



## DEPARTMENT OF TRANSPORTATION

MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

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### Title 49—Transportation

#### CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-103/112; Amdt. No. 172-39]

#### PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

##### Extension of Placarding Compliance Date

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Final rule.

**SUMMARY:** Under this rule, rectangular hazardous materials warning placards (and equivalent markings) formerly required to be displayed on highway vehicles carrying hazardous materials may be used in place of the square-on-point placards which have superseded them. The rule will be effective from January 1, 1978 through June 30, 1978 only, and is intended to give additional time for compliance with recent changes in placarding requirements. This action is based upon considerations raised in petitions and in the course of a hearing that was held on July 21, 1977.

**EFFECTIVE DATE:** This amendment is effective on January 1, 1978.

##### FOR FURTHER INFORMATION CONTACT:

Mr. Donnell W. Morrison, Chief, Vehicle Requirements Branch, Bureau of Motor Carrier Safety, Federal Highway Administration, Washington, D.C. 20590, 202-426-1700.

##### SUPPLEMENTARY INFORMATION:

On July 21, 1977, the Materials Transportation Bureau (MTB) conducted a hearing to receive public comment on the merits of the American Trucking Associations, Incorporated's (ATA) and the National Oil Jobbers Council's (NOJC) petitions to delay mandatory placarding for those vehicles equipped with permanent placarding systems. Written comments were also solicited in the June 6, 1977 notice which announced the July 21 hearing (42 FR 28951). Both oral and written comments were considered in the drafting of this amendment.

The NOJC's petition requested that the effective date of the new placarding requirements be delayed until September 1, 1978, for vehicles currently in use. Since this amendment effectively delays mandatory use of the new placards until July 1, 1978, most of the relief sought in the NOJC petition in effect has been granted for reasons stated elsewhere in this document. However, the MTB believes the NOJC has not justified its petition.

NOJC contends its membership has expended over 9 million dollars in bringing its vehicles into compliance with the new flammable and combustible liquids definition which became effective January 1, 1975, under Docket No. HM-102. They contend an additional outlay

of 6 million dollars is now required for removal of old rectangular placards, painting vehicles, and applying new square-on-point placards. The 9 million dollars spent to comply with HM-102 has already been incurred, and since there is no requirement that a rectangular placard communicating the proper hazard be removed, costs for removing old placards and repainting of vehicles is not necessary to achieve compliance with the new placarding requirements. Based on the foregoing, the NOJC's petition to delay the mandatory placarding effective date until September 1, 1978, for vehicles currently in use, is hereby denied.

The ATA petitioned for a " \* \* \* grandfather provision which would allow motor carriers presently using permanent type rectangular placarding systems to continue using such systems for the useful life of either the permanent placard itself or the vehicle upon which the set is attached, whichever period is shorter." The ATA also petitioned for a delay of the mandatory effective date for the square-on-point placards for certain vehicles until January 1, 1978, which was granted by an amendment to this docket published on June 6, 1977 (42 FR 28888). Since similar relief until July 1, 1978 is provided by this amendment, those aspects of the ATA's petition need not be discussed further.

The ATA contends that failure to grant a grandfather provision will require carriers " \* \* \* to collectively absorb millions of dollars in undue costs \* \* \*". Those costs are enumerated by the ATA as including the value of existing permanent placarding sets, cost of new placard sets, labor for removal of existing placarding, labor to apply new placards, and "down time," during which a vehicle is not in use to generate revenue. As stated earlier, monies spent on existing placard sets is an expense already incurred and existing placard sets need not be removed provided conflicting hazards are not displayed. Concurrently, the alleged "down time" would be reduced if these functions need not be performed in conjunction with application of new placard sets.

The ATA contends a precedent for grandfathering safety devices was established within the Department by the Federal Highway Administration's Bureau of Motor Carrier Safety when a replacement program for new warning devices for stopped vehicles allowed continued use of earlier type warning devices until the vehicle or device was replaced. The MTB acknowledges the Department's prior use of grandfather provisions, but does not agree that a parallel situation exists. Emergency warning devices are not used as often as are placards, and more important, they are not a device or means to communicate information to emergency response personnel information that such personnel need to guide them in responding to emergency situations. The use of two different types of warning devices for stopped vehicles would not create the confusion in relaying information as

would the use of two different hazardous materials communications systems. As evidence to this fact, the MTB has received indications that several of the States that have adopted the Federal placarding requirements, or have similar placarding requirements, are experiencing problems in achieving compliance now because of the present mixing of rectangular and square-on-point placarding systems.

Several commenters at the public hearing in opposition to the ATA's petition pointed out that permanent placarding devices are not required and that nonpermanent placards could be used, although some comments questioned whether an adequate supply of nonpermanent placards is available. The MTB agrees with the ATA's contention that permanent type placarding may result in a higher degree of compliance. The relief granted by this amendment will provide more time for the distribution and installation of permanent placarding sets, and for the adjustment of State regulations where needed.

