

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

[RSPA-99-6195 (Docket No. HM-206D)]

RIN 2137-AD37

Hazardous Materials: Limited Extension of Requirements for Labeling Materials Poisonous by Inhalation (PIH)

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

ACTION: Interim final rule.

SUMMARY: RSPA is providing a limited exception, until October 1, 2001, from requirements to place the new POISON INHALATION HAZARD or POISON GAS labels on packages that are intended for transportation in international commerce. The exception applies only to Division 2.3 materials and Division 6.1 liquids in Hazard Zone A or B that are loaded into a freight container or closed transport vehicle that is placarded and marked with the identification number, as currently required for those materials. This interim final rule is intended to prevent delays and frustrated shipments for these hazardous materials when transported by vessel under the provisions of the International Maritime Dangerous Goods Code (IMDG Code), or by motor vehicle or rail car to or from Canada.

DATES: *Effective dates:* This final rule is effective on October 1, 1999.

Comment date: Comments must be received November 15, 1999.

ADDRESSES: *Written comments:* Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments should identify the docket number RSPA-99-6195 (HM-206D) and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard.

Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the public can review comments by accessing the Docket Management System through the DOT home page at <http://dms.dot.gov>. Comments may also be submitted to the

docket electronically by logging onto the Dockets Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "RSPA-99-6195". Comments may also be submitted by fax by calling (202) 366-3012.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

In the final rules adopted under Docket No. HM-206, RSPA specified requirements for display of: (1) Identification number marking on a transport vehicle or freight container that is loaded at one loading facility with more than 1,000 kg (2,205 pounds) of materials poisonous by inhalation (PIH), on and after October 1, 1998; (2) new labels to be affixed to non-bulk packagings containing PIH materials, on and after October 1, 1999; and (3) new placards to be displayed on transport vehicles and freight containers containing PIH materials, on and after October 1, 2001. RSPA also provided that, if the words "INHALATION HAZARD" appear on the new PIH label or placard, those words need not also be marked on the package (See 49 CFR 172.313). (Final rules, 62 FR 1217 (January 8, 1997), 62 FR 39398 (July 22, 1997), 63 FR 16070 (April 1, 1998).) These requirements were adopted in response to a mandate in section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101-615) that methods of improving placarding be considered including, inter alia, identification of appropriate emergency response procedures through symbols on placards and methods to make placards more visible.

In adopting the PIH marking, label, and placard requirements, RSPA discussed the extremely hazardous nature of these materials and its belief that "the existing POISON and POISON GAS label and placard are not adequate in communicating the inhalation hazard of these materials." 63 FR at 1218. RSPA also referred to its efforts since 1985 "toward enhancing safety in the transportation of PIH materials by establishing a complete system of transportation controls for these materials, including an improved communication of their presence." 62 FR at 39400. As noted in the final rule,

a majority of the persons submitting comments on this issue "supported adoption of the distinctive PIH labels and placards," although a number of commenters urged RSPA to delay implementation until the United Nations Committee of Experts on the Transport of Dangerous Goods (UN Committee) had also adopted the new PIH label and placard. This matter is pending before the UN Committee.

II. Petition for Rulemaking

On June 17, 1999, the Hazardous Materials Advisory Council (HMAC) filed a petition for rulemaking (P-1385) to delay implementation of the new PIH labels adopted under Docket HM-206 until the UN Committee recommends adoption of these requirements. HMAC suggested an implementation date of no sooner than October 1, 2001 to coincide with the effective date for PIH placards and to allow the UN Committee more time to discuss this issue. HMAC stated:

By introducing PIH labels that have not been accepted by the UN Committee, the unintended consequence may well be to cause confusion with international shipments of these materials, thereby undermining their safe transport. Packages of PIH material being imported into the US and labeled in accordance with the IMDG Code by sea mode will not be in compliance with the new US labeling requirement. Shippers will be forced to re-label these packages at port areas where provision to accomplish this is scarce and the possibility for errors and mishandling increase.

HMAC also stated there are major questions regarding the acceptability of the new labels in other countries. HMAC said that re-labeling may be required to make the packages comply with other regional or national regulations, and that such a situation will not enhance safety, which is the intent of introducing the new label. According to HMAC, a Canadian member indicated that lack of international coordination may cause serious problems with compliance and that members outside of the U.S. have questioned the U.S. commitment to worldwide harmonization of dangerous goods transport regulation. HMAC also raised the issue of inconsistency with the intent of Title IV of the Trade Agreements Act of 1979.

III. RSPA Response to Petition for Rulemaking

The HMR provide for a nationwide system of communication of the presence of hazardous materials which includes shipping papers, marking, labeling, placarding, and emergency response information. These requirements are designed to provide

fire and emergency response personnel, the public, and transport workers with information in the event of transportation incidents involving hazardous materials. In responding to incidents involving hazardous materials, emergency response personnel must first identify the specific chemical hazards facing them before approaching the incident site and attempting remedial action. An inappropriate response to an incident involving inadequately identified hazardous materials can significantly endanger individuals, the surrounding community, and the environment.

