

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 173, 174, 175, 176, 177, and 178**

[Docket No. RSPA-98-4952 (HM-223)]

RIN 2137-AC68

**Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage; Extension of Comment Period****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On June 14, 2001, RSPA published a notice of proposed rulemaking to clarify the applicability of the Hazardous Materials Regulations to specific functions and activities, including hazardous materials loading, unloading, and storage operations. The comment period for the proposed rule is extended until February 1, 2002, to provide commenters additional time because of delays they may have encountered in developing or submitting comments and to consider and comment on the proposed rule from the perspective of transportation security.

**DATES:** Submit comments by February 1, 2002. To the extent possible, we will consider comments received after this date in making our decision on a final rule.

**ADDRESSES:** Submit 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 Docket Number RSPA-98-4952 (HM-223) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also e-mail comments by accessing the Dockets Management System Web site at <http://dms.dot.gov/> and following the instructions for submitting a document electronically. If you prefer, you can fax comments to 202-493-2251 for filing in the docket.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets

Management System Web site at <http://dms.dot.gov/>.

**FOR FURTHER INFORMATION CONTACT:**

Susan Gorsky (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

**SUPPLEMENTARY INFORMATION:****Background**

On June 14, 2001, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) (66 FR 32420) under Docket RSPA-98-4952 (HM-223) to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The HM-223 rulemaking has four overall goals. First, we want to maintain nationally uniform standards applicable to functions performed in advance of transportation to prepare hazardous materials for transportation. Second, we want to maintain nationally uniform standards applicable to transportation functions. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which HMR-regulated functions are performed may also be subject to federal, state, or local regulations governing occupational safety and health or environmental protection.

To achieve these goals, the NPRM proposes to list in the HMR pre-transportation and transportation functions to which the HMR apply. Pre-transportation functions are functions performed to prepare hazardous materials for movement in commerce by persons who offer a hazardous material for transportation or cause a hazardous material to be transported.

Transportation functions are functions performed as part of the actual movement of hazardous materials in commerce, including loading, unloading, and storage of hazardous materials that is incidental to their movement. The NPRM also proposes to clarify that "transportation in commerce," for purposes of applicability of the HMR, begins when a carrier takes possession of a hazardous material and continues until the carrier delivers the package containing the hazardous material to its destination as indicated on shipping papers. In addition, the NPRM proposes to include in the HMR an indication that facilities at which functions regulated by the

HMR occur may also be subject to applicable standards and regulations of other federal agencies and state, local, and tribal governments. Finally, the NPRM proposes to include in the HMR the statutory criteria under which non-federal governments may be precluded from regulating in certain areas under the preemption provisions of the federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*)

As a result of the terrorist atrocities committed against the World Trade Center and the Pentagon on September 11, 2001, and subsequent threats related to biological materials, the Department of Transportation is engaged in a broad review of its transportation safety and security programs, including many of its ongoing rulemaking actions. In light of the potential for continuing terrorist threats and the critical need to assure the security of hazardous materials at fixed facilities and in transportation, a rule that specifies the applicability of the HMR to specific functions and activities and clarifies the relationship of the HMR to programs and regulations administered by EPA and OSHA is more important than ever. We intend to move forward with this rulemaking as expeditiously as possible.

We recognize, however, that the current timeframe for submitting comments on the NPRM may not provide sufficient opportunity for commenters because of delays caused by the terrorist activities and the potential desire of commenters to consider and comment on the proposed rule from the perspective of transportation security. Therefore, we are extending the comment period for the HM-223 rulemaking until February 1, 2002.

You should be aware that we are experiencing some delays in mail deliveries as a result of ongoing efforts to ensure that mail is not contaminated with infectious or harmful materials. We encourage you to take advantage of the opportunities provided by the DOT Dockets Management System to submit comments electronically or by fax.

Issued in Washington, DC, on November 20, 2001.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.*

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