

Commission representative, a source of energy sufficient to simultaneously energize the VHF transmitter at its required antenna power, and VHF receiver. Under this load condition the potential of the source of energy at the power input terminals of the VHF radiotelephone installation shall not deviate from its rated potential by more than 10 percent on vessels completed on or after March 1, 1957, nor by more than 15 percent on vessels completed before that date.

(b) When the source of energy for the VHF radiotelephone installation consists of or includes batteries, they shall be installed in the upper part of the ship, secured against shifting with motion of the vessel, capable of operating the installation for 6 hours, and accessible with not less than 10 inches head room.

(c) Means shall be provided for adequately charging any rechargeable batteries used in the vessel's VHF radiotelephone installation. There shall be provided a device which, during charging of the batteries, will give a continuous indication of the charging current.

(d) The VHF radiotelephone installation may be connected to the reserve source of energy of a compulsorily fitted radiotelephone or radiotelegraph installation pursuant to Subparts R and S of this part, respectively.

23. Section 83.856 is added to read as follows:

§ 83.856 VHF radiotelephone antenna system.

An antenna shall be provided for radiotelephone installations, in accordance with the applicable requirements of § 83.107, which is as nondirectional and as efficient as is practicable for the reception of radio ground waves. The construction and installation of this antenna shall be such as to insure, insofar as is practicable, proper operation in time of an emergency.

24. Section 83.857 is added to read as follows:

§ 83.857 Controls and indicators required for the VHF radiotelephone installations.

The control and indicators used on equipment forming part of the VHF radiotelephone installation shall comply with the following standards:

(a) Controls should be of such size as to permit normal adjustment to be easily performed. The function and the setting of the controls should be clearly indicated.

(b) Controls should be illuminated as necessary, so as to enable satisfactory operation of the equipment.

(c) Means should be provided to reduce to extinction any light output from the equipment which is capable of interfering with safety of navigation.

(d) An on/off switch should be provided for the entire installation with a visual indication that the installation is switched on.

(e) The equipment should indicate the channel number, as given in the Radio Regulations, to which it is tuned. It should allow the determination of the channel number under all conditions of external lighting. Where practicable Channel 16 should be distinctively marked.

(f) The receiver should be provided with a manual volume control by which the audio output may be varied.

(g) A squelch control should be provided on the exterior of the equipment.

(h) If the external controls are assembled on a separate control unit and more than one such control unit is provided, the one on the bridge should have priority over the others. When there is more than one control unit, indication should be given to the other(s) that the equipment is in operation.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration; Materials Transportation Bureau

49 CFR Parts 171 and 172

[Docket Nos. HM-126A, 145A, and 171; Amdt. Nos. 171-153, 172-58]

Identification Numbers, Hazardous Wastes

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation (DOT).

ACTION: Notice of public hearing and request for comments.

SUMMARY: On June 30, 1980, Notice was published in the Federal Register (45 FR 43761) announcing postponement of voluntary compliance with new regulations pertaining to the display of identification numbers on placards and use of the Optional Hazardous Materials Table (§ 172.102). The Notice also announced a public hearing scheduled for July 31, 1980, and the closing date of August 12, 1980, for receipt of written comments.

Due to an administrative error, the MTB failed to include in the Notice three additional petitions that it believes should be given full review with public participation. The petitions address the display of identification numbers and the note to § 171.3(c) concerning the transportation of hazardous wastes.

DATES: A public hearing will be held on July 31, 1980, beginning at 9:00 a.m.

Written comments must be received on or before August 12, 1980.

ADDRESSES: The public hearing will be held in Room 7A of the Federal Aviation Administration building (FOB 10A) located at 800 Independence Avenue, S.W., Washington, D.C.

Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that the docket number be identified and that five copies be submitted. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th Street, S.W., Washington, D.C. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. Telephone (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: L. Metcalfe (202-426-0656), Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. Office hours are 8:00 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On May 22, 1980, final regulations were published in the Federal Register (45 FR 34560) under Dockets HM-118, 126A, 126B, 145A, 145B, 159, and 171. Of the eight petitions for reconsideration received, MTB believes that five petitions raise matters of major significance warranting further public participation before any action is taken concerning their disposition. Petitions were received from the Association of American Railroads (AAR) and the Southern Railway System and were quoted (all or in part) in the Notice appearing in the Federal Register on June 30, 1980 (45 FR 43761).

