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Improvements to Hazardous Materials Identification Systems; Editorial Revisions and Responses to Petitions for Reconsideration and Appeal; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM–206]

RIN 2137–AB75

Improvements to Hazardous Materials Identification Systems; Editorial Revisions and Responses to Petitions for Reconsideration and Appeal

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; technical amendments and responses to petitions for reconsideration and an appeal.

SUMMARY: In this final rule, RSPA is making changes to a final rule published on January 8, 1997, and modified in a July 22, 1997 final rule, which amended the Hazardous Materials Regulations to better identify hazardous materials in transportation. The primary changes include: clarifying requirements for display of identification numbers for large quantity shipments of hazardous materials; revising requirements for display of identification numbers for non-bulk packages of hazardous materials that are poisonous by inhalation in Hazard Zone A or B; and providing alternative methods for marking the carrier's telephone number on the exterior of a highway transport vehicle containing hazardous materials that is disconnected from its motive power and not marked with an identification number. Other minor technical and editorial changes are also made. In making improvements to the hazardous materials identification systems in the HMR, RSPA intends to improve safety for transportation workers, emergency responders, and the public.

In this final rule, RSPA is responding to four petitions for reconsideration of the July 22, 1997 final rule and one appeal of an RSPA denial of part of a petition for reconsideration of the January 8, 1997 final rule. Generally, this final rule clarifies and revises certain requirements in partial response to the petitions and the appeal and denies other parts of the petitions and the appeal.

DATES: *Effective date:* This final rule is effective October 1, 1998. The effective date for the final rules published under Docket HM–206 on January 8, 1997 (62 FR 1217) and July 22, 1997 (62 FR 39398) remains October 1, 1998.

Compliance dates: Voluntary compliance with the January 8, 1997 and the July 22, 1997 final rules have been authorized beginning February 11, 1997 and July 22, 1997, respectively. Voluntary compliance with this final rule is authorized beginning May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. Engrum or Paul L. Polydores, telephone (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

On January 8, 1997, RSPA published a final rule in the **Federal Register** (62 FR 1217) under Docket HM–206 that amended the hazard communication requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to enhance the identification of hazardous materials during transportation in commerce. The January 8, 1997 final rule was issued in response to Section 25 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615), which required the Secretary of Transportation to initiate a rulemaking to, among other matters, determine methods of improving the existing system of placarding vehicles transporting hazardous materials. Based on the merit of petitions and other revisions RSPA determined to be necessary to correct or clarify the January 8, 1997 rule, a final rule was published in the **Federal Register** (62 FR 39398), on July 22, 1997, correcting the January 8, 1997 rule and responding to petitions for reconsideration.

Following publication of the July 22, 1997 amended final rule, RSPA received four petitions for reconsideration, an appeal under 49 CFR 106.38 of RSPA's denial of part of a petition for reconsideration of the January 8, 1997 final rule, and a separate inquiry identifying an error in the January 8, 1997 final rule that was not corrected in the July 22, 1997 final rule. In response to these, RSPA is revising four sections of the HMR as follows:

(1) In § 172.301(a)(3), concerning large quantities of hazardous materials in non-bulk packages, a revision is made to further clarify that a vehicle or container containing only a single hazardous material and no other material, hazardous or otherwise, in non-bulk packages loaded at one loading facility must be marked with the identification number.

(2) In § 172.313(c), concerning identification number marking of a material poisonous by inhalation (PIH) in Hazard Zone A or B in non-bulk packages, the phrase ''with more than 1,000 kg (2,205 lbs.)'' is changed to ''with 1,000 kg (2,205 lbs.) or more'' for consistency in approach with § 172.301(a)(3); the words ''Hazard Zone A and B'' are changed to ''Hazard Zone A or B''; and a provision is added clarifying the requirement for identification number marking display for different PIH materials in a vehicle or container.

(3) In § 172.504, Footnote 1 to placarding table 1 is revised to correctly state requirements applicable to exclusive use shipments of low specific activity and surface contaminated radioactive materials transported in accordance with § 173.427(b)(3) and (c).

(4) Section 172.606(b)(2) is revised to clarify methods for marking the carrier's telephone number on a highway transport vehicle containing hazardous materials that is disconnected from its motive power and not marked with an identification number.

