

(A) Complete Line D10 only when the contractor is a small business performing in the United States and the action is under the Small Business Competitiveness Demonstration Program, *i.e.*, Line D1A is coded A or B and Line D9 is coded Y. Otherwise, leave Line D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program:

- (1) Code A—50 or fewer employees.
  - (2) Code B—51–100 employees.
  - (3) Code C—101–250 employees.
  - (4) Code D—251–500 employees.
  - (5) Code E—501–750 employees.
  - (6) Code F—751–1,000 employees.
  - (7) Code G—Over 1,000 employees.
  - (8) Code M—\$1 million or less.
  - (9) Code N—Over \$1 million—\$2 million.
  - (10) Code P—Over \$2 million—\$3.5 million.
  - (11) Code R—Over \$3.5 million—\$5 million.
  - (12) Code S—Over \$5 million—\$10 million.
  - (13) Code T—Over \$10 million—\$17 million.
  - (14) Code U—Over \$17 million.
- (x) LINE D11, EMERGING SMALL BUSINESS.

(A) Complete this line only if the action is under the Small Business Competitiveness Demonstration Program, *i.e.*, Line D9 is coded Y, and the action is in one of the four designated industry groups, not one of the targeted industry categories. Otherwise, leave Line D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) Part E of the DD Form 350. Part E gathers data on specialized items that may not become permanent reporting elements.

(1) LINE E1, CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATION.

(i) Enter code Y on Line E1 if the action exceeds \$200,000 and is in support of—

(A) A contingency operation as defined in 10 U.S.C. 101(a)(13); or

(B) A humanitarian or peacekeeping operation as defined in 10 U.S.C. 2302(8).

(ii) Otherwise, leave Line E1 blank.

(2) LINE E2, COST ACCOUNTING STANDARDS CLAUSE. Enter code Y on Line E2 if the contract includes a Cost Accounting Standards clause (see FAR Part 30). Otherwise, leave Line E2 blank.

(3) LINE E3, REQUESTING AGENCY CODE (FIPS 95). If making a purchase on behalf of a non-DoD agency, enter the four-position code from FIPS PUB 95 that identifies the non-DoD agency. If making a purchase for another DoD department or agency, enter 2100 for Army, 1700 for Navy, 5700 for Air Force, 97AS for DLA, 96CE for USACE, 9763 for DCMA, and 9700 for all other defense agencies. Otherwise, leave Line E3 blank.

(4) LINE E4, REQUESTING ACTIVITY CODE. If making a purchase on behalf of a non-DoD agency, enter the non-DoD agency's office code, if provided. Otherwise, leave Line E4 blank. If making a purchase on behalf of a DoD activity, enter the DoDAAC of the activity for whom the purchase was made. DoDAACs can be found at: <https://day2k1.daas.dla.mil/dodaac/dodaac.asp>. If multiple requesting activities are involved, enter the DoDAAC of the activity that provided the largest portion of funding for the action.

(5) LINE E5, NUMBER OF ACTIONS. If submitting a consolidated DD Form 350, enter the number of actions included in the consolidated report (see 204.670-6(b)). Otherwise, enter 1 on Line E5.

(6) LINE E6, PAYMENT BY GOVERNMENTWIDE PURCHASE CARD. If payment is to be made through use of the Governmentwide purchase card, enter Y on Line E6. Otherwise, leave Line E6 blank.

(f) Part F of the DD Form 350. Part F identifies the reporting official.

(1) LINE F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE. Enter the name (Last, First, Middle Initial) of the contracting officer or representative.

(2) LINE F2, SIGNATURE. The person identified on Line F1 must sign.

(3) LINE F3, TELEPHONE NUMBER. Enter the telephone number (with area code) for the individual on Line F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) LINE F4, DATE. Enter the date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January

through December. For example, enter January 2, 2003, as 20030102.

[FR Doc. 02-17524 Filed 7-11-02; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

[DFARS Case 2000-D014]

#### Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final rule.

SUMMARY: DoD is issuing a correction to the final rule published at 67 FR 38020-38022 on May 31, 2002, pertaining to requirements for use of U.S.-flag vessels in the transportation of supplies by sea.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350.