National Tank Truck Carriers, Inc., (NTTC) filed two petitions for reconsideration and the American Trucking Associations, Inc., (ATA) filed one petition addressing two issues.

Concerning the Hazardous Waste regulations adopted under Docket HM-145A, the NTTC stated, in part, the following:

Briefly stated, NTTC holds that the "Note" following subparagraph (3) of Paragraph (c) within Section 171.3 is (within the context of the Administrator's regulatory jurisdiction) more restrictive than any comparable

element contained in the proposed docket (Federal Register, Vol. 43, No. 102—Thursday, May 25, 1978).

Thus, we can only conclude that the "Note" violates the Department's own rules of procedure.

As we read 171.3 (c) in the final rule, NTTC must compare it to 171.3 (e) of the proposal, in terms of the concept of preemption. In the proposed rule, the Administrator (at 171.3 (e) (3)) would have allowed some variance from shipping paper format only to a state or locality which was "part of an authorized state hazardous waste management program under 42 U.S.C. 6926".

In the instant notice, however, the "Note" (at 171.3 (c) (3)) is simply an open-ended provision which would allow any state to vary from inferred uniformity of format or contents of shipping papers. In fact, the "Note" is an open invitation to states to write their own shipping paper requirements.

Procedurally, NTTC holds that since the Department's jurisdiction over interstate and intrastate carriers of hazardous wastes is virtually absolute; while its jurisdiction in other transportation matters over states and political subdivisions is most limited—any liberalization of the latter becomes more restrictive to the former.

Since the Department's current regulations require carriers to comply with all (non-preempted) state laws, ordinances, etc. "carte blanche" authority to the states to impose their own shipping paper requirements can only be a greater regulatory burden on carriers—a burden not contemplated in the proposal.

In addition to the legalities of the question, however, is the simple issue of needed uniformity throughout the regulatory system. In the most recent past, the Administrator has demonstrated increased awareness of the sensitivity to uniformity. We urge that this philosophy be continued and that the "Note" be stricken.

On the same topic, ATA stated the following:

The purpose of Section 171.3(c) is to assure that state and local government requirements relative to the "Packaging, marking, labeling, and placarding" of hazardous wastes as well as the form and content of shipping documents and discharge reports arising in the movement of such materials are neither inconsistent with the federal standards or are applied differently from or in addition to the federal standards. We agree with this rule.

The Note immediately succeeding this section, however, exempts from the operation of Section 171.3(c):

"* * * any requirements of a state relative to additional information that must be provided by a generator to the operator of a designated facility at or prior to the time of delivery of, or with the shipment of, a hazardous waste to that facility."

We remind MTB that Section 171.3(b) imposes upon carriers engaged in the transportation of hazardous wastes the burden of assuring that the shipping manifest is prepared in accordance with Section 172.205. This latter section, in turn, mandates preparation of the shipping manifest in accordance with the EPA's requirements, 40 C.F.R. 262.

Both MTB and EPA have each considered the transportation of hazardous waste and have ruled upon the requirements which must be met in the transportation of these materials. The rules which these two federal agencies have promulgated are designed to insure the safe and controlled transportation of hazardous wastes and to do so in a way which permits motor carriers to operate uniformly regardless of the origin, intermediate, or destination points of the transportation.

The requirements adopted by MTB and EPA appear to be sufficient, while imposing the least burden upon the motor carrier industry. This could not be said if the exclusory language of the Note is allowed to become effective. It would provide each state with carte blanche to impose whatever additional requirements they chose without giving rise to any meaningful and additional safety benefit, as it is already presumed that the federal requirements assure the greatest level of safety governing the transportation of hazardous wastes. If, in fact, this is not the case, the federal requirements should be amended, but no additional state requirement, which would be at best surplusage, has yet been proven necessary. At the same time, additional, but nonetheless, state requirements will do much to result in confusion of and needless burdens upon, the motor carrier industry. Further, if a state would require of a generator additional information to the operator of a designated facility which would be unrelated to the safe transportation of the waste materials, the motor carrier should not be made to serve as a courier for the generator or state, unless the state requirement places no additional burden of handling or processing or other duties or liabilities upon the motor carrier.

The operational-confusion and problems which could be brought about by differing federal and state requirements, or the application thereof, will greatly reduce the effectiveness of the hazardous waste manifest system. If, for example, a carrier is transporting waste through more than one state the additional state requirements would result in confusion and an undue burden on the carrier and the driver and adversely affect their ability to comply with the variety of requirements.

