



DEPARTMENT OF TRANSPORTATION
MATERIALS TRANSPORTATION BUREAU
WASHINGTON, D.C. 20590

43761

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration and Materials
Transportation Bureau

49 CFR Parts 171, 172, 173, 174, 176,
and 177

[Dockets Nos. HM-126A, 145B, and 171;
Amdts. Nos. 171-153, 172-58]

Identification Numbers, Hazardous
Substances, International Descriptions

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

ACTION: Postponement of voluntary
compliance date; notice of public
hearing and request for comments.

SUMMARY: This action postpones the
voluntary compliance data for display of
identification numbers on placards and
of the Optional Hazardous Materials
Table. Petitions for reconsideration have
been received from the Association of
American Railroads (AAR) and the
Southern Railway System (Southern)
pertaining to these matters, thereby
compelling MTB to postpone voluntary
compliance with those new regulations
that impact on regulations presently in
effect. A public hearing will be held on
July 31, 1980, to receive comments on the
petitions for reconsideration, including
those portions dealing with hazardous
substances.

DATES: The Effective Date statement,
published in the *Federal Register* for
Amendment No. 172-58 *et al.* (45 FR
34560) on May 22, 1980, is changed to
read "November 20, 1980, unless
otherwise specified in the regulations
adopted under this rulemaking. Except
for descriptions specified in § 172.102
and the display of identification
numbers on placards (§ 172.334),
shipments may be prepared, offered for
transportation, and transported in
accordance with these amendments
beginning July 1, 1980."

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

Written comments must be received
before August 12, 1980.

ESSES: 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) or Delmer
Billings (202-426-2075), 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 six
petitions for reconsideration received,
MTB believes that two petitions raise
matters of major significance warranting
further public participation before any
action is taken concerning their
disposition. These petitions were
received from the Association of
American Railroads (AAR) and the
Southern Railway Company and its
affiliated rail carriers commonly
referred to as Southern Railway System
(Southern). In order to afford full public
review, the MTB is providing in this
publication a complete reproduction of
the text of the AAR petition and the
principal statements of Southern that
are in addition to those of the AAR. The
AAR statement is quoted as follows:

This petition is submitted by the
Association of American Railroads (AAR) on
behalf of its member railroads. The AAR
seeks reconsideration of the regulations
published by the Materials Transportation
Bureau's Research and Special Programs
Administration (MTB), Department of
Transportation, at 45 FR 34560 (1980). The
AAR and its member railroads have a
substantial interest in regulations affecting
the transportation of hazardous materials.

The rules promulgated by the MTB
represent the consolidation of several
rulemaking proceedings which vary in degree
of controversy. The AAR and individual
member railroads have participated in all of
these proceedings by the filing of comments in
response to published notices. Two of the

proceedings—HM-145A and HM-145B—
represent MTB's exercise of its rulemaking
authority to adopt rules which will
accommodate the Congressionally mandated
program for the handling of hazardous
wastes under the Resource Conservation and
Recovery Act (RCRA) and the Environmental
Protection Agency's hazardous substance
program established pursuant to Section 311
of the Federal Water Pollution Control Act.
The AAR is conscious of the importance of
implementing the RCRA regulations and the
hazardous substances program and
compliments the MTB on the manner in
which it has structured the regulations in this
regard. There are, however, several important
deficiencies in MTB's regulations which must
be corrected.

As will be discussed more fully, the
railroads take sharp issue with several
aspects of the regulations adopted pursuant
to Dockets HM-126 and HM-171. In those
two proceedings, the Bureau has adopted
rules which seriously undermine safety
programs and impose significant and
unnecessary burdens on the railroads. The
Optional Materials Table, fashioned after the
Inter-Governmental Maritime Consultative
Organization (IMCO) Code for use by
shippers in domestic movements, is
particularly onerous and must be withdrawn.
Additionally, the MTB would permit the use
of an alternate form of placards on hazardous
materials cars which destroys the integrity of
the current placard system. This new placard
system was adopted without notice and
without opportunity to address the utility of
the current format of the various placards.
This action by the MTB is totally
unreasonable and must be reversed.