#### Correction

In the issue of Friday, May 31, 2002, on page 38021, in the third column, amendatory instruction 5.b. is corrected by removing “252.247-2023” and adding in its place “252.247-7023”.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02-17521 Filed 7-11-02; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA-01-10568 (HM-207B)]

RIN 2137-AC64

#### Hazardous Materials: Retention of Shipping Papers

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

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material

shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

**EFFECTIVE DATE:** This final rule is effective on August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) require a person who offers a hazardous material for transportation in commerce to describe the hazardous material on a shipping paper in the manner required in 49 CFR part 172, subpart C. A paper copy of the shipping paper must accompany a hazardous material during transportation. A shipping paper includes "a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204." 49 CFR 171.8 (definition of "shipping paper"). A hazardous waste manifest "may be used as the shipping paper" if it contains all the information required by part 172, subpart C. 49 CFR 172.205(h).

Since 1980, generators and transporters of hazardous waste have been required to retain a copy of the hazardous waste manifest "for three years from the date the waste was accepted by the initial carrier." 49 CFR 172.205(e)(5), adopted in RSPA's May 22, 1980 final rule, 45 FR 34560, 34698. See also regulations of the U.S. Environmental Protection Agency at 40 CFR 262.40(a), 263.22(a).

In 1994, Congress amended the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business." 49 U.S.C. 5110(e), added by Pub. L. 103-311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations."

On September 12, 2001, the Research and Special Programs Administration

(RSPA, we) issued a notice of proposed rulemaking (NPRM) to amend the HMR to conform with § 5110(e) (66 FR 47443). We proposed to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. An electronic image includes an image transmitted by a facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine. In order to facilitate compliance with and enforcement of the requirement, we proposed that the copy include the date that the shipment is accepted for transportation by the initial carrier. We further proposed to require the shipping paper copy or its electronic image to be accessible at or through the principal place of business of each person required to prepare or maintain it during transportation.

Except for hazardous waste manifests, see 49 CFR 172.205(a), the HMR do not require a shipping paper to be in any specific form or format. We understand that different types of documents are used by offerors of hazardous material to meet the requirement to describe the hazardous material on a "shipping paper." Some private motor carriers use the same shipping paper for multiple shipments of a hazardous material. Typically, these permanent shipping papers are used by private motor carriers who transport a single hazardous material on a regular basis over an extended period, such as one cargo tank of gasoline. However, permanent shipping papers may also be utilized by common or contract carriers. In the NPRM, we proposed to permit operators to retain a single copy of such permanent shipping papers for the period in which the shipping paper is used and 375 days thereafter, provided that the operator also retains a record of each shipment made under the shipping paper.

**II. Discussion of Comments**

We received 16 written comments. The commenters included a university, utility companies, shippers, carriers, and representatives from industry associations representing a broad spectrum of businesses that offer hazardous materials for transportation or transport hazardous materials in commerce. Most commenters generally support the intent of the proposal to require a copy of the shipping paper or an electronic image thereof to be

retained for 375 days after the date the initial carrier accepts the hazardous materials for transportation. One commenter suggests that we implement a system for tracking hazardous materials shipments. Other commenters suggest revisions to the NPRM proposals related to the shipping paper retention period, acceptance date, permanent shipping papers, mode-specific requirements, retention at principal place of business, and proposed legislative changes to the current shipping paper requirement in the Federal hazmat law.

**A. Shipment Tracking System**

Florida International University (FIU) suggests we require shippers and carriers to implement a tracking system that would show the exact date when transportation ends. According to FIU,

"With a better tracking system, shippers and carriers will be able to know when the shipment departs and when it arrives at its final destination. We think there should be a document or form, which should be created for the original carrier, all intermediate carriers (if any), and the final carrier who receives the cargo. This form should be returned to the previous carrier and originating location electronically notifying the shipment's arrival and condition. By doing this, it will ensure the tracking of the dates and time it takes exactly to arrive to each destination (if going through more than one destination). With a better tracking system it would even be convenient to make the original carrier responsible and liable for knowing at any given time the current location, final destination, and final date of transportation. All this, of course, in addition to keeping records of the materials. All second hand carriers should electronically report all information to the first carrier."

We disagree. For purposes of this rulemaking, a complicated and expensive tracking system of the type suggested by FIU is not necessary. Nor do we agree that a second shipping document would help achieve the goals of this rulemaking. The current shipping paper requirement, modified as proposed in the NPRM, is adequate to assure implementation of the shipping paper retention requirement in Federal hazmat law. Further, an additional form would result in an unacceptable increase in paperwork burden on the regulated industry.