The unique design of the PIH labels and placards substantially improves the identification of PIH materials during transportation. It is important that there be distinctive warnings that will lead to appropriate response actions for these high risk materials. The risk posed by PIH materials such as acrolein (inhibited), allyl alcohol, methyl isocyanate, or acetone cyanohydrin (stabilized), is substantially greater than the risk posed by other poisonous materials such as benzonitrile, chloroform, ethyl bromide, or tetrachloroethane. Yet prior to implementation of the Docket HM-206 requirements, all of these materials were identified by display of the same labels and placards.

RSPA understands that PIH labels and placards are not yet formally recognized outside the jurisdiction of the U.S., and that the UN Committee has yet to act upon the merits of our proposal on this subject. We also recognize that we should strive for harmonious hazard communication requirements, when appropriate. However, differences have been recognized as necessary and appropriate in a number of instances. For example, there are domestic exceptions from placarding for Class 9 materials, and for less than 1,001 pounds of certain materials. In addition, the HMR provide a domestic exception which permits use of DANGEROUS placards in place of placards for certain classes of hazardous materials loaded in transport vehicles or freight containers. As these exceptions are recognized and accepted as being appropriate, RSPA is certain that the improved communication of hazard for high risk PIH materials also is necessary and appropriate.

Much of the information and issues raised in HMAC's petition have already been considered and addressed during the rulemaking proceeding in Docket HM-206. RSPA believes HMAC has not presented justification for either its request to postpone implementation of the requirement for PIH labels until the

UN Committee has had the opportunity to judge the merits of the proposal, or for its recommendations that implementation of the requirements be deferred until October 1, 2001 for both domestic and international transportation. Further, RSPA does not agree that the requirements are inconsistent with the language and intent of Title IV of the Trade Agreements Act of 1979. However, RSPA agrees with HMAC that there is the possibility for errors and mishandling at port areas for shipments made in accordance with the IMDG Code, and there may be instances where the new labels are not recognized in other countries, such as shipments to or from Canada. RSPA believes there is a potential for delayed or frustrated shipments for these PIH materials when transported by vessel under the provisions of the IMDG Code as authorized by 49 CFR 171.12, or to or from Canada under the provisions of 49 CFR 171.12a. Also, the potential for exposure would be increased for transportation workers if they must further handle and re-label these extremely toxic and highly volatile materials. For these reasons, RSPA is granting the HMAC petition in part, and denies other parts of the petition.

In order to facilitate international transportation in commerce of PIH materials, RSPA is providing a limited exception, until October 1, 2001, from the requirement to display PIH labels on packages. The exception applies only to PIH materials in non-bulk packages in a closed transport vehicle or freight container that displays placards and identification numbers for the PIH materials in other than domestic transportation. Since the closed vehicles containing PIH materials in non-bulk packages in containerized loads moving in international commerce will, while in the United States, be identified as containing such materials by the display of identification numbers, RSPA does not believe that safety within the United States will be significantly reduced by adoption of this rule. Therefore, in this interim final rule, the provisions in §§ 171.12 and 171.12a are revised to provide a limited exception, until October 1, 2001, from the requirement to display the PIH labels on packages, provided the PIH materials are in non-bulk packages in closed transport vehicles or freight containers placarded and marked with an identification number.

Because use of the new PIH labels would otherwise be required on October 1, 1999, it is impossible for RSPA to publish an NPRM and receive comments before issuing this interim

final rule or to provide at least 30 days before the effective date of this interim final rule. Delay in issuing the interim final rule would create an undue hardship on the international regulated community and have the potential to disrupt and frustrate the shipment of these high hazard materials by vessel, or by motor vehicle or rail car to or from Canada.

Although an opportunity for public comment on this particular approach has not been provided prior to issuing this interim final rule, RSPA encourages interested persons to participate in this rulemaking by submitting comments containing information or views concerning this interim final rule. Commenters opposing adoption of this rule should provide a reason for their opposition. RSPA will consider all public comments.

IV. Editorial Correction

An editorial correction is being made to remove paragraph (e) in 49 CFR 171.14, which contains a provision postponing the compliance date for use of the new PIH labels an additional year, from October 1, 1998 to October 1, 1999. Except as provided for in this rule for shipments by vessel in accordance with 49 CFR 171.12, or to or from Canada in accordance with 49 CFR 171.12a, on and after October 1, 1999, packages containing PIH materials must be labeled as required by the HMR. Therefore, paragraph (e) is obsolete and it is removed.

V. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. A regulatory evaluation prepared for the January 8, 1997 final rule is available in the Docket (HM-206). Implementation of this labeling exception for PIH materials provided by this rulemaking should not result in any additional costs. Any savings associated with avoiding delay or frustration of shipments is considered so minimal as to not warrant revision of the regulatory evaluation.

B. Executive Order 12612

The final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). Federal hazardous materials transportation law, 49 U.S.C. 5101-5127 contains express preemption provisions at 49 U.S.C. 5125 and

expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain subjects and are not substantively the same as Federal requirements. These subjects are:

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

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

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

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

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

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

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 has determined that the effective date of Federal preemption for these requirements will be December 15, 1999.