In previous amendments and notices to this docket, the MTB stated its rationale for revising the shipping paper, labeling, marking, and placarding requirements. While the desire to have a unified placarding system among the modes was a major factor in that project, it was only part of the overall aim to establish a communications system to convey to persons handling hazardous materials, including emergency response personnel, the hazards associated with the materials. All segments of that planned systematic approach to hazard communication are now in effect except for placarding. A further extensive delay in full implementation of the new placarding requirements would continue some of the uncertainties that have hampered the ability of carriers to comply with the regulations because of their interrelationship with shippers as established by § 172.506. An extended delay also would increase the potential for confusion on the part of State and local enforcement personnel that may impede commerce. In light of these factors, as well as our review of the economic arguments offered by ATA, the petition of ATA to grandfather existing permanent placarding systems is hereby denied.

The amendment provided herein is intended to give persons subject to highway placarding requirements more time to conform to the recent changes and to insure adequate availability and distribution of the necessary placards. The amendment is also intended to allow during the first six months of 1978 the use of mixed placarding in a manner that is more easily enforceable than has been the case to date. In view of this, the MTB believes that the interests of States and localities are adequately served by the rule published herein and advises that State or local requirements inconsistent with the rule may detract from the Department's compliance and

enforcement efforts. The MTB urges State and local agencies concerned with highway placarding to examine their placarding requirements critically to ascertain the impact of those requirements on persons subject to the Department's Hazardous Materials Regulations.

This amendment adds a new paragraph to § 172.506 to allow some of the rectangular placards specified for use before June 30, 1976, to be used on motor vehicles transporting hazardous materials by highway only, in substitution for the square-on-point placards specified by the new placarding regulations issued under Docket HM-112. Between January 1, 1978 and July 1, 1978, the new placarding regulations must be followed, but where those regulations specify use of a square-on-point placard which is identified in the table added by this amendment to § 172.506(c), the comparable rectangular placard identified in that table may be used in place of the square-on-point placard. This amendment does not authorize continued reliance on the old placarding regulations, but merely allows the old format rectangular placards to be used as specified in place of the new square-on-point placards. Thus, shippers and carriers are bound, after January 1, 1978, by the placarding regulation issued under Docket HM-112, including those rules that specify when and what kind of placard may be required for a particular transport vehicle, but at their option during the first six months of 1978, they may substitute comparable rectangular placards for square-on-point placards.

This amendment applies to all placards identified in the table, regardless of whether the placard in question is of permanent or nonpermanent construction, and regardless of whether the placard is presently mounted on a transport vehicle.

For example, if under Subpart F a square-on-point NONFLAMMABLE GAS placard is required, a rectangular COMPRESSED GAS placard or marking prescribed by § 172.823 in effect on June 30, 1976 may be used until July 1, 1978.

After July 1, 1978, only the square-on-point placards may be used to comply with the requirements of Subpart F. Placards already mounted on transport vehicles need not be removed if they do not convey hazard information that conflicts with information on the new placards. The table provided in this amendment may be used to make that determination. Except for the fact that many old rectangular placards need not be removed, carriers and shippers should conduct their operations recognizing that as of July 1, 1978 rectangular placards will not be authorized for any purpose.

This document is a relaxation of existing requirements and does not impose new requirements. For this reason, and because of the public hearing held on July 21, 1977, at which the petitions of the ATA and the NOJC were discussed, further public notice is dispensed with. This action is not expected to increase costs to Federal, State, or local governments, to consumers, or to impose undue costs on the businesses affected, and should not have any significant environmental or inflationary impact. Primary drafters of this document are David B. Goodman, Bureau of Motor Carrier Safety, Federal Highway Administration, and Gerald M. Tierney, Motor Carrier and Highway Safety Law Division, Office of Chief Counsel, Federal Highway Administration.

In consideration of the foregoing, § 172.506 of Title 49 CFR is amended as follows:

In § 172.506 paragraph (a)(1) is redesignated paragraph (b) and a new paragraph (c) is added. As revised, § 172.506 reads as follows:

**§ 172.506 Providing and affixing placards: Highway.**

(a) Each person offering a motor carrier a hazardous material for transportation by highway shall provide to the motor carrier the required placards for the material being offered prior to or at the same time the material is offered for transportation, unless the carrier's motor

vehicle is already placarded for the material as required by this subpart.

(b) No motor carrier may transport a hazardous material in a motor vehicle unless the placards required for the hazardous material are affixed thereto as required by this subpart.

(c) Until July 1, 1978, a placard or marking meeting the requirements of § 177.823 of this subchapter in effect on June 30, 1976, may be substituted in accordance with the following table for a placard required by this subpart to be affixed to a motor vehicle transporting a hazardous material by highway:

*The motor vehicle may be marked or placarded in the format, letter size and color prescribed in 49 CFR 177.823 in effect on June 30, 1976:*

*If this subpart requires the motor vehicle to be placarded:*

EXPLOSIVES A.....	EXPLOSIVES A.
EXPLOSIVES B.....	EXPLOSIVES B.
NONFLAMMABLE GAS.....	COMPRESSED GAS.
FLAMMABLE GAS.....	FLAMMABLE GAS.
COMBUSTIBLE.....	COMBUSTIBLE OR FLAMMABLE.
FLAMMABLE.....	FLAMMABLE.
FLAMMABLE SOLID.....	FLAMMABLE.
CORROSIVE.....	CORROSIVES.
POISON.....	POISON.
OXIDIZER.....	OXIDIZERS.
RADIOACTIVE.....	RADIOACTIVE.
DANGEROUS.....	DANGEROUS.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.1)

NOTE.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on November 3, 1977.

JOHN J. FEARNSIDES,  
Acting Director,

Materials Transportation Bureau.

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