

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 172 and 177**

[Docket No. HM-126F; Amdt. No. 172-126, 177-79]

RIN 2137-AB26

Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule; revisions and response to petitions for reconsideration.

SUMMARY: This rule revises a final rule published in the *Federal Register* on May 15, 1992 (57 FR 20944), which revised the Hazardous Materials Regulations to require training for hazardous materials (hazmat) employees. RSPA is delaying the compliance dates for training, primarily in response to petitions for reconsideration, and making editorial and technical corrections to the final rule.

EFFECTIVE DATE: February 22, 1993.**FOR FURTHER INFORMATION CONTACT:**

Jackie Smith, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION:**Background**

On May 15, 1992, the Research and Special Programs Administration (RSPA) published a final rule under Docket HM-126F entitled, "Training for Safe Transportation of Hazardous Materials" (57 FR 20944) to enhance the training requirements for persons involved in the transportation of hazardous materials. This action was necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate, under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), the training of all hazardous materials (hazmat) employees. Based on information provided to RSPA through its hazardous materials incident reporting system, human error is the probable cause of most transportation incidents and associated consequences involving the release of hazardous materials. Training of hazmat employees is aimed at

reducing the number and severity of hazardous materials incidents.

Subsequent to issuance of that final rule, RSPA received six petitions for reconsideration and two comments in support of petitions submitted by other parties. In this document, RSPA is revising the final rule based on the merits of these petitions. Also, RSPA is making other minor revisions to correct, clarify and simplify certain provisions of the final rule.

Petitions Granted

RSPA received petitions requesting an extension of the compliance dates. RSPA had specified an April 1, 1993 compliance date for current employees (employed on or before November 15, 1992), and a compliance date for new employees (hired after November 15, 1992) of within 90 days of employment for completion of training. Petitioners requested that the April 1, 1993 compliance date be extended to October 1, 1993, to coincide with a compliance date for new hazard communication and classification requirements implemented under Docket HM-181, "Performance-oriented Packaging Standards" (55 FR 52402, 56 FR 66124, et al.) Petitioners asserted that the April 1, 1993 compliance date would force hazmat employers to expend substantial resources training employees in both pre-HM-181 and post-HM-181 requirements. Petitioners stated that an extension of the training compliance date would allow hazmat employers to concentrate resources on educating hazmat employees on post-HM-181 requirements and relieve them of the administrative and financial burden of training employees on requirements which will soon be obsolete.

RSPA agrees with these petitions. Therefore, in this document RSPA is revising § 172.704(c)(1)(i) to require completion of training by October 1, 1993 for current employees and those hired on or before July 2, 1993 (i.e., 90 days or more prior to October 1, 1993) and is revising § 172.704(c)(1)(ii) to require completion of training within 90 days of employment for those hired after July 2, 1993. It should be noted that HMTUSA required each hazmat employee to begin training current employees within six months (i.e., by November 15, 1992) after issuance of the May 15, 1992 final rule. This revision to the final rule does not affect the HMTUSA requirement for commencement of training.

Petitions Denied

A railroad petitioned that the two-year recurrent training period be extended to a three-year cycle for

consistency with Federal Railroad Administration (FRA) requirements in 49 CFR part 240 for certification of railroad engineers. RSPA denies this petition. Certification requirements for railroad engineers under 49 CFR part 240 are distinct from hazardous materials training requirements under 49 CFR part 172 and RSPA sees no pressing need for identical training cycles. RSPA has previously considered and rejected comments regarding alternative training periods in the May 15, 1992 final rule. This petitioner did not present any new information to warrant changing the requirement.

A maritime association requested an exception from the two-year recurrent training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment (i.e., marine cargo handling and warehousing). In place of biannual training, training would be provided " * * * with such frequency necessary to provide employees with information on current regulation requirements." The petitioner stated that the definition of a "hazmat employee" remains ambiguous as to its application to longshoremen and believes that most longshoremen do not strictly fit into the definition since their employment does not "directly affect hazardous materials transportation safety." The petitioner stated that while necessary information and training should be provided to these employees, the frequency of the recurrent training requirement is considered to be excessive.

The maritime association also requested that they be allowed to maintain records of training for members of their union. The petitioner stated that labor is dispatched on a daily basis from a union hall. Individuals may work for multiple employers during the course of one week. Historically, the association stated that they have provided hazmat training to the union work force and petitions that the exact location where a hazmat employee's training record is kept should be determined by the employer.

RSPA denies this petition for the following reasons. First, a longshoreman or other employee who handles hazardous materials, regardless of frequency, affects transportation safety and is unquestionably a hazmat employee. An occasional employee who only handles hazardous materials occasionally needs recurrent training at least as often as an employee who regularly handles hazardous materials, to ensure the employee's continuing awareness of safety considerations and regulatory requirements. The information presented in the petition

does not justify an exception to the two-year recurring training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment. Second, § 172.704(d) of the final rule requires that a record certifying each hazmat employee's current training be created and retained by the hazmat employer. The location of the record of training is not specified. If agreed to by both the hazmat employer and the union, the union could maintain the required records on behalf of the hazmat employer. Under the HMR, both could be held responsible for recordkeeping requirements. According, RSPA believes that no change to the requirement is necessary.

