"the Act directed DOT to consider only one issue—safety." Sen. Thurmond and Reps. Gillmor, Spratt and Baker all advised RSPA to consider the factors mentioned in IFDI's comments to the ANPRM (on which RSPA invited comments in the ANPRM). Sen. Hollings and Rep. Gillmor questioned whether RSPA had prejudged the issues in this rulemaking, and Rep. Spratt stated that the standard of an equal or greater level of safety "is specifically not a standard of equivalence to the performance tests of HM–181."

The Supreme Court has made clear that the "starting point in determining the scope" of legislation "is, of course, the statutory language." *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 520 (1982). Resort to legislative history, or the asserted intentions of a statute's sponsors, is unnecessary when the language of the statute is unambiguous. Freytag v. Commissioner, 501 U.S. 868, 873 (1991) ("When we find the terms of a statute unambiguous, judicial inquiry should be complete except in rare and exceptional circumstances."); United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989) (where "the statute's language is plain," the only task is to enforce the law according to its terms).

In this case, the Act's command is clear: DOT must determine whether alternate standards will provide "an equal or greater level of safety" than the HM–181 performance standards. The level of safety to be provided by alternate standards is the sole basis of RSPA's finding in Part IV, above, consistent with Section 122 of the Act. Historical shipping experience under lesser standards, in effect prior to the adoption of the performance standards in HM–181, cannot be dispositive.

As a matter of fact, the actual experience of shipping hazardous materials in fiber drums was considered in RSPA's detailed decision on FDTC's appeal from the denial of its application for an exemption. There RSPA's Acting Administrator found that the claimed

99.99% "success rate" for fiber drums was comparable for all packagings but, notwithstanding that record, it was appropriate to further improve safety in HM-181 by eliminating nonspecification packagings of all constructions (metal and plastic, as well as fiber). Were RSPA to have accepted the fiber drum industry's position that the past shipping record was satisfactory, that success rate "would foreclose RSPA from taking any further actions to require appropriate levels of safety for the transportation of hazardous materials." Moreover, the types of incidents involving fiber drums were considered to be more reflective of a packaging's performance, and the need to upgrade the packaging, than just the number of incidents.

Also beyond the direction of Section 122 of the Act is IFDI's claim that the HM-181 standards are too strict and need to be relaxed for fiber drums. Under Section 122, the benchmark for alternate standards is HM-181, not some less protective version thereof. Moreover, contentions regarding the impossibility of making fiber drums to meet the HM-181 performance standards and arguments concerning other exceptions from the HM-181 requirements were discussed in detail in the decision on FDTC's appeal from a denial of its application for an exemption.

The only additional matter raised in IFDI's comments in this proceeding relates to an approval recently issued by RSPA that permits the remarking of steel drums, as meeting the HM-181 standards without additional testing, that were certified to meet the former DOT specifications at dates up to September 30, 1994. (Packagings may not be made to the former DOT specifications after September 30, 1994. 49 CFR 171.14(b)(5)(ii).) Those former DOT specifications included a series of tests in which sample drums were required to be tested at pressures of 15 psi or more (some up to 80 psi) and

dropped from a height of at least four feet, in various orientations (e.g., diagonally on the chime and on any other part "considered weaker than the chime," 49 CFR 178.116–12(a)(1990 ed.)). Moreover, a remanufacturer who remarks a steel drum, under the authority of this approval, certifies that the drum is capable of meeting the HM– 181 performance standards.

In contrast, IFDI would continue the authority to transport liquid hazardous materials in fiber drums that cannot pass a drop test greater than two feet (or 13 inches for the standard 55-gallon drum) or a hydrostatic pressure test at 3 psi. Nothing in RSPA's approval for remarking steel drums can justify the continued use of fiber drums that do not meet either the former DOT specifications or the HM–181 performance standards.

Section 122 of the Act requires RSPA to determine whether alternate standards for fiber drums provide "an equal or greater level of safety" as the HM-181 performance standards. As already discussed, a standard that requires only a one- to two-foot drop test does not provide an equal level of safety as a standard that requires being able to withstand a drop of 2.6 feet. The separate question raised by IFDI, whether certain steel drums actually meet the former DOT specification, is beside the point and concerns enforcement of the applicable standards rather than the appropriate standard to be applied.

VI. Final Agency Action

This rulemaking proceeding is terminated, and this decision constitutes RSPA's final agency action.

Issued at Washington, DC on September 21, 1995, under authority delegated in 49 CFR Part 1.

D.K. Sharma,

Administrator.

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