Uniform national regulations are essential to an expedient and safe transportation of hazardous waste from generator to the designated facility.

Accordingly, ATA urges MTB to reconsider its adoption of the Note immediately following paragraph 171.3(c), and that it strike the Note from the final rules adopted in Docket No. HM-145-A.

Concerning the display of identification numbers, the NTTC stated the following:

Specifically, NTTC urges reconsideration of the panel/placarding regulations found at 49 CFR 172.328, 172.332 and 172.336.

With the introduction of the United Nations Hazard Information Number, as specified in 172.332, an alternative HI number display was created at 172.334. The choice was: 1) use of existing diamond-shaped placards and the orange HI number panel (of specified

dimension); or, 2) use of diamond-shaped placards with the HI number on the placard and no use of the panel.

NTTC believes that it is in the best interests of carriers and shippers for DOT to mandate exclusive use of the "number on placard" described at 172.334 and eliminate the separate number panel from the regulations.

Scrapping the HI panel would save thousands of dollars in panel holders, panels and installation costs. While NTTC does not have exact figures, our estimates indicate that 50,000-60,000 cargo tanks will be affected, of which 10,000 have multiple compartments. Therefore, assuming a breakdown of 50,000 single compartment trailers and 10,000 three compartment trailers we estimate that a total of 80,000 compartments will have to be fitted with a minimum of three panel holders. Since panel holders cost approximately \$5.00 each, we are looking at a cost parameter in the range of \$1,200,000.00.

When one adds in the labor costs for installation, estimated at \$7.00 per holder, we conclude that the total materials and labor costs to the tank truck industry will be \$2,880,000.00.

These estimates are based on the statistics found on page 160 of the COMMERCIAL CAR JOURNAL Fleet Survey Issue, June 1979 balanced against the number of flammable liquid trailers built since 1965 published by the Bureau of Census, U.S. Department of Commerce and released in 1979.

Another significant cost would accrue to the shipping community. Under 172.332 (as written), shippers are required to provide both HI panels and placards or numbered placards. The costs for one panel is about \$0.10 and three panels are required for each bulk shipment. The cost savings (if the HI panel were eliminated) would be approximately \$15,000,000.00 per year (assuming 50,000,000 bulk shipments, per year, in for-hire, private and interstate transportation).

We stress that these are minimum costs because (absent a change in these rules) cargo tanks would need a HI panel holder, a diamond-shaped placard holder, and, in many instances diamond-shaped flip signs. The unnecessary costs for carriers to provide for (and, for shippers to have in inventory) three different placard warning systems, are most significant.

Of course, these costs would be passed on to consumers in the retail prices because of the higher transportation costs involved.

In addition to cost savings, safety and the HI numbers' effectiveness will be improved. The correct number and correct hazard class placard will be in place because they are on one placard. Firemen and other emergency personnel will not be faced with a situation where mismatched HI panels and placards indicate Acetone as "1090" and as an "Oxidizer" (by shipper or carrier error).

The confusion and time delay could cause unnecessary injuries, fatalities and property damage. Additionally, the credibility and reliability of the system will come into question when such situations inevitability occur.

The use of placards with HI numbers will meet the needs of emergency response

personnel, reduce the potential for error and reduce costs to consumers.

The HI number panel, as proposed, is, at best, redundant; and, at worst, regulatory overkill. Therefore, NTTC prays that DOT will eliminate sections 172.328, 172.332 and those portions for 172.336 pertaining to HI Number Panels from the regulations (and references thereto).

Timing, of course, is critical. If this action is taken quickly, before shippers and carriers begin investing in the equipment and materials required for compliance, savings will be maximized.

The ATA added the following comment concerning the display of identification numbers to its petition pertaining to hazardous wastes:

On another matter, ATA has studied the position that the National Tank Truck Conference (NTTC) has taken in its June 20, 1980 letter to MTB regarding the use of the orange hazard identification panels (copy attached). ATA would like to go on record in support of the NTTC position relative to bulk shipment of hazardous materials. We believe, therefore, that DOT should act favorably towards the NTTC position.

Since the NTTC and ATA petitions, in addition to those of the AAR and the Southern Railway System, address matters of major interest and concern to many shippers, carriers, and emergency response entities, the MTB believes these petitions should be given full review with public participation prior to taking final action. Therefore, MTB has included them within the scope of the public hearing announced earlier and solicits written views and comments on the petitions as they relate to the regulations published on May 22, 1980.

