

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 172 and 174

[Docket No. HM-181F; Amdt Nos. 172-137
and 174-77]

RIN 2137-AB89

Performance-Oriented Packaging
Standards; Technical Revisions; Final
RuleAGENCY: Research and Special Programs
Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects two errors and clarifies a third matter in a September 24, 1993 final rule published under Docket HM-181F [58 FR 50224], which adopted changes to the regulations based on petitions for rulemaking and RSPA's own initiative to help clarify certain aspects of a final rule issued on December 21, 1990. The intended effect of this final rule is to promote accuracy through certain technical revisions. This rule will not impose any new requirements on persons subject to the Hazardous Materials Regulations.

EFFECTIVE DATE: The effective date of this final rule is September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington, DC, 20590-0001 or Edward W. Pritchard, telephone (202) 366-0510, Office of Safety Enforcement, Federal Railroad Administration, Washington, DC, 20590-0001.

SUPPLEMENTARY INFORMATION:**Background**

The Research and Special Programs Administration (RSPA) published a final rule on December 21, 1990 (Docket HM-181; 55 FR 52402), which comprehensively revised the Hazardous Materials Regulations (HMR; 49 CFR parts 171 to 180) with respect to hazard communication, classification, and packaging requirements based on the United Nations Recommendations on the Transport of Dangerous Goods. A document responding to petitions for reconsideration and containing editorial and substantive revisions to the HM-181 final rule was published on December 20, 1991 (56 FR 66124). On October 1, 1992, under Docket HM-181 and HM-189, RSPA issued additional editorial amendments to the December 21, 1990 final rule (57 FR 45446).

A petitioner to the October 1992 final rule stated Special Provision B65 in 49 CFR 172.102 was inconsistent because the first sentence specified only a DOT 105A500W tank car, while the second sentence pertained to the remarking of a DOT 105J500W tank car to a DOT 105J300W tank car. RSPA revised this special provision in the September 24, 1993 final rule to clarify that the DOT 105A500W tank car is the only authorized tank car for hydrocyanic acid, aqueous solutions and hydrogen cyanide, anhydrous stabilized [58 FR 50235]. However, the second sentence incorrectly referenced a DOT 105J tank car. Therefore, in this final rule, RSPA is correcting the second sentence in Special Provision B65 to prescribe the remarking of a DOT 105A500W tank car to a DOT 105A300W tank car.

One rail carrier stated its belief that the regulations adopted under the December 21, 1990 final rule allowed rail cars moving under their own momentum to strike placarded flatcars, including flatcars loaded with placarded transport vehicles, freight containers, and bulk packagings. In order to clarify this matter, RSPA issued a correction in the Docket HM-181F final rule that amended the rail car handling requirements in § 174.83(b) [58 FR 50237]. RSPA explained that the change was being made so as not to allow an over-speed impact of any rail car transporting a Division 1.1 or 1.2 explosive, a Division 2.1 flammable gas (in a class DOT 113 tank car), or a Division 2.3 poisonous gas. Additionally, RSPA explained that in order to clarify these handling requirements, § 174.83(b) was being restructured to reflect the regulatory language that existed prior to December 21, 1990.

After publication of the September 24, 1993 final rule, several commenters noted that § 174.83(b) prohibited rail cars containing all Division 2.3 poisonous gases from moving under their own momentum, as opposed to only those containing Division 2.3 Hazard Zone A materials. Commenters further noted that the rule did not prohibit the movement of rail cars under their own momentum for Division 6.1 Packing Group I Hazard Zone A materials. A notice of proposed rulemaking published on July 12, 1993, under Docket HM-181F (58 FR 37612), proposed revisions to § 174.83(b) applicable to Division 2.3 Hazard Zone A and Division 6.1 Packing Group I Hazard Zone A materials; however, in the final rule, paragraph (b) was rewritten for clarity and did not reflect accurately the applicable categories.

Therefore, this final rule amends § 174.83(b) to correct these omissions.

RSPA also is amending § 174.83(b) to clarify that handling restrictions apply only to loaded rail cars transporting a Division 1.1 or 1.2 explosive, a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material. The handling restrictions will still apply to all class DOT 113 tank cars (both loaded tank cars and those containing a residue) that are used to transport a Division 2.1 material, because of the design of the inner tank supporting system (see §§ 172.203(g)(2), 179.400-13, and 179.400-26(d)).

**Summary of Regulatory Changes by
Section**

Section 172.102. Special Provision B65 is amended by changing the tank car specifications referenced in the second sentence to read "DOT 105A500W" and "DOT 105A300W", respectively.

Section 174.83. Paragraph (b) introductory text is revised to clarify handling restrictions and to prohibit rail cars transporting a Division 1.1 or 1.2 explosive, a Division 2.1 flammable gas (in a class DOT 113 tank car), a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material from moving under their own momentum, from being coupled into with more force than is necessary to complete the coupling, or from being struck by any other rail car moving under its own momentum.

Changed Legal Citations

On July 5, 1994, President Clinton signed H.R. 1758—now Public Law (Pub. L.) 103-272—"a bill to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation," including the HMTA. Public Law 103-272, 108 Stat. 745 (1994). The purpose of Public Law 103-272 was to "clean-up" related Federal transportation laws and restate them in a format and language intended to be easier to understand without changing substantive content. Consequently, Public Law 103-272 revised, enacted and codified provisions of the Federal hazardous materials transportation law, now found at 49 U.S.C. 5101-5127. At the same time, Public Law 103-272 also repealed the original statute.

The legal citations that appear in this document reflect the non-substantive changes made by Public Law 103-272.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The original regulatory evaluation has been reexamined but not modified. The changes made under this final rule provide clarification and will not result in an adverse economic impact on industry.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Section 5125(b)(1) of Title 49 U.S.C. expressly preempts State, local, and Indian tribe requirements on certain covered subjects unless they are substantively the same as the Federal requirements. Covered subjects are:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under paragraph (B) above and, therefore, preempts State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Section 5125(b)(7) of Title 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, 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. RSPA has determined that the effective date of Federal preemption for these requirements will be December 21, 1994. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule corrects two errors and clarifies an existing requirement in the Hazardous Materials Regulations concerning operational requirements for rail carriers. I certify this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. 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.

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.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The parenthetical authorities at the end of any sections in part 172 are

removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

2. In § 172.102, in paragraph (c)(3), Special Provision B65 is amended by revising the second sentence to read as follows:

§ 172.102 Special provisions

* * * * *

(c) * * *

(3) * * *

B65 * * * Each DOT 105A500W tank car must be marked as DOT 105A300W.

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PART 174—CARRIAGE BY RAIL

3. The parenthetical authorities at the end of any sections in part 174 are removed and the authority citation is revised to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

4. In § 174.83, the introductory text in paragraph (b) is revised to read as follows:

§ 174.83 Switching placarded rail cars, transport vehicles, freight containers, and bulk packagings.

* * * * *

(b) Any loaded rail car placarded for a Division 1.1 or Division 1.2 explosive, a Division 2.3 Hazard Zone A gas or a Division 6.1 PG I Hazard Zone A material, or any Class DOT-113 tank car placarded for a Division 2.1 flammable gas may not be:

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Issued in Washington, DC on September 14, 1994, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

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