In all other respects, RSPA is denying the petitions for reconsideration of the July 22, 1997 final rule and the appeal of RSPA's prior denial of a petition for reconsideration of the January 8, 1997 final rule. Denied are requests to: (1) increase from 1,000 kg to 4,000 kg the threshold quantity for identification number marking of PIH materials; (2) adopt additional provisions concerning responsibility for providing, affixing and maintaining identification number markings; (3) except placarded transport vehicles (without identification number markings) from carrier information contact requirements applicable to unattended motor vehicles; and (4) allow slogans or other similar communications (*e.g.*, ''Drive Safely'') to remain on placard-type displays or in placard holders until they wear out and are replaced.

II. Discussion of Editorial Changes and Responses to Petitions for Reconsideration and an Appeal Under 49 CFR 106.38

A. Identification Number Marking Display for Large Quantities of Hazardous Materials in Non-bulk Packages

In the January 8, 1997 final rule, a new requirement was adopted requiring display of identification numbers for large quantities of hazardous materials in non-bulk packages having a single identification number and having an aggregate gross weight of 4,000 kg or more in a transport vehicle or freight container. In the final rule, RSPA decided to avoid use of the economic

terms ''truckload'' and ''carload'' for the application of the identification number marking requirements to large quantities of hazardous materials in non-bulk packages in a vehicle or container. In addition, RSPA chose the 4,000 kg threshold to preclude application of the requirement to small vehicles, such as pick-up trucks and small vans. In the July 22, 1997 final rule, RSPA revised § 172.301(a)(3) to apply to a transport vehicle or freight container that is loaded at *one loading facility* with 4,000 kg or more of hazardous materials in non-bulk packages, when *all* the hazardous materials have the *same proper shipping name and identification number.*

The Hazardous Materials Advisory Council (HMAC) and Roadway Express, Inc., petitioned RSPA for further clarification on how the requirement is to be applied, particularly during pick-up and delivery of less-than-truckload (LTL) freight, and asked for guidance in this area. They also recommended that RSPA amend the regulations to address responsibility for providing, affixing, and maintaining the identification number marking displays. The petitioners believe responsibility should be separately set forth in § 172.301 in order to eliminate confusion or misunderstanding between persons who offer hazardous materials for transportation and carriers when the situation demands that a transport vehicle be properly marked for transportation. The petitioners said that the assignment of responsibility is obscured in a paragraph on general applicability (§ 172.300) rather than as clearly stated in a similar requirement in § 172.506 dealing with providing placards.

The petitioners also asked for guidance on the applicability of the identification number marking requirements for non-bulk packages in a transport vehicle or freight container carrying LTL freight. They indicated that different conclusions might be reached, depending on whether there were different hazardous materials that meet or exceed the threshold quantity (4,000 kg) loaded in the vehicle or container at the same or subsequent loading point.

RSPA believes the changes in the requirements for identification number marking made in the July 22,1997 final rule responded to many of the problems identified by the petitioners. RSPA modified the rule to apply only when *all* the hazardous materials loaded at *one loading facility* have the *same proper shipping name and identification number.* However, RSPA is revising § 172.301(a)(3) to further clarify that the requirement applies *only* when a vehicle contains *a single* hazardous material loaded at one facility, and *no* other materials, hazardous or otherwise. This clarification makes the requirement more consistent with provisions in the UN Recommendations for placing identification numbers on ''packaged dangerous goods of a single commodity which constitute a full load for the transport unit.''

In an effort to provide guidance and facilitate further clarification and understanding of this requirement, the following examples indicate whether identification numbers are required for shipments of non-bulk packages at *one loading facility*:

(*No*—Means no identification number required.)

