



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

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration; Materials
Transportation Bureau

49 CFR Parts 171 and 172

[Docket Nos. HM-126A, 145A, and 171;
Amdt. Nos. 171-153, 172-58]

Identification Numbers, Hazardous
Wastes

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

ACTION: Notice of public hearing and
request for comments.

SUMMARY: On June 30, 1980, Notice was
published in the Federal Register (45 FR
43761) announcing postponement of
voluntary compliance with new
provisions pertaining to the display of
identification numbers on placards and
the Optional Hazardous Materials
Table (§ 172.102). The Notice also
announced a public hearing scheduled
for July 31, 1980, and the closing date of
August 12, 1980, for receipt of written
comments.

Due to an administrative error, the
MTB failed to include in the Notice three
additional petitions that it believes
should be given full review with public
participation. The petitions address the
display of identification numbers and
the note to § 171.3(c) concerning the
transportation of hazardous wastes.

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

Written comments must be received
on or before August 12, 1980.

ADDRESSES: 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.
Metcalf (202-426-0656), 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
eight petitions for reconsideration
received, MTB believes that five
petitions raise matters of major
significance warranting further public
participation before any action is taken
concerning their disposition. Petitions
were received from the Association of
American Railroads (AAR) and the
Southern Railway System and were
quoted (all or in part) in the Notice
appearing in the Federal Register on
June 30, 1980 (45 FR 43761).

National Tank Truck Carriers, Inc.
(NTTC) filed two petitions for
reconsideration and the American
Trucking Associations, Inc. (ATA) filed
one petition addressing two issues.

Concerning the Hazardous Waste
regulations adopted under Docket HM-
145A, the NTTC stated, in part, the
following:

Briefly stated, NTTC holds that the "Note"
following subparagraph (3) of Paragraph (c)
within Section 171.3 is [within the context of
the Administrator's regulatory jurisdiction]
more restrictive than any comparable
element contained in the proposed docket
(Federal Register, Vol. 43, No. 102—Thursday,
May 25, 1978).

Thus, we can only conclude that the "Note"
violates the Department's own rules of
procedure.

As we read 171.3 (c) in the final rule, NTTC
must compare it to 171.3 (e) of the proposal,
in terms of the concept of preemption. In the
proposed rule, the Administrator (at 171.3 (e)
(3)) would have allowed some variance from
shipping paper format only to a state or
locality which was "part of an authorized
state hazardous waste management program
under 42 U.S.C. 6926".

In the instant notice, however, the "Note"
(at 171.3 (c) (3)) is simply an open-ended
provision which would allow any state to
vary from inferred uniformity of format or
contents of shipping papers. In fact, the
"Note" is an open invitation to states to write
their own shipping paper requirements.

Procedurally, NTTC holds that since the
Department's jurisdiction over interstate and
intrastate carriers of hazardous wastes is

virtually absolute; while its jurisdiction in
other transportation matters over states and
political subdivisions is most limited—any
liberalization of the latter becomes more
restrictive to the former.

Since the Department's current regulations
require carriers to comply with all (non-
preempted) state laws, ordinances, etc. "carte
blanche" authority to the states to impose
their own shipping paper requirements can
only be a greater regulatory burden on
carriers—a burden not contemplated in the
proposal.

In addition to the legalities of the question,
however, is the simple issue of needed
uniformity throughout the regulatory system.
In the most recent past, the Administrator
has demonstrated increased awareness of the
sensitivity to uniformity. We urge that this
philosophy be continued and that the "Note"
be stricken.

On the same topic, ATA stated the
following:

The purpose of Section 171.3(c) is to assure
that state and local government requirements
relative to the "Packaging, marking, labeling,
and placarding" of hazardous wastes as well
as the form and content of shipping
documents and discharge reports arising in
the movement of such materials are neither
inconsistent with the federal standards or are
applied differently from or in addition to the
federal standards. We agree with this rule.

The Note immediately succeeding this
section, however, exempts from the operation
of Section 171.3(c):

... any requirements of a state relative
to additional information that must be
provided by a generator to the operator of a
designated facility at or prior to the time of
delivery of, or with the shipment of, a
hazardous waste to that facility."

We remind MTB that Section 171.3(b)
imposes upon carriers engaged in the
transportation of hazardous wastes the
burden of assuring that the shipping manifest
is prepared in accordance with Section
172.205. This latter section, in turn, mandates
preparation of the shipping manifest in
accordance with the EPA's requirements, 40
C.F.R. 262.

Both MTB and EPA have each considered
the transportation of hazardous waste and
have ruled upon the requirements which must
be met in the transportation of these
materials. The rules which these two federal
agencies have promulgated are designed to
insure the safe and controlled transportation
of hazardous wastes and to do so in a way
which permits motor carriers to operate
uniformly regardless of the origin,
intermediate, or destination points of the
transportation.

