

into a vehicle, or the temporary parking in a carrier's terminal area of a fully or partially loaded tank truck prior to its outbound movement should be defined as "transportation." As such, both the activity and the location where they occur should be subject to the Department of Transportation's jurisdiction. These types of temporary cessations in the transportation movement should not be classified as "storage."¹

We want to emphasize that, in petitioning for this rule, the motor carrier industry's intent is not to avoid its responsibility to provide pertinent safety information concerning hazardous materials to its workers. We believe, however, that such information, covering the host of DOT-regulated hazardous materials, is already available through the Guidebook, where it is provided in a format which is provably more effective and efficient than that of material safety data sheets.

* * * * *

By letter dated December 29, 1983, WTA stated the following:

* * * * *

The Wyoming Trucking Association, Inc. endorses the petition filed with your Department by the American Trucking Association, Inc., to require motor carriers involved in the transportation of hazardous materials to maintain a copy of the emergency response guidebook at each facility where hazardous materials are loaded or unloaded from vehicles.

The ATA petition requests that the DOT pre-empt state and local requirements for material data sheets.

Wyoming has many points where hazardous materials are loaded and unloaded, but as a bridge state many more loads cross with closed doors.

* * * * *

By letter dated January 27, 1984, the acting Chief Counsel, Research and Special Programs Administration (RSPA) stated the following in response to the WTA letter:

* * * * *

As the ATA notes in its petition, and as you reiterate in your letter, one purpose of such a requirement is to overcome or forestall the imposition by state or local governments of requirements that motor carriers maintain material safety data sheets for each hazardous material received or shipped at each terminal.

In accepting your letter, and docketing it as a comment on the ATA petition, I wish to point out that the acceptance of the ATA petition, or any subsequent rulemaking arising out of it, would not in and of itself represent the preemption of any current or future state or local requirement. Under provision of the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1812) and the Regulations of the MTB (49 CFR

107.201-107.225), the preemption of a state or local requirement occurs upon a finding that the requirement is inconsistent with the HMTA or a regulation issued thereunder. The administrative process (or, if a party challenging the state or local requirement elects, the judicial process) is separate and distinct from the rulemaking process invoked by the ATA petition. Consequently, the question of the preemption of state and local requirements mandating the use of safety data sheets, would not be relevant to any rulemaking action that might arise from the ATA petition.

* * * * *

By letter dated January 13, 1984, the IBI stated the following:

* * * * *

It has come to our attention that the American Trucking Association (ATA) petitioned the Materials Transportation Bureau (MTB) on October 26, 1983, to require motor carriers involved in the transportation of hazardous materials to maintain a copy of the DOT Emergency Response Guidebook at each facility where hazardous shipments are loaded and unloaded. In its petition (P-922), ATA requested that the DOT requirement preempt state and local requirements for Material Safety Data Sheets (MSDS).

While we support the effort to require motor carriers to maintain copies of the Emergency Response Guidebook, we are concerned about DOT preemption of state and local laws requiring the maintenance of MSDS at transportation facilities. We believe that a DOT regulation requiring the use of the guidebook cannot preempt a state or local law requiring a MSDS because each document provides significantly different information, and therefore a different benefit, to employees involved in the transportation of hazardous materials.

The DOT Emergency Response Guidebook was developed in 1980 for use during the initial stages of a transportation emergency. The guidebook classifies hazardous materials by shipping name and provides acute health hazard information. While MSDS do offer information on acute health hazards and emergency action, unlike the DOT guidebook, however, MSDS provide information on chronic and long latency health effects from exposure to a hazardous material. The differences between the Guidebook and the MSDS can best be illustrated by examining the treatment of a particular hazardous material, benzene.

Benzene solvent is produced in billion gallon quantities per year. Scientific data strongly suggest that benzene is a human carcinogen. The DOT guidebook lists the health effects of benzene in terms of acute health effects. The guidebook states that benzene: "Vapors may cause dizziness and suffocation. Contact may irritate or burn skin and eyes. Fire may produce irritating or poisonous gases. Runoff from fire control or dilution may cause pollution".

The chronic or long latency health effects associated with benzene exposure are not mentioned in the DOT handbook.

Similar to the guidebook, an MSDS for benzene would note the acute effects linked to benzene exposure. In contrast, however,

an MSDS would describe chronic and long latency effects of benzene exposure in terms of leukemia, lymphatic and hematopoietic cancer. We believe that workers transporting hazardous materials have a right to be informed of the chronic health effects associated with exposure to shipped materials as well as the acute health effects. The DOT guidebook alone does not offer complete health hazard information.

In addition to the discrepancy between the guidebook and the MSDS in terms of the completeness of chronic and long latency health effects information, the documents differ in their treatment of chemical mixtures. MSDS generally include health hazard information on all chemicals present in concentrations greater than 1% in a hazardous chemical mixture. In contrast, the guidebook provides health effects information for the major constituent of a chemical mixture, leaving the other minor constituents unnamed and unaddressed. We believe that the health effects associated with exposure to *all* constituents of a chemical mixture should be made known to employees transporting hazardous materials. This can only be accomplished through the use of an MSDS.

In summary, MSDS generally provide more thorough health hazard information in terms of chronic health effects and chemical mixture information than the DOT guidebook. On balance, the DOT guidebook is particularly useful in emergency incidents. Since the documents are useful for different purposes, we feel it is inappropriate to *substitute* the guidebook for an MSDS. Instead, we recommend that the shipper be required to maintain *both* the guidebook and MSDS at all facilities involved in the transportation of hazardous materials. Clearly, the benefits of employee access to *complete* health hazard information on hazardous materials in transportation outweigh any burden placed on the carrier to obtain and maintain the guidebook and MSDS documents, documents readily available from DOT and chemical manufacturers/shippers, respectively.

* * * * *

In its comments on proposals made under Docket HM-126A (44 FR 32972; June 7, 1979), the IBT stated the following:

* * * * *

More than any other group, Teamster members bear the brunt of the inherent dangers involved in the transportation of hazardous materials. Teamster members package, ship, transport, and receive a major share of all hazardous materials moving in interstate (and intrastate) commerce. Transportation workers stand alone as the vital first link in dealing with hazardous materials incidents. Their actions in the first minutes following an incident may well determine if that incident will remain minor or result in a major catastrophe.

This NPRM recognizes, but does not act upon the fact that transportation workers must be adequately prepared and equipped with the knowledge necessary to prevent this type of catastrophe. If the proposed

¹ The United States Environmental Protection Agency agrees with this proper distinction between "transportation" and "storage." Pursuant to its regulation, 40 CFR 263.12, a carrier's holding of a waste in a specification container for a period of ten days or less at any one location does not constitute storage.