In the preamble to the regulations (45 FR
34560, 1980) MTB announced that "Shipments
may be prepared, offered for transportation,
and transported in accordance with these
amendments beginning July 1, 1980." The
AAR strongly urges that the MTB issue a
Federal Register notice withdrawing that
statement. The rules as promulgated make
significant and substantial changes which
cannot be implemented by the railroads on
such short notice. While shippers may find it
possible to use the Optional Hazardous
Materials Table prior to November 20, 1980,
the railroads cannot complete by that time
the instructions and training programs which
would be necessary to enable railroad
employees to comply with the regulations
associated with the use of the Optional
Hazardous Materials Table. Similarly, while
shippers may be in a position to alter existing
placards or to paste labels with UN numbers
over the wording on existing placards, the
significant burdens resulting from the use of
an additional placarding system fall on the
railroads. In addition to training programs,
the MTB's regulations must be published in
the Bureau of Explosives Tariff before the

railroads can enforce regulations as a part of the contract for the carriage of commodities designated as hazardous materials. It is anomalous for MTB to admit "it will take some time for the emergency services to become fully familiar" with the new system (45 FR 34564, 1980) and at the same time allow use of the new system almost immediately. The MTB's regulations, which represent drastic changes, should not be offered as alternatives prior to the effective date of the regulations.

49 CFR 171.8

As an essential element in the implementation of the EPA's hazardous substances program, it was necessary that DOT adopt regulations requiring that shippers advise carriers when they are tendering a reportable quantity of a hazardous substance and to specifically advise the carrier of the precise identification of that commodity. For the most part the MTB's regulations accomplish this purpose. Positive steps taken include the inclusion of all hazardous substances in the Hazardous Materials Table, the addition of "E" as a designator denoting an environmentally hazardous substance, and the use of "RQ" as an indicator of a reportable quantity of a hazardous substance. Furthermore, while § 171.17, which provides for hazardous substance discharge notifications, does not define what a hazardous substance discharge is, the preamble clearly supports the proposition that § 171.17 and § 171.8 be read together (45 FR 34570, 1980). As a result, notification of a hazardous substance discharge is required only when a reportable quantity is discharged. This result is consistent with EPA regulations and thereby supports a coherent regulatory program.

In one particular respect the definition of the term "hazardous substance" is too narrow and could potentially expose the railroads to liability. As promulgated, 49 CFR 171.8 defines a hazardous substance as "a quantity of a material offered for transportation in one package, or transport vehicle when the material is not packaged", that equals or exceeds the reportable quantity for the material. According to this definition, a trailer offered in TOFC service loaded with 55 gallon drums of a hazardous material does not contain a hazardous substance if one drum does not contain the reportable quantity, even though in the aggregate the trailer contains far in excess of the reportable quantity. A spill from such a trailer could result in an environmental disaster and a railroad could be subject to civil suits by parties affected by such a spill even though the railroad did not know it was transporting a hazardous substance. The definition must be modified to require shippers to notify transporters when several packages of a hazardous material are tendered in one transport vehicle, if in the aggregate there is an amount equal to or exceeding a reportable quantity of a hazardous substance. The AAR suggests that a "hazardous substance" be redefined to mean a quantity of material offered for transportation in one or more packages, or one transport vehicle when the material is not packaged.

49 CFR 172.102

The AAR strongly objects to the adoption of the "Optional Hazardous Material Table" in § 172.102. The MTB has created two optional and interchangeable commodity tables without any attempt to reconcile the differences. The chaotic effect of maintaining two hazardous materials lists to be available at the whim of the shippers is totally unacceptable to the railroad industry. The Optional Table will be counterproductive from a safety standpoint because in actual practice, the presence of the Optional Table will require use of both tables and increase the potential for error. The Optional Table not only requires verification and cross-referencing with the § 171.101 Hazardous Materials Table, but also creates havoc for rail personnel seeking correct train placement and a correlation between shipping papers and car placards.

Use of the Optional Table and the IMCO hazard classification numbers will also result in significant operating burdens on the railroads which cannot be justified on the basis of the record in this proceeding. Some commodities classed as hazardous under the IMCO system are presently classed as ORME under existing DOT regulations. Thus, if a shipper elected to use the Optional Table for these commodities, placarding and special car handling and placement would be required, while under the § 172.101 Hazardous Materials Table placarding and special car handling would not be required. In addition, many commodities now classed as "combustible" under the § 172.101 Hazardous Materials Table would be classed as "flammable" under the IMCO system. Flammable commodities require special handling, combustible commodities do not. The MTB cannot justify imposing the additional expense and operating burdens that will result from use of the Optional Table. The Optional Table for the first time assigns certain commodities to a hazard class and changes have been made without the required data, safety experience, or independent analyses of commodity characteristics.