The requirements adopted by MTB and
EPA appear to be sufficient, while imposing
the least burden upon the motor carrier
industry. This could not be said if the
exclusionary language of the Note is allowed to

become effective. It would provide each state with carte blanche to impose whatever additional requirements they chose without giving rise to any meaningful and additional safety benefit, as it is already presumed that the federal requirements assure the greatest level of safety governing the transportation of hazardous wastes. If, in fact, this is not the case, the federal requirements should be amended, but no additional state requirement, which would be at best surplusage, has yet been proven necessary. At the same time, additional, but boundless, state requirements will do much to result in confusion of and needless burdens upon, the motor carrier industry. Further, if a state would require of a generator additional information to the operator of a designated facility which would be unrelated to the safe transportation of the waste materials, the motor carrier should not be made to serve as a courier for the generator or state, unless the state requirement places no additional burden of handling or processing or other duties or liabilities upon the motor carrier.

The operational confusion and problems which could be brought about by differing federal and state requirements, or the application thereof, will greatly reduce the effectiveness of the hazardous waste manifest system. If, for example, a carrier is transporting waste through more than one state the additional state requirements would result in confusion and an undue burden on the carrier and the driver and adversely affect their ability to comply with the variety of requirements.

Uniform national regulations are essential to an expedient and safe transportation of hazardous waste from generator to the designated facility.

Accordingly, ATA urges MTB to reconsider its adoption of the Note immediately following paragraph 171.3(c), and that it strike the Note from the final rules adopted in Docket No. HM-145-A.

Concerning the display of identification numbers, the NTTC stated the following:

Specifically, NTTC urges reconsideration of the panel/placarding regulations found at 49 CFR 172.328, 172.332 and 172.336.

With the introduction of the United Nations Hazard Information Number, as specified in 172.332, an alternative HI number display was created at 172.334. The choice was: 1) use of existing diamond-shaped placards and the orange HI number panel (of specified dimension); or, 2) use of diamond-shaped placards with the HI number on the placard and no use of the panel.

NTTC believes that it is in the best interests of carriers and shippers for DOT to mandate exclusive use of the "number on placard" described at 172.334 and eliminate the separate number panel from the regulations.

Scrapping the HI panel would save thousands of dollars in panel holders, panels and installation costs. While NTTC does not have exact figures, our estimates indicate that 50,000-60,000 cargo tanks will be affected, of which 10,000 have multiple compartments. Therefore, assuming a breakdown of 50,000 single compartment trailers and 10,000 three compartment trailers we estimate that a total of 80,000 compartments will have to be fitted with a minimum of three panel holders. Since panel holders cost approximately \$5.00 each, we are looking at a cost parameter in the range of \$1,200,000.00.

When one adds in the labor costs for installation, estimated at \$7.00 per holder, we conclude that the total materials and labor costs to the tank truck industry will be \$2,800,000.00.

These estimates are based on the statistics found on page 160 of the COMMERCIAL CAR JOURNAL Fleet Survey Issue, June 1979 balanced against the number of flammable liquid trailers built since 1965 published by the Bureau of Census, U.S. Department of Commerce and released in 1979.

Another significant cost would accrue to the shipping community. Under 172.332 (as written), shippers are required to provide both HI panels and placards or numbered placards. The costs for one panel is about \$0.10 and three panels are required for each bulk shipment. The cost savings (if the HI panel were eliminated) would be approximately \$15,000,000.00 per year (assuming 50,000,000 bulk shipments, per year, in for-hire, private and interstate transportation).

We stress that these are minimum costs because (absent a change in these rules) cargo tanks would need a HI panel holder, a diamond-shaped placard holder, and, in many instances diamond-shaped flip signs. The unnecessary costs for carriers to provide for (and, for shippers to have in inventory) three different placard warning systems, are most significant.

Of course, these costs would be passed on to consumers in the retail prices because of the higher transportation costs involved.

In addition to cost savings, safety and the HI numbers' effectiveness will be improved. The correct number and correct hazard class placard will be in place because they are on one placard. Firemen and other emergency personnel will not be faced with a situation where mismatched HI panels and placards indicate Acetone as "1090" and as an "Oxidizer" (by shipper or carrier error).

The confusion and time delay could cause unnecessary injuries, fatalities and property damage. Additionally, the credibility and reliability of the system will come into question when such situations inevitably occur.

The use of placards with HI numbers will meet the needs of emergency response

personnel, reduce the potential for error and reduce costs to consumers.

The HI number panel, as proposed best, redundant; and, at worst, regula overkill. Therefore, NTTC prays that DOT will eliminate sections 172.328, 172.332 and those portions for 172.336 pertaining to HI Number Panels from the regulations (and references thereto).

Timing, of course, is critical. If this action is taken quickly, before shippers and carriers begin investing in the equipment and materials required for compliance, savings will be maximized.

The ATA added the following comment concerning the display of identification numbers to its petition pertaining to hazardous wastes:

On another matter, ATA has studied the position that the National Tank Truck Conference (NTTC) has taken in its June 20, 1980 letter to MTB regarding the use of the orange hazard identification panels (copy attached). ATA would like to go on record in support of the NTTC position relative to bulk shipment of hazardous materials. We believe, therefore, that DOT should act favorably towards the NTTC position.

Since the NTTC and ATA petitions, in addition to those of the AAR and the Southern Railway System, 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 taking final action. Therefore, MTB included them within the scope of the public hearing announced earlier 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 July 1, 1980.
L. D. Santman,

Director, Materials Transportation Bureau

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