**B. 375-Day Retention Period**

The NPRM proposed to require shipping papers to be retained for 375 days (one year plus 10 days) for consistency with the statutory requirement that shipping papers be retained for one year *after transportation ends*. Over 95 percent of hazardous materials shipments are

delivered within 10 days after they are offered to a carrier. Most commenters support the proposed 375-day period for retention of shipping papers. However, one commenter, the Institute of Makers of Explosives (IME), stated the retention requirement should be "1 year" as stated in the law. IME states that " \* \* \* delivery may not take place within 10 days in all cases. While as a whole most hazardous materials shipments may be delivered within 10 days (largely because of the preponderance of flammable liquid deliveries), across different hazard classes and types of carriers the '10-day' delivery date is going to vary widely. For simplicity, the retention requirement should be simply, as stated in the law, '1 year.'" We disagree. The current statutory requirement is for shipping papers to be retained for one year after a shipment is "no longer in transportation." A regulatory requirement to retain shipping papers for one year is not consistent with the statutory requirement. A requirement to retain shipping papers for 375 days accommodates most shipment delivery times. In this final rule, we are adopting the 375-day retention period as proposed.

#### C. Acceptance Date

Several commenters object to the proposal to require shipping papers to include the date the shipment is accepted by the initial carrier. The Association of American Railroads (AAR) notes that for rail transportation, "the date on railroad shipping papers (waybills) is the date a shipment has been offered for transportation, *i.e.*, when the shipper has notified a railroad the shipment is ready to be picked up by the railroads. That date may or may not be the actual date a shipment is picked up by a railroad. It is common practice for a railroad to pick up a shipment one or more days after it is ready for transportation. Consequently, the railroads oppose the proposed requirement that the date of actual acceptance be placed on shipping papers. It would take substantial investment in computer reprogramming and changes in railroad procedures to use the date of actual receipt of a shipment on shipping papers." The Fertilizer Institute (TFI) requests clarification of the meaning of "date of acceptance." TFI states, "[W]hen shipments are presented for transportation, a signature generally is required on the Bill of Lading (BOL). We assume that the signature and date on the BOL will establish the 'date of acceptance' and trigger the retention period. \* \* \* However, the date of

shipment and the date of acceptance are not always the same. This is especially true for rail shipments. A BOL may be sent electronically to the railroad many hours, sometimes days, prior to the arrival of the train crew who accepts a shipment. RSPA should specify how the retention period is triggered in this situation." It was not our intention in the NPRM to require shippers and carriers to implement new systems for preparing and dating shipping documentation. We agree with AAR and TFI that the shipping paper retention requirements should be sufficiently flexible to accommodate current rail transportation practices. In this final rule, the shipping paper requirements for rail shipments permit the date on the shipping paper to be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an alternative to the date the shipment is picked up, or accepted, by the carrier.

IME is concerned that a shipper may not always know when the carrier accepts a shipment, especially rail shipments. IME suggests that requiring both the shipper and carrier to date the shipping paper on the date the carrier accepts the shipment may not be the best approach. IME recommends "the date be keyed to when the shipper 'prepares the shipping paper' instead \* \* \* This would also reduce the compliance burden, as the initial carrier does not have to add a subsequent 'acceptance' date." We disagree. A shipper may prepare shipping papers well in advance of offering a shipment for transportation. The date of acceptance of a shipment by a carrier more closely approximates the actual beginning of transportation and is, thus, consistent with the current statutory requirement for retention of shipping papers for one year after transportation ends. As stated above, for rail shipments, this final rule permits the date on a shipping paper to be the date the carrier is notified that a shipment is ready for transportation as an alternative to the date the carrier picks up, or accepts, the shipment. This revision to the NPRM proposal should help to minimize the compliance burden on shippers and carriers.

The Agricultural Retailers Association (ARA) opposes inclusion of the acceptance date on shipping papers, as proposed. ARA states, "This proposal appears to be arbitrary and capricious. There will be a cost involved to change recordkeeping systems that are based on one year and without apparent benefit economically or safety-wise." We disagree. The proposed 375-day retention period begins from the date a

shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carriers. Therefore, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of shipping documents for one year after transportation ends.

AAR suggests that we require only the last modified version of the shipping paper to be retained. AAR states that "shipping papers can be changed multiple times in the course of a shipment. Reasons for changing shipping papers include: substitution of the scale weight for the initial estimate of the weight; diversion or reconsignment of a shipment; and addition of switching information. There is no reason to keep versions of shipping papers that have been superseded." Provided the shipment notification date or date of acceptance is on the shipping paper, we agree that the current railroad practice to retain the last modified version of the shipping paper is acceptable for retention purposes proposed under this rulemaking.