Examples

(1) 4000 kg of ''Acetone, UN 1090'' and no other material (hazardous or non-hazardous)—*Yes*

(2) Less than 4000 kg of only a single HAZMAT—*No*

(3) 3,000 kg of ''Acetone, UN 1090'' and 2,000 kg of ''Paint, UN 1263''—*No*

(4) 5,000 kg of ''Acetone, UN 1090,'' 5,000 kg of ''Paint, UN 1263'' and 5,000 kg of ''Ethanol, UN 1170''—*No*

(5) 5,000 kg or more of ''Acetone, UN 1090'' and 1,000 kg of Paint, UN 1263'' in Limited Quantities, Small Quantities, or Consumer Commodities—*No*

(6) 5,000 kg or more of ''Acetone, UN 1090'' and 10,000 kg of automobile parts—*No*

RSPA believes that the requirements in § 172.300 adequately prescribe applicability and responsibility for the marking requirements in the HMR. That is, each person who offers a hazardous material for transportation must mark each package, freight container or transport vehicle containing the hazardous material as required in Subpart D of Part 172. When assigned the function to display the identification number marking, as in a situation which comes under carrier control (e.g., when a LTL freight carrier consolidates at one loading facility non-bulk packages of hazardous materials requiring identification number marking), the carrier bears responsibility for providing and affixing the identification number marking. For these reasons, RSPA is denying the petitions for an additional section that would essentially duplicate the requirements already set forth in § 172.300.

B. Identification Number Marking Display for Certain Quantities of Packaged PIH Materials

In the January 8, 1997 final rule, RSPA specified 1,000 kg as the threshold quantity for display of identification number markings for a PIH material in non-bulk packages in a transport vehicle or freight container. In the July 22, 1997 final rule corrections and responses to petitions for reconsideration, RSPA revised the identification number marking requirement to limit it to PIH materials in *Hazard Zone A or B* having the *same proper shipping name and identification number.* RSPA also included an exception from the currently required ''Inhalation Hazard'' marking provision when the words ''Inhalation Hazard'' appear on the PIH label or placard.

In their petitions, the Association of Waste Hazardous Materials Transporters (AWHMT), HMAC, and Roadway Express recommended that RSPA clarify, for consistency, the phrases ''more than'' as used in § 172.313(c) and ''or more'' as used in § 172.301(a)(3), that triggers compliance when the threshold quantity is met or exceeded for display of identification number markings. HMAC and Roadway Express recommended both sections read ''more than,'' while AWHMT took no position on which phrase would be more appropriate.

The Compressed Gas Association (CGA) submitted an appeal of RSPA's denial of their petition in the July 22, 1997 final rule, under the provisions of 49 CFR 106.38, and expressed its concern regarding multiple markings. CGA said:

> RSPA did respond to our previous comment on potentially misinterpreting markings for different hazard zone markings by restricting this to only Hazard Zone A and B. However, RSPA did not address CGA's concern about multiple markings for poisonous by inhalation materials causing confusion among the emergency responders.

CGA suggested that its concern be addressed by revising § 172.313(c) to be consistent with the wording in § 172.301(a)(3) that an identification number would be required only when *all* the Hazard Zone A or B materials in non-bulk packages loaded in the vehicle or container have the same proper shipping name and identification number. CGA indicated, by limiting application of the identification number marking for certain materials poisonous by inhalation, that such a revision would address their concerns relative to multiple markings causing confusion among emergency responders.

HMAC petitioned RSPA to revise § 172.313(c) and recommended that the identification number marking threshold, 1,000 kg for PIH materials in Hazard Zone A or B having the same proper shipping name and identification number in non-bulk packages, be raised to 4,000 kg, the same threshold for non-PIH hazardous materials in non-bulk packages. HMAC indicated that a different threshold for PIH materials would impose additional training problems for persons offering or transporting these materials.

CGA also had concerns regarding voluntary compliance. It said voluntary compliance as authorized in HM–206 creates three points of confusion, that is: (1) Emergency responders are unfamiliar with the new PIH label; (2) potentially, several different identification numbers create confusion about which hazardous material might be causing an emergency situation; and (3) because the transition provisions in § 171.14 allow labels and placards to be used interchangeably, the labels and placards may not be the same. CGA believes the issue of voluntary compliance is still a safety issue which needs to be addressed, and because of the possibility of confusion suggested that early training, before compliance enforcement, is necessary in this case.