(49 U.S.C 1803, 1804, 1808; 49 CFR 1.53, Appendix A to Part I)

Issued in Washington, D.C. on July 1, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

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Materials Transportation Bureau

49 CFR Parts 172, 173, 178

[Docket No. HM-139C; Amdt. Nos. 172-59, 173-139, 178-61]

Conversion of Individual Exemptions to Regulations of General Applicability

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on the data and analyses supplied in selected exemption applications or from existing

exemptions. The need for this action has been created by the public demand to make available new packaging and shipping alternatives that have proven themselves safe under the Department's exemptions program. The intended effect of these amendments is to provide wider access to the benefits of transportation innovations recognized and shown to be effective and safe.

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: John C. Allen, Office of Hazardous Materials Regulations, 400 7th Street, S.W., Washington, D.C. 20590 (202-472-2726).

SUPPLEMENTARY INFORMATION: On March 24, 1980 the Bureau published Notice No. 80-5 (45 FR 18994) under Docket HM-139C which proposed to amend the Hazardous Materials Regulations by incorporating the provisions of certain DOT exemptions and applications for exemptions into the general regulations. The public comment period ended on April 23, 1980. All comments received on Docket HM-139C have been reviewed. With one important exception relating to analytical standards, all commenters were favorable to the proposals.

MTB proposed to add § 173.4 to the regulations which would have had the effect of substantially deregulating minute quantities of hazardous materials when shipped as an "analytical standard." This proposal was based on three DOT exemptions (7755, 7921, 8116) which authorized a variety of different packaging techniques for small quantities of specified hazardous materials. An attempt was made to create a standardized package which could be referenced in § 173.4 that would adequately accommodate various methods of shipping these very small quantity analytical standards. Based on the comments received on this proposal, the Bureau was not successful in this attempt. Commenters' recommendations included changing the outer packaging requirement; deleting the requirement for neutralizing material for corrosive liquids; authorizing a greater quantity of material per package; and deregulating minute quantities of hazardous materials other than those used for analytical standards. One commenter strongly suggested that the proposal be tightened substantially to limit the types of hazardous materials that would qualify for the exception, especially for shipment by air. Although MTB does not believe these problems are insurmountable, it is believed that enough disagreement and confusion exist that the entire issue of providing a general exception for analytical

standards should be addressed separately. Consequently, the proposed amendment to add § 173.4 to the Hazardous Materials Regulations is being withdrawn from this docket and will be considered for a future rulemaking after further study.

All other proposals contained in Notice 80-5 are being adopted by these amendments. Three minor changes should be noted, however. First, the notice proposed to consolidate § 173.119 (m)(13) and (m)(15) into one paragraph to be designated (m)(13). This necessitates an amendment to paragraph (m)(14) by deleting the reference to the DOT 105A tank car since this tank car will be authorized under the provisions of the new paragraph (m)(13). Also, the reference to (Note 1) in existing § 173.119(m)(15) is deleted as no longer applicable.

The second minor change involves the amendment to the table which authorizes certain types of steels to be used in constructing the DOT 3AA and 3AAX cylinders in § 178.37-5. Part of the proposed amendment to this table was to eliminate the unused steel designations NE-8630, 9115, 9125, 9115X, and 9125X. One commenter requested that the NE-8630, 9115 and 9125 steels not be deleted since the company was considering a new cylinder design involving these steels. Consequently, only the 9115X and 9125X steel designations are being deleted.

The last change from the notice involves a relocation of a proposed amendment to § 173.114a. The proposal involves the allowance of the use of a single Blasting Agent placard in cases where both an Oxidizer placard and Blasting Agent placard would be required. Notice 80-5 proposed to include this authorization by adding a new paragraph (j)(1) to § 173.114a. Since this involves a placarding requirement, a more appropriate location would be in § 172.504 *General Placarding Requirements*. Consequently, this amendment has been effected by adding a new footnote Note 10 to Table 2 in § 172.504.

In consideration of the foregoing, 49 CFR Parts 172, 173 and 178 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

§ 172.101 [Amended]

1. In § 172.101 the *Hazardous Materials Table* is amended by revising the entries on Consumer Commodity; Sodium potassium alloy (liquid); and Tear gas device, to read as follows:

BILLING CODE 4910-60-M