the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: May 27, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 3, 11, 12, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 1, 1999.

* * * * *

3. Special Senses and Speech (2.00 and 102.00): July 1, 1999.

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11. Multiple Body Systems (110.00): July 1, 1999.

12. Neurological (11.00 and 111.00): July 1, 1999.

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15. Immune System (14.00 and 114.00): July 1, 1999.

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[FR Doc. 98–14599 Filed 6–3–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177

[Notice No. 98–6]

Hazardous Materials: Formal Interpretation of Regulations

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

ACTION: Formal interpretation of regulations.

SUMMARY: This document publishes a formal interpretation of the Hazardous Materials Regulations (HMR) concerning the responsibilities of a carrier when accepting hazardous materials for transportation in commerce. This interpretation is being published in order to facilitate better public understanding and awareness of the HMR.

EFFECTIVE DATE: June 4, 1998.

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

SUPPLEMENTARY INFORMATION: As part of its implementation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, RSPA issues the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. From time to time, RSPA's Chief Counsel issues formal interpretations of the HMR. These interpretations generally involve multimodal issues and are coordinated with the other DOT agencies which, together with RSPA, enforce the HMR: Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and United States Coast Guard. This document publishes a Chief Counsel's interpretation concerning the responsibilities of a carrier when accepting hazardous materials for transportation in commerce. This interpretation addresses issues raised in a letter by Mr. E.A. Altemos, of HMT Associates, and is consistent with an August 19, 1997 written response to Mr. Altemos by RSPA's Associate Administrator for Hazardous Materials Safety.

In addition to these infrequent formal interpretations by RSPA's Chief Counsel, RSPA's Office of Hazardous Materials Standards provides information and informal clarifications of the HMR on an ongoing basis, through (1) a telephonic information center (1–800–467–4922) to answer oral questions and (2) informal written interpretations or clarifications in response to written inquiries. RSPA's formal interpretations and informal letter clarifications (and additional information concerning the HMR) are also available through the Hazmat Safety Homepage at "http://hazmat.dot.gov." In addition, some of RSPA's interpretations and clarifications may be reproduced or summarized in selected trade publications.

Further information concerning the availability of informal guidance and interpretations of the HMR is set forth in 49 CFR 107.14. RSPA believes that publication of its interpretations should promote a better understanding of the HMR and improve compliance with the HMR.

Issued in Washington, DC, on May 28, 1998.

Judith S. Kaleta,

Chief Counsel.

[Int. No. 98–1]

Background

Mr. E.A. Altemos, HMT Associates, requested clarification of requirements in the HMR concerning an air carrier's acceptance of packages containing hazardous materials. This inquiry concerned only the carrier's responsibilities relating to hazardous materials offered by another person, and not a carrier's transportation of its own materials or products. (For information on an air carrier's transportation of its own company materials, or "COMAT," *see* "COMAT FACTS" in RSPA's January 1998 Safety Alert, available on the Hazmat Safety Homepage.)

Although Mr. Altemos's question was posed in the context of air transportation, the HMR requirements discussed in RSPA's interpretation apply to carriers by all modes of transportation.

Interpretation

Basic requirements in the HMR set forth in 49 CFR 171.2(a) and (b), and applicable to carriers in all modes of transportation, are that no person may

accept a hazardous material for transportation in commerce unless * * * the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or

authorized by applicable requirements of [the HMR], or an exemption, approval, or registration issued under [the HMR] * * * [or]

transport a hazardous material in commerce unless * * * the hazardous material is handled and transported in accordance with applicable requirements of [the HMR], or an exemption, approval, or registration issued under [the HMR] * * *

A carrier's acceptance and transportation of hazardous materials can involve several different situations, including the following two ends of the spectrum:

1. the shipment is declared by the offeror, in one manner or another, to contain hazardous materials and complies (in whole or in part) with requirements in the HMR; or

2. whether intentionally or unintentionally, the shipment is not declared by the offeror to contain hazardous materials, and no attempt has been made to comply with the HMR (the "undeclared" or "hidden" shipment).

The Secretary of Transportation has delegated to agencies within the Department (Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, United States Coast Guard, and Research and Special Programs Administration), the authority in 49 U.S.C. 5123 to assess a civil penalty against any person who "knowingly violates" any requirement in the HMR, including the provisions in § 171.2 (a) and (b) quoted above. Section 5123(a) provides that a person "acts knowingly" when

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

Accordingly, a carrier knowingly violates the HMR when the carrier accepts or transports a hazardous material with actual or constructive knowledge that a package contains a hazardous material which has not been packaged, marked, labeled, and described on a shipping paper as required by the HMR. This means that a carrier may not ignore readily apparent facts that indicate that either (1) a shipment declared to contain a hazardous material is not properly packaged, marked, labeled, placarded, or described on a shipping paper, or (2) a shipment actually contains a hazardous material governed by the HMR despite the fact that it is not marked, labeled, placarded, or described on a shipping paper as containing a hazardous material.