#### D. Permanent Shipping Papers

Most commenters support the NPRM proposal as it applies to permanent shipping papers. However, three commenters oppose the proposal to require shippers to retain a record of each shipment made under a permanent shipping paper. SRP, an electric system operator and provider, and the Utility Solid Waste Activities Group (USWAG) state, "RSPA's proposal to require maintenance of a running record of each shipment made under a 'permanent shipping paper' goes above and beyond statutory requirements and existing regulatory practice to create a redundant recordkeeping obligation with little apparent value." SRP further states that "this requirement would significantly impact our workload, again with no gain from a transportation safety aspect."

We disagree that the requirement to retain a copy of a daily record of the shipments made under a permanent shipping paper increases the recordkeeping burden. We also disagree that maintenance of a running record of each shipment made under a "permanent shipping paper" goes above and beyond statutory requirements and existing regulatory practice. It is our understanding that retention of this type

of information on a daily basis is standard business practice for inventory and tax purposes, and therefore, does not pose an additional recordkeeping burden. The federal hazmat law requires a shipping paper to be retained for each hazardous materials shipment. Thus, a requirement to maintain a record of each shipment made under a permanent shipping paper is entirely consistent with the statute.

#### *E. Mode-Specific Requirements*

United Parcel Service (UPS) suggests that proposing to delete the second sentence of § 175.30(a)(2), which requires only the originating aircraft operator to retain a copy of the shipping paper, poses a new problem concerning the shipper's certification required by § 172.204. According to UPS, the current regulations for air, motor, and rail carriers allow for the shipper's certificate to be delivered to the originating operator. This provision continues in the regulations applicable to the surface modes that are proposed in this rulemaking. UPS states that "by proposing to delete the current sentence focused on the originating aircraft operator, RSPA has proposed to require that the certification be delivered to every and all air carriers involved in the movement of a specific shipment. This requirement has the potential to impose a significant burden on operators who rely on close partnerships with dedicated charter air carriers to extend their delivery networks and may use streamlined documentation to furnish the required hazardous materials information to those partner carriers." UPS indicates a need for uniformity in application of the HMR for each mode. We agree that the application of the shipper's certification should be uniform as it applies to the modes. In this final rule, we revised § 175.30(a)(2) to indicate that the initial air carrier will receive the shipper's certification in accordance with provisions in § 172.204.

The Fertilizer Institute (TFI) requests clarification of the proposed language in § 176.24(a). TFI is concerned that "RSPA may have unintentionally narrowed the scope of exceptions to shipping paper requirements. Currently, this section references only the exceptions to shipping paper requirements specified in § 172.200(b). Section 173.315(m) also contains exceptions from shipping paper requirements under certain conditions. We strongly recommend that RSPA omit references to specific CFR sections and simply reference exceptions to shipping paper requirements in general." We did not intend to eliminate the current

exception from shipping paper requirements for hazardous materials shipped in accordance with § 173.315(m) or any other exceptions stated elsewhere in the HMR. In this final rule we have modified the language for clarity.

The American Trucking Associations suggest that the proposed revisions to § 177.817(a) relieve a motor carrier from the responsibility to carry a copy of the shipping paper with the shipment on the motor vehicle. We agree that the proposed language should be clarified, and have done so in this final rule. The American Trucking Associations further suggest that the proposed revisions to § 177.817(a) require a shipper's certification on all copies of the shipping paper instead of the initial carrier's copy. We disagree. Section 177.817(b) addresses a shipper certification on a shipping paper offered to an initial carrier. Paragraph (b) of § 177.817 is unchanged in this final rule.

#### *F. Principal Place of Business*

Several commenters say that requiring shipping papers to be accessible at or through a central location or principal place of business, and to be "immediately available" upon request to authorized officials may cause problems. According to the Dangerous Goods Advisory Council (DGAC; formerly the Hazardous Materials Advisory Council), "\* \* \* production plants or other shipping points have the original signed documents. Copies, or electronic images thereof, can be transferred to a central location but not instantaneously as implied in the proposal." DGAC suggested that the proposal be modified to require shipping papers to be "immediately available to shipping/origination points or available within 48 hours at a central location" in order to recognize a common industry practice of batch processing of documents for electronic transmission. Similarly, the Air Transport Association states that "\* \* \* air carriers principal places of business must include all airport locations where the carrier operates, as carriers normally maintain shipping paper record files at the origin station. Requiring air carriers to maintain a storage or a data base for shipping papers at a headquarters office location would not appear feasible or desirable." We disagree with the commenters. The proposal does not require duplicate sets of shipping records to be maintained at various locations. The proposal requires copies of shipping papers or electronic images of shipping papers to be immediately available at a company's