CGA and ECOLAB Center generally expressed their concerns for continued harmonization with international standards, as it relates to the improvements to the hazardous materials identification system (HM–206). CGA stated that while they believe RSPA recognizes the importance of harmonization, as indicated by the statements in the preamble referring to the UN Committee of Experts, it is not clear to them what recourse it will have in the event RSPA's recommendations are not acceptable to the UN. It said, ''* * * it appears we will require two sets of placarding and labeling.'' The ECOLAB Center had similar concerns and stated:

* * * From the perspective of a multinational company, every divergence of hazmat regulations between the U.S. and the rest of the world causes confusion and possibility of errors. For several years, harmonization has been the aim and has been used to justify hazmat labeling, packaging, and labeling [sic] changes that have caused us significant expense. Now it appears that the U.S. will make its own choice and hope the rest of the world follows. If this is the beginning of a trend for the U.S., we request that you reconsider this policy, and remain open to voluntarily extending or eliminating the compliance date for these changes as the situation develops.

RSPA agrees with the petitioners that the threshold quantities in § 172.313(c) and § 172.301(a)(3) should be phrased in a consistent manner. The intent is to trigger compliance with the threshold quantity for identification number marking display under both provisions at the levels specified for each ''or more.'' Therefore, a revision is made in, § 172.313(c) to replace the phrase ''more than'' with ''or more'' for materials poisonous by inhalation. An editorial revision is also made in § 172.313, in paragraph (c), to change the phrase ''Hazard Zone A and B'' to correctly read ''Hazard Zone A or B.''

To reduce the burden of the identification number marking requirement and in response to CGA's concerns that problems may still exist for emergency responders in determining appropriate protective actions to be taken when multiple identification number markings are displayed for PIH materials, RSPA is revising § 172.313(c) to specify when a vehicle or freight container is carrying different PIH materials for which identification number marking is required, display of the identification number is only required for the PIH material in the hazard zone posing the greatest risk (i.e., Zone A takes precedence over Zone B), or if all the same hazard zone, the identification number must be displayed for the PIH material having the greatest aggregate gross weight. The following examples indicate whether the identification number is required for shipments of PIH materials in non-bulk packages at *one loading facility*:

Examples

(*No*—means no identification number required.)

Examples

(1) Less than 1,000 kg of PIH material in Hazard Zone A—*No*

(2) 1,000 kg of ''Methyl isocyanate, UN 2480, Zone A'' and 4,000 kg of ''Acetone, UN 1090''—*Yes, for Methyl isocyanate, UN 2480, because it is a PIH material in Zone A*

(3) 1,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' 1,000 kg of ''Allyl alcohol, UN 1098, Zone B,'' and 1,000 kg of ''Methyl mercaptan, UN 1064, Zone C''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material with the highest hazard zone*

(4) 2,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' and 1,000 kg of ''Acrolein, inhibited, UN 1092, Zone A''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material in the greatest quantity*

(5) 3,000 kg of ''Methyl isocyanate, UN 2480, Zone A,'' 2,000 kg of ''Acrolein, inhibited, UN 1092, Zone A,'' and 1,000 kg of ''Allyl alcohol, UN 1098, Zone B''—*Yes, for Methyl isocyanate, UN 2480, because it is the PIH material both in the highest hazard zone and in the greatest quantity*

RSPA believes that along with the effectiveness of the new PIH labels and placards (required for even small amounts of a PIH material), identification numbers ensure quick recognition of certain types and quantities of a PIH material in non-bulk packages in a vehicle or container. Emergency responders with immediate access (through the use of the DOT Emergency Response Guidebook or other emergency response information carried during transportation) to information on the potential hazards and health and safety risks associated with PIH materials will be better able to determine protective and mitigation actions at incidents involving these high risk materials.

RSPA does not agree with HMAC that the threshold for PIH (1,000 kg or more) and non-PIH materials (4,000 kg or more) should be the same. RSPA set the threshold quantity lower for PIH materials because of the significantly greater risk associated with these materials as opposed to most other hazardous materials. Because of the toxicity and volatility of a PIH material, a release would be immediately life threatening over a large area. The choice of protective options for a given situation depends on many factors. Whereas evacuation may be the best option (in some cases), in-place protection may be the best course in others. RSPA enhanced the regulations because they were inadequate in providing vital information to communicate the presence of a PIH material in non-bulk packages in a vehicle or container that, if released, may potentially pose severe and immediate risks to the public, transportation workers, and emergency response personnel.