The Department's October 4, 1977 interpretation concerning 49 CFR 175.30 (reproduced below) relates to the first situation in the above paragraph, *i.e.*, when an air carrier receives a shipment accompanied by a shipping paper containing a shipper's certification that hazardous materials within the shipment have been classed, packaged, marked, labeled and accurately described as required. *See* 49 CFR 172.204. Whenever, in the course of examining the shipping paper and performing the required visual inspection of the package, an air carrier has reason to know of discrepancies, the carrier may not simply rely on the shipper's certification.

In the case of an undeclared or hidden shipment, all relevant facts must be considered to determine whether or not a reasonable person acting in the circumstances and exercising reasonable care would realize the presence of hazardous materials. In an enforcement proceeding, this is always a question of fact, to be determined by the fact-finder. Because innumerable fact patterns may exist, it is not practicable to set forth a list of specific criteria to govern whether or not the carrier has sufficient constructive knowledge of the presence of hazardous materials within an undeclared or hidden shipment to find a knowing violation of the HMR.

Information concerning the contents of suspicious packages must be pursued to determine whether hazardous materials have been improperly offered. A carrier's employees who accept packages for transportation must be trained to recognize a "suspicious package," as part of their function—specific training as specified in 49 CFR 172.704(a)(2), because the legal standard remains the knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have. Because this standard applies to all modes of transportation, a single training program and a uniform screening process can be developed for all of a company's employees involved in surface or air transportation.

At the same time, an offeror who fails to properly declare (and prepare) a shipment of hazardous materials bears the primary responsibility for a hidden shipment. Whenever hazardous materials have not been shipped in compliance with the HMR, DOT generally will attempt to identify and bring an enforcement proceeding against the person who first caused the transportation of a noncomplying shipment. The procedures applicable to DOT civil penalty enforcement cases procedures are set forth in 14 CFR 13.16 (FAA); 33 CFR part 1, subpart 1.07 (USCG); 49 CFR part 109, subpart B (FRA); 49 CFR part 107, subpart D (RSPA); and 49 CFR part 386 (FHWA).

To the extent that any carrier, regardless of the mode of transportation, is truly "innocent" in accepting an undeclared or hidden shipment of hazardous materials, it lacks the knowledge required for assessment of a civil penalty. However, when a carrier acts "knowingly," as defined in 49 U.S.C. 5123(a), it must be considered subject to civil penalties. RSPA rejects any suggestion that a carrier would be deemed to have "knowingly" accepted a hazardous material for transportation, and be subject to civil penalties under 49 U.S.C. 5123, only when the material is described as a hazardous material on a shipping paper or other commercial documentation, or the package is marked or labeled in a manner as prescribed by the HMR. That approach would improperly limit a carrier's responsibility to situations involving a "declared" shipment.

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

October 4, 1977.

Subj: Air Carrier's Responsibility for Inspection of Hazardous Materials Packages.

From: Assistant General Counsel for Materials Transportation Law.

To: Director, Transportation Safety Institute, TES–15

This is in response to your request of August 25, 1977, for our opinion as to whether an air carrier has a specific regulatory obligation to inspect hazardous materials packages prior to acceptance for air transportation to insure the shipper's compliance with specific regulatory requirements of parts 173 and 178. With the question, you have supplied your analysis and conclusion that except for the physical integrity inspection provided for in § 175.30(b) there is no duty on the air carrier to inspect hazardous materials packages prior to acceptance for transportation in order to determine compliance with the requirements of parts 173 and 178. Thus, it is your opinion that the air carrier may rely on the shipper's certification accompanying the shipment.

Section 175.30 prescribes the requirements that must be met before an air carrier accepts a shipment of hazardous materials for transportation. In achieving compliance with these requirements, the air carrier must, under paragraph (a), examine the shipment against the information supplied on the shipping paper, and must, under paragraph (b), make a visual inspection for leaks and damaged packaging. Consequently, I agree with your analysis and conclusion that the regulations permit the air carrier to rely on the information supplied on the shipping paper, unless, in complying with paragraphs (a) and (b), he has reason to know that there are discrepancies.

[FR Doc. 98–14561 Filed 6–3–98; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 052098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the Second Half of 1998

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1998. Publication of these bycatch rate standards is required under regulations