49 CFR 172.334 and 172.338

Section 172.334 permits the display of United Nations (UN) identification numbers on the placard specified for the hazard material contained in the car. This section provides for a new series of placards as an alternative to displaying the identification number on an orange panel in the proximity of the placard. [* MTB has excluded "poison gas" and "radioactive" placards from this alternative system. At a minimum, the exclusion should extend to "Explosive A" placards.] These new placards would not contain the wording currently used to define the particular hazard class. MTB would replace the easily understandable wording presently found on placards with an obtuse numbering system which means nothing to most people and conveys no immediate information. This drastic action is being taken without the thorough discussion or evaluation necessary to ensure that the change will protect public safety. The alternative placard system has been adopted without providing the public with notice or an

opportunity to comment, as required by the Administrative Procedure Act, and must be withdrawn.

It is unconscionable for the MTB to permit the alternative system on the basis of a record which contains no discussion of the effect of the elimination of the wording currently found on MTB mandated placards. The existing placards were adopted after an exhaustive examination of the alternatives. In Docket HM-103, the Department of Transportation proposed a series of placards in a Notice of Proposed Rulemaking published in the Federal Register of June 24, 1974 (39 FR 33964). The Department of Transportation proposed that a 2-digit numeric identifier be included on placards as the mechanism for conveying the hazard and multiple hazards of the materials. Following the receipt of comments by shippers and carriers, the Department of Transportation, by notice in the Federal Register on June 25, 1975 (40 FR 26687), terminated its proposals pertaining to the use of a 2-digit number to identify the hazards of materials during transportation. In the final regulations adopted in HM-103, the MTB included as an integral part of its placard system the requirement that specific wording identifying the hazard class appear on placards. Now, without opportunity for public participation in the decision-making process and indeed without notice, MTB would permit an alternative system under which the UN identification numbers can be applied to a placard in a manner which obliterates the descriptive wording.

Railroad personnel and emergency force have been trained in the use of placards containing descriptive wording for both train placement and initial emergency response. The record contains no indication of any analysis of the adverse safety impact which may result from the elimination of the descriptive wording on the placards. It would indeed be charitable to define this action by MTB as being arbitrary, capricious, unreasonable, and without support in the record.

The problems which the railroads would confront by the shippers' use of the alternate placard system would be exacerbated by § 172.338 which requires that the railroads replace UN identification numbers and placards which are lost from a car in transit. Even though the railroads are convinced that the use of the UN number on an orange label attached to the car in the vicinity of the placard provides no information for immediate emergency response purposes, we do not object to the label provisions in § 172.332. As a consequence, we do not object to the provision in § 172.338 requiring as soon as practicable the replacement of the orange labels bearing the UN number (which can be inserted on a blank panel by use of an indelible ink pen) when such labels are lost from a car in transit. However, we strongly object to the requirement that railroads replace the alternative labels which are permitted to be used pursuant to § 172.334. It is not reasonable to require that the railroads maintain a dual system of placards and various colored indelible ink markers so they may respond to a shipper's choice of a placarding system. This is a particularly

unreasonable burden considering that the alternate placarding system has been used without justification. Although the effective date for these regulations is November 20, 1980, shipments may be transported under the alternate placard system on July 1, 1980. Even assuming there were no other problems with the alternate placard system, the AAR would like to reiterate that MTB is inviting disaster by allowing the system to be used on July 1. Railroad personnel, firemen, policemen, and other emergency officials have been using the present placard system for the past several years. In a little over a month thousands of these people will be required to familiarize themselves with the UN hazard class numbering system. Instead of identifying the nature of the hazard by the words printed on a placard, railroad personnel and others will have a numbering system which does not provide easily understood information. The training program required by this new system cannot be completed by July 1. Furthermore, the emergency manuals associated with the UN hazard class numbering system have not been published by the Department of Transportation. In light of the safety dangers posed by immediate use of the alternate placard system, the AAR sees no reasons for the MTB to permit that system to be used as early as July 1.

Conclusion

The AAR recognizes the dangers inherent in the transportation of hazardous materials. The railroad industry has demonstrated a strong commitment to the safe transportation of hazardous materials. Consistent with these efforts, the AAR feels obliged to bring to the attention of the Department of Transportation regulations which hinder the railroads' safety program. This petition for reconsideration offers suggestions for an improved safety program and discusses those regulations which do not contribute, and are in fact counterproductive, to the safe transportation of hazardous materials. The AAR strongly recommends the adoption of its proposals.