RSPA agrees with HMAC that the new requirements may necessitate additional training for persons offering or transporting hazardous materials, particularly relative to the new requirements addressing poisonous materials which pose an acute inhalation toxicity. For compliance purposes, persons offering or transporting hazardous materials need to continually update their training to include the new requirements.

In regard to CGA's safety concerns on the issue of voluntary compliance, RSPA believes that voluntary compliance periods have historically helped industry in achieving compliance without compromising the safety of emergency responders. RSPA routinely provides voluntary or permissive compliance time frames, such as those provided for in § 171.14, before mandatory compliance is necessary. In fact, RSPA is often requested to extend mandatory compliance dates and various transitional provisions, while continuing to allow for permissive voluntary compliance, such as provided for in Docket HM–181 addressing changes to hazard communication requirements, such as marking, labeling, and placarding. The process of providing for voluntary compliance prior to mandatory compliance has worked well and allows industry to incrementally phase-in new requirements in an orderly manner so that new requirements are not implemented on a specific date without adequate time to implement new procedures or training programs.

RSPA also acknowledges that additional training is necessary to implement and understand the new requirements, particularly during the transition period. RSPA also recognizes the need to help emergency responders to more quickly recognize and identify the specific hazards of these types of materials. RSPA has taken steps to promote better understanding of the new requirements. For example, information is available on the new requirements through the RSPA Internet Web site (http://hazmat.dot.gov). Also, RSPA is revising current training materials, such as the widely distributed DOT ''Chart 10,'' a guide to help industry and emergency responders comprehend and apply the requirements for marking, labeling, placarding and emergency response information. Informational brochures are being developed to address the new requirements for improving the system of identifying and communicating the hazards associated with hazardous materials in transportation.

RSPA is aware of the concerns of petitioners regarding continued harmonization of the domestic regulations with the international standards, and harmonization has been one of our objectives for many years. RSPA evaluated the petitions to the January 8, 1997 and the July 22, 1997 final rules which requested that RSPA eliminate the new PIH label and placard, or not adopt them domestically until the labels and placards had been adopted for use in the international community. The petitions were denied. To date, no new information has been submitted to RSPA that would warrant reconsideration of the denial of the petitions on this issue. To allow the affected parties more time to come into compliance and to give the U.N. Committee of Experts more time to consider adoption of the new PIH labels and placards, in the July 22, 1997 final rule, RSPA changed the effective date for this portion of the rule from October 1, 1997 to October 1, 1998. Also, mandatory use of the new PIH labels and placards in domestic transportation is not required until October 1, 1999 for labels and October 1, 2001 for placards.

Over the years, RSPA has adopted classification, hazard communication and packaging requirements recommended by the U.N. Committee of Experts in order to facilitate international commerce. However, in the past, RSPA has not waited for development of an international standard before addressing pressing safety concerns such as establishing criteria for defining and classifying materials that are poisonous by inhalation, such as Acrolein, Methyl Isocyanate, and Allyl Alcohol. (Final Rule under Docket HM–196; 50 FR 41092; October, 8, 1985) Similarly, RSPA does not intend to wait for development of an international standard to gain the safety benefits deriving from a distinctive label and placard for PIH materials that may pose a substantial risk if released during transportation.

Harmonization does not always mean exact adoption of international standards without any deviation. In some instances, deviations from international standards are necessary to meet legislated requirements, such as the domestic regulatory requirements for hazardous wastes and hazardous substances. In other instances, the industry has often asked for and been provided with exceptions applicable to domestic transportation. The HMR often contains domestic exceptions that are supported by industry. For example, RSPA has provided certain domestic placarding exceptions that are not provided for by international standards, such as: 1) use of a DANGEROUS placard for mixed loads of Table 2 materials; 2) a domestic exception for the mandatory use of the Class 9 placard; and 3) exception from placarding small loads of Table 2 materials in non-bulk packagings (i.e., 1,001 pounds or less does not require placarding). RSPA will continue to work toward harmonization; however, as in the past, RSPA will continue to provide domestic exceptions when warranted and specify additional requirements when warranted.

