June 27, 1989 and January 10, 1990 under Docket HM-126C from June 4, 1990 to September 17, 1990 (55 FR 870).

RSPA received three petitions for reconsideration of certain aspects fo the final rule (55 FR 870) from Government Service Institute Incorporated (GSI), a company that provides training on the regulations applicable to hazardous materials transportation, the Petroleum Marketers Association of America (PMAA), and the Ocean Carrier Dangerous Goods Coalition. These petitions and the actions being taken by RSPA are addressed in this final rule.

III. Petitions for Reconsideration

A. Technical Names for Hazardous Wastes described by N.O.S. descriptions

GSI petitioned that § 172.203(k)(4)(ii) be reinstated as published in the final rule dated June 27, 1989 (54 FR 27138) to require the inclusion of the technical name of n.o.s. descriptions, with the limited exception of ORM-E classed hazardous wastes that are regulated as hazardous substances. GSI stated:

> Assuming that the technical name information has a safety consequence to emergency response personnel compliance with the rule as modified in the January 10, 1990 Federal Register is unreasonable and not in the public interest to the extent that it deprives those whom it was designed to protect from the very information designed to protect them.

GSI's position is supported by the Chemical Waste Transportation Institute's (CWTI) letter to RSPA. In their letter, CWTI stated:

> The members of the Institute realize from the preamble of the January 10th amendment and the revision to 172.203(k)(4)(ii) that the CWTI position has not been clearly understood. Therefore, this letter should clarify our position on this issue.
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> In a letter dated April 27, 1989, the Institute clarified for OHMT that the relief we were seeking for hazardous wastes under HM-126C was confined to wastes in the ORM-E class. [The Institute's concerns about additional description requirements for wastes packaged in accordance with 49 CFR 173.12(b) have been successfully resolved through the HM-126C rulemaking and are not at issue here.] The Institute was therefore confused to read in the January 10th preamble that the CWTI was seeking relief from additional description requirements as permitted in 172.203(c) for "DOT hazard classes other than ORM-E." Clearly, the final rule goes far beyond what was intended.
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> The Institute admits that part of the confusion could have resulted from a subsequent letter dated August 10, 1989 in which the Institute asked for reconsideration of 172.203(k)(4)(ii) on what was a very narrow ground. The publication of this sentence on June 27, 1989 began by providing relief to materials using the proper shipping name "Hazardous Waste, liquid or solid, n.o.s.". Such wastes were, in the Institute's mind, the ORM-E hazard class entries for which relief was sought. We failed to make clear we supported the limitation in our August 10th letter. Again, what we were seeking was a deletion of the phrase, "that are also hazardous substances." OHMT must have assumed when we used the term "n.o.s. ORM-E entries" in our April 27th letter that we were not referring to hazard class but to proper shipping names. In effect, 172.203(k)(4)(ii) provided no more relief than what already existed under 172.203(c). We were trying to extend the relief of 172.203(c) to hazardous wastes, liquid or solid, n.o.s., ORM-E that were shipped in quantities larger than qualified to be packaged according to 173.12(b), but smaller than the reportable quantity for that waste stream.

RSPA did not intend to except all hazardous waste shipments which are described in accordance with the provisions of § 172.203(c) from the requirement for inclusion of the technical name on shipping papers and non-bulk packages, or to allow the use of the EPA hazardous waste number in place of the technical name for all hazardous wastes. Accordingly, except for hazardous wastes correctly using the proper shipping name "Hazardous wastes, liquid or solid, n.o.s.", and meeting the hazard class definition of ORM-E (in which case the EPA Hazardous waste number may be included in place of the technical name), hazardous wastes described by "n.o.s." descriptions must include the technical name of the materials on shipping papers and non-bulk packages. In this amendment, § 172.203(k)(4)(ii) is revised to provide an exception for inclusion of the technical name only for hazardous wastes using the proper shipping name "Hazardous waste, liquid or solid, "n.o.s.".

B. 24-hour Emergency Response Telephone Number

PMAA petitioned RSPA to amend 49 CFR 172.604 to provide for a limited application of the requirement to maintain a "24 hour" emergency response telephone number that is monitored at all times since many petroleum marketers limit their deliveries of hazardous materials to daytime hours only. PMAA stated that many of the smaller petroleum marketers deliver only to residential and farm accounts during the daytime and do not transport product 24 hours per day and, therefore, maintenance of a "24 hour" telephone contact is overly burdensome and imposes unnecessary costs. Secondly, PMAA indicated that these small marketers do not employ common carriers, that they would know when any of their product is being transported and, because they control the delivery, would be able to provide an emergency response telephone number during the times that the product is being shipped. RSPA agrees. Accordingly, § 172.604(a)(1) is revised to clarify that the emergency response telephone number must be monitored at all times the hazardous material is in transportation, including storage incidental to transportation.

C. Applicability of final rule to Import/Export Shipments by Vessel

The Ocean Carrier Dangerous Goods Coalition petitioned RSPA to further delay (indefinitely) implementation of the emergency response information requirements with respect to hazardous materials shipments moving between points of origin and destination in international ocean commerce to or from a U.S. port and, in particular, clarification and/or reconsideration of the final rule with respect to the transportation of hazardous materials by vessel, transiting a U.S. port or being offloaded and transhipped between vessels within U.S. port facilities. The Coalition includes both U.S. and foreign flag carriers. These carriers transport substantial volumes of hazardous materials in freight containers under all-water and intermodal bills of lading.

In reviewing their internal procedures and methods of ensuing compliance by their customers (in the U.S. and abroad) with the requirements for emergency response information, including the 24-hour telephone number, members of the Coalition believe that, despite the efforts of carriers, many shippers in U.S. foreign commerce simply cannot, or will not, comply with the requirements under Docket HM-126C. The petitioner stated:

> * * * In many countries the respect for the rule of law generally is also not what it is in the U.S. Further, carriers must often operate in truly hostile legal and political environments. Shippers and transportation intermediaries in these countries may not only feel little compunction about noncompliance with legal requirements, they are often quite confident that they are beyond the reach of U.S. governmental enforcement efforts, let alone private actions by carriers.
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> * * * This requirement may be perceived by foreign entities as unimportant since it is intended solely to deal with the speculative possibility of an accident far away, in the U.S. The Coalition believes the burdens of the rule will increase existing incentives to misdescribe by certain foreign chemical and other hazardous goods shippers. The result in certain trades could very well be an increase in international cargoes moving without any ER information whatsoever, including proper shipping name.