

**Required DOT Packaging Marking & Labeling in Missouri
REGFORM's Proposed Amendments to 10 CSR 25-5.262
Hazardous Waste Forum - May 15, 2011**

1. Background

As early as April 2006 REGFORM and its member companies have been requesting that enforceable requirements, unique to Missouri, at 10 CSR 25-5.262(2)(C), be rescinded so that Missouri businesses can comply with the Federal requirement (40 CFR 262—Subpart C) alone.

The Federal rule requires DOT labeling “Before transporting or offering hazardous waste for transportation off-site.” The state rule, however, requires DOT packaging, marking and labeling “During the entire time hazardous waste is accumulated in storage on-site.” DNR staff interpret the term “accumulated in storage” to exclude satellite accumulation areas, however.

2. REGFORM's Preferred Proposal

10 CSR 25-5.262 currently states:

“(2)(C) Pretransport, Containerization and Labeling Requirements

1. During the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR 262.32 and 40 CFR Part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest document number for the shipment on the container until it is prepared for off-site shipment.”

We propose that the regulation be amended as follows:

“(2)(C) Pretransport, Containerization and Labeling Requirements

1. Generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR Part 262 subpart C, as incorporated and modified within these regulations.”

Alternatively, **paragraph (2)(C)1 could simply be deleted**, since Part 262 Subpart C (including 40 CFR 262.32) requirements are fully incorporated by reference at the beginning of 10 CSR 25-5.262.

The Missouri Hazardous Waste Program (HWP) has suggested that requiring DOT labeling during storage introduces important procedural steps that raise the awareness of generators' employees, thereby making the workplace safer and reducing the risk of harm to the environment. The HWP has also indicated that DOT labeling during storage provides a level of safety on a container-by-container basis that protects MDNR inspectors who are present in the generator's facility for inspections and/or emergency response personnel who arrive on-scene during a fire or other emergency.

| We believe the additional DOT labeling requirement codified in Missouri regulation:

- 1) provides no additional beneficial environmental effects over those that are already present when generators comply with other promulgated state and federal hazardous waste, community right-to-know, and emergency response preparedness regulations,
- 2) cannot be met if additional wastes are added to drums in storage, because the Missouri requirement includes not only DOT hazard class labels, but also DOT Proper Shipping Name, which can change significantly as additional wastes are added,
- 3) adds undue burden to regulated generators,
- 4) creates greater confusion among regulated generators, particularly those whose company-wide hazardous waste management systems include facilities outside Missouri, such that the confusion increases the risk of harm to human health and the environment, and
- 5) creates enforceability issues, since DOT packaging, marking, and labeling requirements are revised frequently by DOT. Shipping personnel must attend refresher training courses at least every 3 years [49 CFR 172.704(c)(2)] in order to stay current on these changes and to properly certify shipping documents. Unless all DNR hazardous waste inspectors also attend these courses on DOT's required refresher training schedule, they are not qualified to determine whether DOT labels and proper shipping names are correct or not.

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We have attached a table titled "Affirmative Disclosures and Readily Accessible Information on Stored Hazardous Wastes" that lists provisions in federal regulation that, if the generator complies, address the concerns that the HWP has outlined.

3. Option Two: Federal OR State

The HWP has asked us to propose an option or options other than adoption in Missouri of the straight federal requirement for DOT labeling.

Since we believe that the ability to comply with the current federal rule provisions reduces confusion and thereby increases the likelihood of protecting human health and the environment, our first proposed Option provides the generator, without regard to size, complexity of his operation, or LQG/SQG/CESQG status, the option of complying with the existing state rule OR the existing federal rule.

The current state regulation may be amended as follows to implement this Option:

"(2)(C) Pretransport, Containerization and Labeling Requirements

1. Generators that comply with either subsection A. or subsection B. of this section shall be in compliance with this section.

A. Generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR Part 262 subpart C, as incorporated and modified within these regulations.

B. During the entire time hazardous waste is accumulated in storage on-site, generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR Part 262 subpart C, as incorporated and modified within these regulations. The generator is not required to mark the manifest

document number for the shipment on the container until it is prepared for off-site shipment.”

We do not support any provisions that would require a generator to declare up front which subsection in rule he/she is complying with. Nor do we support a requirement that all waste streams or storage areas in any facility comply with the same subsection.

This Option provides those generators who prefer the current state rule the opportunity to comply with it. The HWP has reported that a significant number of generators in the state prefer the current state rule over existing federal requirements.

4. Option Three: Hazard Identification Warnings During Storage “Recommended”

Our second proposed Option also gives generators the ability to comply with the federal requirements alone. Under this Option, the generator is recommended to provide hazard identification warning during storage.

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The current state regulation may be amended as follows to implement this Option:

“(2)(C) Pretransport, Containerization and Labeling Requirements

1. Generators shall package, mark, and label hazardous waste containers in compliance with the requirements of 40 CFR Part 262 subpart C, as incorporated and modified within these regulations. It is recommended, but not required, that during the entire time hazardous waste is accumulated in storage on-site, generators affix DOT hazard class labels to individual hazardous waste containers, affix appropriate National Fire Protective Association (NFPA) hazard placards to the storage structure exterior, and/or display DOT hazard class labels on signs to indicate segregated storage locations within the storage structure.”

NFPA placards or segregated storage location marking may already be required for some facilities by local fire code, insurers, Local Emergency Planning Committee, or the facility’s RCRA Contingency Plan. The three options are recommended, rather than mandated, to ensure that the facility has flexibility to select methods that conform to the desires of local first responders, insurers, and other parties directly affected by the decision.

This Option also provides those generators who prefer the current state rule of DOT labeling of individual containers the opportunity to comply with it, but without the requirement for DOT Proper Shipping Names during the entire period of storage. As described above, the Proper Shipping Name can be subject to change as additional wastes are added to a container, while the DOT hazard class is more stable during storage. The HWP has reported that a significant number of generators in the state prefer the current state rule over existing federal requirements. It is also well understood that many generators rely on the expertise and advice of their waste haulers. This provision would give the transporter the foundation in regulation to advise generators that DOT labeling during storage is recommended.

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5. Preserving the LQG vs. SOG Distinction

Lastly, we would like to comment on one of the “Concepts” that was introduced at the April 7, 2011 Hazardous Waste Forum. If this particular Concept were adopted as proposed, small quantity generators (SQG) would comply with the current state rule and large quantity generators (LQG) would comply with the existing federal rule.

Remarks made by the HWP at the April 14, 2011 Hazardous Waste Management Commission meeting indicate that the HWP is further considering an option that would allow a SQG to voluntarily meet the training obligations required of a LQG. Upon meeting these training requirements, the SQG would be allowed to comply with the federal regulation.

We do not support any distinction in a final state rule that would not allow a SQG to comply with the federal DOT labeling requirement alone. Again, we believe that other existing rules (see the attached table), even those that apply to SQGs, satisfy the HWP’s stated goals for protecting human health and the environment.

Further, we believe that adding a new distinction between SQGs and LQGs is potentially even more confusing than the situation we have now. Again, we believe protection of human health and the environment is better served by eliminating and reducing confusion.

Also, we do not support a provision in this rule that could potentially cause unintended consequences by enticing a SQG to be treated like a LQG.

6. Closing

We appreciate the HWP’s consideration of these proposals. We look forward to discussing these options and others that may be offered.