C. RADIOACTIVE PLACARD Footnote to Placarding Table 1

RSPA received an inquiry regarding the footnote in § 172.504(e), placarding Table 1. In the January 8, 1997 final rule, footnote ''1'' regarding placarding for exclusive use shipments of low specific activity radioactive materials contains an incorrect section reference. In this final rule, footnote ''1'' is revised to read: ''1 RADIOACTIVE placard also is required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c).''

D. Carrier Emergency Information Contact Number for an Unattended Motor Vehicle Disconnected From Its Motive Power

In the January 8, 1997 final rule, RSPA added alternatives for compliance with the carrier emergency information contact number requirements for an unattended motor vehicle disconnected from its motive power and parked at a location other than a consignee's, consignor's, or carrier's facility. In that situation, the carrier must mark its telephone number on the motor vehicle, place shipping papers and emergency response information on the vehicle or have the shipping paper and emergency response information available as required in § 172.602(c)(2). In the July 22, 1997 final rule, RSPA provided an exception from requirements when the motor vehicle is marked with the identification number of each hazardous material loaded inside the vehicle, and the identification number marking is visible on the outside of the motor vehicle.

Roadway Express had concerns with the methods available for marking a carrier's telephone number on a vehicle disconnected from its motive power when motor carriers use rental and ''pool'' equipment for varying periods of time in order to meet the demands of each person who offers a hazardous material for transportation. It stated that it is impractical to expect carriers to mark a telephone number on a piece of equipment that may be in the carrier's control for only a few days, and suggests revising the requirements in § 172.606(b)(2) to allow affixing or attaching a device, such as a plastic tag, directly to the brake hose or ''gladhand'' connection.

HMAC and Roadway Express petitioned RSPA to expand this exception for a marked vehicle to

include ''all *placarded* or marked trailers, semi-trailers, or freight containers.'' Roadway Express stated that on the average, LTL carriers consolidate 30 individual shipments on a transport vehicle and that when non-bulk packages of hazardous materials comprise even a small percentage of the total load, the variety of materials contained in one consignment may make marking individual identification numbers burdensome and impractical. HMAC stated:

> While documentation on trailers or freight containers that are not otherwise placarded or marked may be required, those which already display placards or identification number markings shouldn't also be required to have telephone numbers or shipping papers. Therefore, HMAC recommends that the exception granted in § 172.606(c) be expanded to include ''all placarded or marked trailers, semi-trailers, or freight containers.''

HMAC believes that the regulations for display of a carrier's telephone number or the availability of shipping papers on certain trailers and freight containers removed from motive power are not responsive to the problems encountered by the LTL segment of the transportation industry. HMAC stated that the new requirements will make it more difficult for motor carriers to use rental trailers to conduct business. It said, for example, one particular motor carrier used nearly 6,000 rental trailers in one month in order to accommodate the demands of each person who offers a hazardous material for transportation, and thus display of the motor carrier's telephone number is not possible on such trailers, and rental trailers normally do not have a pouch or pocket to store shipping papers.

Roadway Express also said that because shipping papers and emergency response information documents are also a means of complying with § 172.606(b)(2) and must be readily available on the transport vehicle, document maintenance and security provisions, as it relates to proprietary information (such as the name and address of both the persons who offer a hazardous material for transportation and the carrier's customer), should be considered.

In this final rule, RSPA is editorially revising the introductory text of § 172.606 and paragraph (a) and is revising paragraph (b) for clarity and in response to petitioners. RSPA notes that the provision adopted in § 172.606(b)(2) in the January 8, 1997 final rule, allows a carrier to display only the carrier's telephone number and does not require disclosure of information which the carrier may consider proprietary. The carrier information contact requirement applies to a trailer or freight container-on-chassis dropped at a public place such as a truck stop or motel, but does not apply when a vehicle is dropped at a facility covered by the provisions of § 172.602(c)(2), such as a carrier's facility or a marine terminal. RSPA notes under § 172.602(c)(2), a facility may be operated by someone other than a carrier, consignor, or consignee. In this final rule, RSPA is revising the introductory language in paragraph (b) of § 172.606 to clarify this. RSPA is removing the provision in paragraph (b)(1) because that requirement already applies to facilities under § 172.602(c)(2) and is not applicable outside such a facility. Also, in response to these petitions, RSPA is revising § 172.606(b), to clarify that the carrier's telephone number may be marked on the exterior of the vehicle, or attached to the vehicle on a label, tag or sign at the brake hose or electrical connection.

