPA decides to retain the RPP requirements, in the form of Subpart I of 49 CFR Part 172 or otherwise, RSPA will submit this information collection and recordkeeping requirement to OMB for approval. As part of that process, RSPA will provide interested members of the public and affected agencies an

opportunity to comment on information collection and recordkeeping requests, as provided in OMB's regulations.

F. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda. The September 28, 1995 final rule and the May 8, 1996 final rule were published under RIN 2037–AB60.

List of Subjects in 49 CFR Part 172

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

In consideration of the foregoing, the following provisions in 49 CFR part 172 is amended 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 continues to read as follows:

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

2. Section 172.807 is revised to read as follows:

§ 172.807 Transitional provisions.

Compliance with the requirements of this subpart is required after October 1, 1999.

Issued in Washington, DC on December 12, 1997, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

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