Though much of Southern's petition for reconsideration was a repetition of the AAR petition quoted above, Southern made some additional comments in support of its petition. Concerning the July 1, 1980, voluntary compliance date as it pertains to use of the optional Hazardous Materials Table and the display of identification numbers on placards, Southern stated:

The instructional programs and necessary training cannot be accomplished on such short notice. In addition to the training programs, the MTB's regulations must be published in the Bureau of Explosives Tariff before the railroads can enforce regulations as a part of the contract for the carriage of commodities designated as hazardous materials. Because these regulations constitute such drastic changes from the current DOT regulations, at a minimum they should not be offered as alternatives prior to the effective date of the regulations.

It is anomalous for the MTB to refuse to admit that it will take some time for the emergency services to become

fully familiar with the new system and not recognize the same need for carrier personnel. Unless the MTB withdraws its authorization, Southern must seek court relief.

Concerning the applicability of the regulations to hazardous substances, Southern stated:

Assuming several drums of that material equal the reportable quantity and yet shipper identification is not made under the DOT regulations, a spill from those drums could result in an environmental disaster, and the carrier, even though not having the requisite information to marshal its emergency forces, might still be held accountable. The DOT's statement on page 34570 that the EPA will not bring civil or criminal suit for failure to make notification when notification is not required under the DOT rules is small comfort to any carrier facing enormous liability because it did not act timely to abate or clean up a spilled substance not known to be hazardous.

In a similar vein Southern strenuously objects to the chart the MTB has established in § 171.8 for shippers to use to identify hazardous substance constituents contained in mixtures or solutions. In Southern's view this chart (based on certain weight concentrations and percentages, tied into the RQ weight quantities specified in § 172.101, is still not specific enough, and precise percentages should be furnished by shippers to carriers to determine whether in fact a reportable quantity of a hazardous substance contained in a mixture or solution has been spilled. To be consistent with notifications for pure substances, precise percentages must be provided. Otherwise carriers will be cleaning up spills which do not have to be cleaned up and not cleaning up some which should. To make any exceptions for mixtures or solutions (from the Clean Water Act criteria applicable only to hazardous substances in reportable quantities) goes beyond the MTB's authority.

Concerning the use of the optional Hazardous Materials Table (§ 172.102), Southern stated:

Approximately ninety-nine commodities which would be classed as ORM-E under the Hazardous Materials Table (thus not requiring either placarding or special handling) would be classed as hazardous under the IMCO system (requiring placarding and special handling). Similarly, some 188 commodities (**A prime example is diesel fuel) now classed as "combustible" under the Hazardous Materials Table (thus requiring placarding but not special handling) would be classed as "flammable" under the IMCO system (requiring placards and special handling). The importance of such

classification changes lies in the increased handling that such cars must be given by the carriers. In the future, depending on the whim of the shipper who chooses to use the Optional Table, it will be necessary either to placard commodities not now placarded, i.e., ORM-E shipments moving under the IMCO system, or to provide special car handling and placement in the train (including showing to rest under E.O. #5) where the current regulations do not require such handling.

Concerning the display of identification numbers on placards, Southern stated:

An argument might be raised that the presence of the UN hazard class number on the lower corner of the placard obviates the need for the hazard class wording, but Southern submits that it does not. A verbal description of the hazard class is far more quickly and accurately recognizable than any code number could ever be. The use of words—commonly understood, requiring no code book to be read—makes it much more likely that a spill or discharge will be acted on properly, in both ordinary operations and emergency situations. This is especially true in instances where visibility is poor because of fog, darkness, or smoke, which would make small-sized numbers hard to see. E.G., even if some of the larger letters in the phrase "Explosives A" are obscured, the message as to the kind of danger is likely to be received by the reader. But if one digit of a UN number is obscured or misread, then the whole message is probably lost. * * * Displaying such identification numbers is a marking requirement, and any replacement should be a shipper's responsibility entirely. While Southern agrees that the placards (as opposed to panels) will have to be replaced, by carriers, we vigorously protest any requirement that railroads replace the missing "UN" placard. . . . The MTB should only require the carriers to replace the missing "UN" placard with the most appropriate placard currently used under the existing DOT rules.

Since the AAR and Southern petitions 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 scheduled a public hearing announced earlier in this publication 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 June 25, 1980.

L. D. Santman,
Director, Materials Transportation Bureau.

[FR Doc. 80-19709 Filed 6-27-80; 8:45 am]

BILLING CODE 4910-50-M