RSPA reminds motor carriers of the requirement in the Federal Motor Carrier Safety Regulations, 49 CFR 397.5, which requires, with limited exceptions, that a motor vehicle required to be placarded must be attended by its driver at all times when the motor vehicle is located on a public street or shoulder of a public highway. Based on this requirement, and taking into account longstanding provisions which apply to facilities under § 172.602(c)(2), RSPA believes the carrier information contact requirement will not pose an unreasonable burden on motor carriers.

RSPA does not agree with the petitioners in regard to expanding the exception in § 172.606(c) to include any *placarded* motor vehicle disconnected from its motive power. A placard (e.g., FLAMMABLE, POISON) provides basic identification regarding the hazard of a material, but it does not communicate specific information regarding the contents of a vehicle as do shipping papers or identification number markings. The methods currently prescribed in § 172.606(b) facilitate access to more detailed response, information for the hazardous material in such a vehicle.

RSPA acknowledges Roadway Express' concern relative to security provisions as it relates to information on shipping papers that a carrier considers ''proprietary,'' such as the name and address of its customers. RSPA provided a number of options for compliance, as follows: (1) A carrier's telephone number marked or attached to a motor vehicle, (2) a copy of a shipping paper and emergency response information attached to a motor vehicle, or (3) an identification number marking displayed on the exterior of a motor vehicle. None of these options require disclosure of the name and address of consignors or consignees. RSPA encourages the trucking industry to develop uniform methods for displaying information required by § 172.606.

E. Prohibited Placarding (Slogans)

In the January 8, 1997 final rule, RSPA revised § 172.502 to prohibit extraneous information (e.g., ''Drive Safely'') on placard-type displays or in placard holders. As modified in the July 22, 1997 final rule, RSPA has specified that this prohibition does not apply until October 1, 2001, to a slogan which was permanently marked on a transport vehicle, bulk packaging, or freight container on or before August 21, 1997. This should provide sufficient notice and prevent the unintended application of an *immediate* prohibition to a slogan that may have been permanently marked on a transport vehicle, bulk packaging or freight container between October 1, 1996 and issuance of the January 8, 1997 final rule.

ECOLAB Center petitioned RSPA to allow an indefinite period until placards must be replaced in order to remove extraneous information or slogans (e.g., ''Drive Safely''). ECOLAB believes that prohibiting such slogans on placards and in placard holders is not an enhancement of safety, and said:

> Due to the lowering of the weight for which a class placard is required, and the requirement to placard for a large quantity of non-bulk materials, the number of occasions when a safety slogan placard may be displayed will be dramatically reduced. Would not a reasonable compromise be to let existing placard sets be used until retirement or replacement?

RSPA denies the petition. RSPA believes it has provided a reasonable period for industry to comply with the requirement to remove, cover, or obliterate slogans or other similar communications on placard-type displays or in placard holders on transport vehicles and freight containers. With the extension of the overall effective date of the rule, October 1, 1998, and the compliance date for mandatory removal of these signs, October 1, 2001, affected businesses are provided sufficient time to make conversion.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866

and, therefore, was not reviewed by the Office of Management and Budget.

The regulatory evaluation prepared for the August 15, 1994 NPRM was examined and modified for the January 8, 1997 final rule. Both of these documents are available for review in the public docket. The July 22, 1997, final rule made relatively minor, incremental changes in the regulations concerning placarding and other means of communicating the hazards of materials in transportation, and in most cases clarifies and relaxes provisions of the January 8, 1997 final rule. This final rule denies an appeal under 49 CFR 106.38, and several petitions for reconsideration of certain aspects of the July 22, 1997 final rule, and makes several editorial revisions. Accordingly, no additional regulatory evaluation was performed.

B. Executive Order 12612

The January 8, 1997 and the July 22, 1997 final rules and this final rule were analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, content, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1998.