principal place of business. With facsimile machines and email capabilities, companies can transmit copies of shipping papers from shipping locations to a principal place of business very quickly. A 48-hour period is not necessary to fax or email a copy of a shipping document. An authorized official will need to see a copy while he or she is on the premises conducting an inspection, not 48 hours later. The proposal is adopted in this final rule.

The Air Transport Association also expressed concern with the wording in the NPRM that allows retention of an "electronic image" of a shipping paper. According to the Air Transport Association, an image is not the same as an electronic record of the information on the shipping paper. The wording "electronic image" is taken directly from the Federal hazmat law. As we explained in the NPRM, an electronic image includes an image transmitted by a facsimile machine, an image on the screen of a computer, or an image generated by an optical imaging machine. The Air Transport Association's suggestion that we revise the proposal to permit retention of an electronic record of the information on the shipping paper is not consistent with the statutory requirement.

#### *G. Three-Year Retention (HMTA Re-authorization)*

Two commenters note that the Administration's proposed legislation to re-authorize the hazardous materials transportation safety program requires retention of shipping papers for three years. Both commenters are opposed to the proposal in the re-authorization legislation. The bill is currently under consideration by the Congress. At such time as the legislation becomes law, we will address any revisions to the current shipping paper retention requirements.

### **III. 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 Executive Order 12866 and, was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

This final rule implements a statutory requirement that has been in effect since 1994. We do not anticipate any additional costs on offerors and carriers of hazardous materials, and, preparation of a regulatory evaluation is not warranted.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous materials transportation law preempts any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this final rule, 49 U.S.C. 5125(b)(1)(B), but this final rule does not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. The consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item 3 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to assure that the HMR requirements for retention of shipping papers are consistent with Federal hazardous materials transportation law.

Federal hazardous materials transportation law provides at § 5125(b)(2) 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. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

*C. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to assess the impact of its regulations on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule implements a statutory requirement that has been in effect since 1994. This final rule will not impose additional costs on offerors and carriers of hazardous material. I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small businesses.

*E. Unfunded Mandates Reform Act of 1995*

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. No new burdens are proposed under this final rule. RSPA has a current information collection approval under OMB No. 2137–0034, "Shipping Papers and Emergency Response Information" which includes the shipping paper retention requirement in the burden estimates.

*G. 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*H. Environmental Assessment*

This final rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this final rule.

**List of Subjects***49 CFR Part 172*

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

*49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Railroad safety.

*49 CFR Part 175*

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 176*

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

*49 CFR Part 177*

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Parts 172, 174, 175, 176, and 177, 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. In § 172.201, the section heading is revised and a new paragraph (e) is added to read as follows:

**§ 172.201 Preparation and retention of shipping papers**

\* \* \* \* \*

(e) Each person who provides the shipping paper must retain a copy of the shipping paper required by § 172.200(a), or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government

agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier, except that, for rail shipments, the date on the shipment waybill or bill of lading may be used in place of the date of acceptance by the initial carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (*i.e.*, one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

**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 174.24 is revised to read as follows:

**§ 174.24 Shipping papers.**

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by rail unless that person receives a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter. This section does not apply to a material that is excepted from shipping paper requirements by this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the

material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. The date on the shipping paper may be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an alternative to the date the shipment is picked up, or accepted, by the carrier.

**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. In § 175.30, paragraph (a)(2) is revised to read as follows:

**§ 175.30 Accepting and inspecting shipments**

- (a) \* \* \*
- (1) \* \* \*

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by § 171.11 of this subchapter. Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification as required by § 172.204 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 176.24 is revised to read as follows:

**§ 176.24 Shipping papers**

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

**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. In § 177.817, paragraph (a) is revised and new paragraph (f) is added, to read as follows:

**§ 177.817 Shipping papers**

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter. A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter.

\* \* \* \* \*

(f) *Retention of shipping papers.* Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained

for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III

of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include

shipping name, identification number, quantity transported, and date of shipment.

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**Ellen G. Engleman,**

*Administrator.*

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