One petitioner asked RSPA to delay, until the first round of recurrent training is completed, the testing and certification of current hazmat employees who have already been trained. The petitioner stated that testing undertaken merely to meet the testing requirements would not be as effective as an integrated program; and that such a delay would allow employers to consider the most effective means of testing currently trained employees based on their job function and the type of training necessary.

The purpose of testing and certification is to ascertain whether the employee has familiarity with the general provisions of the Hazardous Materials Regulations (HMR), is able to recognize and identify hazardous materials, has knowledge of specific requirements of the HMR applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures. By delaying the completion date for training current hazmat employees until October 1, 1993, RSPA is providing sufficient time for hazmat employers to train, test, and develop the recordkeeping documentation. Therefore, the petition is denied.

Except as adopted herein, all petitions for reconsideration received by RSPA regarding issues addressed by the final rule published on May 15, 1992, are denied. Any subsequent submission regarding issues relating to this rulemaking should be filed as a petition for rulemaking in conformance with 49 CFR 106.31.

Section-by-Section Review

Part 172; Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Section 172.704. Paragraph (a)(1) is revised to correct punctuation. Paragraph (a)(2)(i) is amended to clarify that training is required for hazmat employees who perform functions subject to conditions specified by exemptions issued under the HMR. Paragraph (a)(2)(ii) is revised to clarify the acceptability of function-specific training under the ICAO Technical Instructions and the IMDG Code, to the extent that compliance with these regulations is authorized under the HMR (see §§ 171.11 and 171.12), as an alternative to function-specific training under corresponding provisions of the HMR.

As discussed above, the dates in paragraph (c)(1)(i) are revised to require completion of training by October 1, 1993, for hazmat employees employed on or before July 2, 1993. Also, the date in paragraph (c)(1)(ii) is revised to require training within 90 days of employment for employees employed after July 2, 1993.

Part 177—Carriage by Public Highway

Section 177.816. Editorial changes are made including deletion of carrier requirements that are not directly related to safety in a functional sense. In the final rule issued on May 15, 1992, RSPA inadvertently required that training in the Motor Carrier Safety Regulations, as required in paragraph (a), meet the frequency and recordkeeping requirements in § 172.704. Accordingly, paragraph (c) is revised and a new paragraph (d) is added to clarify that the frequency and recordkeeping requirements in § 172.704 apply only to the specialized requirements for cargo tanks and portable tanks in paragraph (b).

Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures.

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be non-significant because it clarifies and corrects provisions of the final rule and provides limited relief to the regulated industry. The regulatory evaluation for the final rule was

reexamined, but was not modified because the changes made under this rule will result in a minimal economic benefit for the regulated industry.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612. This final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Under section 106(b)(7) of the HMTA, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

List of Subjects

49 CFR Part 172

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

49 CFR Part 177

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

In consideration of the foregoing, 49 CFR parts 172 and 177 are amended 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 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

2. In § 172.704, paragraphs (a)(1), (a)(2), (c)(1)(i) and (c)(1)(ii) are revised to read as follows:

§ 172.704 Training requirements.

(a) Hazmat employee training shall include the following:

(1) *General awareness/familiarization training.* Each hazmat employee shall be provided general awareness/familiarization training designed to

provide familiarity with the requirements of this subchapter, and to enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of this subchapter.

(2) *Function-specific training.* (i) Each hazmat employee shall be provided function-specific training concerning requirements of this subchapter, or exemptions issued under subchapter B of this chapter, which are specifically applicable to the functions the employee performs.

(ii) As an alternative to function-specific training on the requirements of this subchapter, training relating to the requirements of the ICAO Technical Instructions and the IMDG Code may be provided to the extent such training addresses functions authorized by §§ 171.11 and 171.12 of this subchapter.

* * * * *

(c) * * *

(1) * * *

(i) Training for a hazmat employee employed on or before July 2, 1993,

shall be completed prior to October 1, 1993.

(ii) Training for a hazmat employee employed after July 2, 1993, shall be complete within 90 days after employment.

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PART 177—CARRIAGE BY PUBLIC HIGHWAY

4. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.816 [Amended]

5. In § 177.816, the following changes are made:

(a) In paragraph (a), the words "383, 387," are removed.

(b) In paragraph (a), the word "399" is removed and replaced with word "397".

(c) In paragraph (a)(4), the word "navigating" is removed and replaced with the word "maneuvering".

6. In § 177.816, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 177.816 Driver training.

* * * * *

(c) The training required by paragraphs (a) and (b) of this section may be satisfied by compliance with the current requirements for a Commercial Driver's License (CDL) with a tank vehicle or hazardous materials endorsement.

(d) Training required by paragraph (b) of this section must conform to the requirements of § 172.704 of this subchapter with respect to frequency and recordkeeping.

Issued in Washington, DC, on January 15, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Programs Administration.

[FR Doc. 93-1515 Filed 1-21-93; 8:45 am]

BILLING CODE 4910-80-M