C. Regulatory Flexibility Act

This final rule, which responds to petitions for reconsideration and an appeal under 49 CFR 106.38, makes several editorial revisions for clarification of the regulations. Although this final rule applies to each person who offers a hazardous material for transportation and all carriers of hazardous materials, some of whom are small entities, the requirements contained herein will not result in significant economic impacts. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in 49 CFR Parts 172 through 177 pertaining to shipping papers have been approved under OMB approval number 2137–0034. This final rule makes only editorial corrections and does not increase any burden to provide information. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 172

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

In consideration of the foregoing, 49 CFR chapter I is 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 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.301, as amended at 62 FR 39404, effective October 1, 1998, paragraph (a)(3) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packages.

(a) * * *

(3) *Large quantities of a single hazardous material in non-bulk packages.* A transport vehicle or freight container containing only a single hazardous material in non-bulk packages must be marked, on each side and each end as specified in the §§ 172.332 or 172.336, with the identification number specified for the hazardous material in the § 172.101 Table, subject to the following provisions and limitations:

(i) Each package is marked with the same proper shipping name and identification number;

(ii) The aggregate gross weight of the hazardous material is 4,000 kg (8,820 pounds) or more;

(iii) All of the hazardous material is loaded at one loading facility;

(iv) The transport vehicle or freight container contains no other material, hazardous or otherwise; and

(v) The identification number marking requirement of this paragraph (a)(3) does not apply to Class 1, Class 7, or to non-bulk packagings for which identification numbers are not required.

* * * * *

3. In § 172.313, as amended at 62 FR 39405, effective October 1, 1998, paragraph (c) is revised to read as follows:

§ 172.313 Poisonous hazardous materials.

* * * * *

(c) A transport vehicle or freight container containing a material poisonous by inhalation in non-bulk packages shall be marked, on each side and each end as specified in § 172.332 or § 172.336, with the identification number specified for the hazardous material in the § 172.101 Table, subject to the following provisions and limitations:

(1) The material is in Hazard Zone A or B;

(2) The transport vehicle or freight container is loaded at one facility with

1,000 kg (2,205 pounds) or more aggregate gross weight of the material in non-bulk packages marked with the same proper shipping name and identification number; and

(3) If the transport vehicle or freight container contains more than one material meeting the provisions of this paragraph (c), it shall be marked with the identification number for one material, determined as follows:

(i) For different materials in the same hazard zone, with the identification number of the material having the greatest aggregate gross weight; and

(ii) For different materials in both Hazard Zones A and B, with the identification number for the Hazard Zone A material.

§ 172.504 [Amended]

4. In § 172.504(e), as amended at 62 FR 39407, effective October 1, 1998, footnote 1 in Table 1 is amended to read as follows:

''[1] RADIOACTIVE placard also required for exclusive use shipments of low specific activity material and surface contaminated objects transported in accordance with § 173.427(b)(3) or (c) of this subchapter.''

5. In § 172.606, as added at 52 FR 1234 and amended at 62 FR 39409, effective October 1, 1998, the introductory text is removed, and paragraphs (a) and (b) are revised to read as follows:

§ 172.606 Carrier information contact.

(a) Each carrier who transports or accepts for transportation a hazardous material for which a shipping paper is required shall instruct the operator of a motor vehicle, train, aircraft, or vessel to contact the carrier (e.g., by telephone or mobile radio) in the event of an incident involving the hazardous material.

(b) For transportation by highway, if a transport vehicle, (e.g., a semi-trailer or freight container-on-chassis) contains hazardous material for which a shipping paper is required and the vehicle is separated from its motive power and parked at a location other than a facility operated by the consignor or consignee or a facility (e.g., a carrier's terminal or a marine terminal) subject to the provisions of § 172.602(c)(2), the carrier shall—

(1) Mark the transport vehicle with the telephone number of the motor carrier on the front exterior near the brake hose and electrical connections or on a label, tag, or sign attached to the vehicle at the brake hose or electrical connection; or

(2) Have the shipping paper and emergency response information readily available on the transport vehicle.

* * * * *

Issued in Washington, D.C. on March 26, 1998 under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Acting Administrator.

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