C. Executive Order 13084

RSPA believes this change will not significantly or uniquely affect the communities of Indian tribal governments under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether this interim final rule would have a significant economic

impact on a substantial number of small entities. This rule provides limited relief to certain shippers and carriers of materials poisonous by inhalation and will have no significant economic impacts. I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not contain any new information collection requirements.

F. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final 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 to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. RSPA does not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not contain business process changes and does not require modifications to computer systems for computer generated labels. The rule does not affect organizations'

ability to respond to the Year 2000 problem and provides some relief to the international regulated community, until October 1, 2001, when mandatory compliance with the new PIH labeling is required.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, 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 part 1.

2. Section 171.12 is amended by adding paragraph (b)(8)(iv), and by revising paragraphs (b)(8)(ii) and (iii) to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(8) * * *

(ii) The material must be packaged in accordance with the requirements of this subchapter;

(iii) Except as provided in paragraph (b)(8)(iv) of this section, the package must be marked in accordance with § 172.313 of this subchapter and placarded with "POISON INHALATION HAZARD" or "POISON GAS", as appropriate, in accordance with subparts E and F, respectively, of part 172 of this subchapter;

(iv) Until October 1, 2001, the package may be labeled in accordance with the IMDG Code if transported in a closed transport vehicle or freight container marked with identification numbers for the materials in any quantity in the manner specified in paragraphs (c) and (c)(3) of § 172.313 of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

* * * * *

3. Section 171.12a is amended by adding paragraph (b)(5)(iv), and by revising paragraphs (b)(5)(ii) and (iii) to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(5) * * *

(ii) The material must be packaged in accordance with the requirements of this subchapter;

(iii) Except as provided in paragraph (b)(5)(iv) of this section and for a

package containing anhydrous ammonia, the package must be marked in accordance with § 172.313 of this subchapter and labeled and placarded with "POISON INHALATION HAZARD" or "POISON GAS", as appropriate, in accordance with subparts E and F, respectively, of part 172 of this subchapter. For shipments of anhydrous ammonia, the shipping paper must contain an indication that the markings, labels and placards have been applied in conformance with the TDG Regulations and this paragraph (b)(5);

(iv) Until October 1, 2001, the package may be labeled in accordance with the TDG Regulations if transported in a closed transport vehicle or freight container marked with identification numbers for the materials in any quantity in the manner specified in paragraphs (c) and (c)(3) of § 172.313 of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

* * * * *

§ 171.14 [Amended]

4. In § 171.14, paragraph (e) is removed.

Issued in Washington, DC, on September 13, 1999, under the authority delegated in 49 CFR part 1.

Stephen D. Van Beek,

Deputy Administrator.

[FR Doc. 99-24176 Filed 9-15-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 98123133-9127-03; I.D. 091399B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shoreside Whiting Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 1999 primary season for the shoreside fishery for Pacific whiting (whiting), and resumption of a 10,000-lb (4,536-kg) trip limit, at 12:00 noon local time (l.t.) September 13, 1999, because the allocation for the shoreside

sector will be reached by that time. This action is intended to keep the harvest of whiting within the 1999 allocation levels.

DATES: Effective from 12:00 noon l.t. September 13, 1999, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**, unless modified, superseded, or rescinded. Comments will be accepted through October 1, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or Rodney McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206-526-6145 or Becky Renko at 206-526-6110.

SUPPLEMENTARY INFORMATION: 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. On January 8, 1999 (64 FR 1316), the 1999 fishing seasons for Pacific whiting were published in the **Federal Register**. A new whiting stock assessment was completed in early 1999, and an allowable biological catch (ABC) and optimum yield (OY) of 232,000 metric tons (mt) were recommended for all U.S. harvests. On May 24, 1999, (64 FR 27928), NMFS announced the 1999 whiting ABC and OY of 232,000 mt, the tribal whiting allocation of 32,500 mt, and the commercial OY of 199,500 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial allocation into separate allocations for the catcher/processor, mothership, and shoreside sectors of the whiting fishery. When each sector's allocation is reached, the primary season for that sector is ended. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors. The allocations, which are based on the 1999 commercial harvest guideline for whiting of 199,500 mt, are 67,800 mt (34 percent) for the catcher/processor sector, 47,900 mt (24 percent)

for the mothership sector, and 83,800 mt (42 percent) for the shoreside sector.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for the shoreside sector as the period(s) when the large-scale target fishery is conducted (when trip limits under § 660.323(b) are not in effect). The 10,000 lb (4,536-kg) trip limit, which also had been in effect before the primary season, is intended to accommodate small bait and fresh-fish markets, as well as bycatch in other fisheries.

The best available information on September 10, 1999, indicated that the 83,800 mt shoreside allocation would be reached by 12:00 noon l.t. September 13, 1999.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C), NMFS herein announces:

Effective 12:00 noon l.t. September 13, 1999—No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(C) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 13, 1999.

Rebecca Lent,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99-24182 Filed 9-13-99; 2:44 pm]

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