As more fully explained below, RSPA does not believe that the decision to eliminate 49 C.F.R. 171.3(c) should be reversed.

The Federal Hazardous Materials Law

In 1975, Congress enacted the Hazardous Materials Transportation Act (HMTA) to provide DOT with greater authority to protect the Nation against the risks to life and property which are inherent in the transportation of hazardous materials. In 1990, the HMTA was amended by Congress' enactment of the Hazardous Materials Transportation Uniform Safety Act. In 1994, the provisions of the HMTA, as amended, were codified in the present-day Federal hazardous materials transportation law, which includes provisions setting out an all-inclusive, comprehensive preemption program. Under the preemption authority, DOT may issue binding Federal preemption determinations in all areas of hazardous materials transportation, including hazardous waste.

The law now specifies ''covered subjects'' with which State, local, and tribal requirements are required to be ''substantively the same.'' These ''covered subjects'' include shipping papers, packaging, marking, labeling, placarding and written reports of hazardous materials releases. The ''covered subjects'' preemption provisions have obviated the necessity to maintain a separate regulatory provision which addresses only hazardous waste.

Analysis/Decision

The Petition's first argument in support of the request for reconsideration is that RSPA's September 24, 1995 Notice of Proposed Rulemaking (NPRM) failed to provide notice of its proposal to delete 49 C.F.R. 171.3(c). The Petition also states that RSPA received no support for the deletion from the commenters who responded to the NPRM. Although the preamble did not address this issue, the NPRM did expressly propose deletion of 49 C.F.R. 171.3(c) in the proposed rule text of the NPRM. (60 FR 47734). Comments opposing the proposed deletion were considered; however, for the reasons stated in the preamble to the May 9, 1996 final rule and in this letter, RSPA believes that deletion of 49 C.F.R. 171.3(c) is appropriate.

Second, the Petition cites 49 CFR 171.3(c) as historically serving as a basis for voluntary harmonization of non-Federal requirements with Federal requirements. Absent voluntary harmonization, the Petition's third point of consideration is an argument that RSPA has cited the regulation in every binding preemption determination concerning hazardous waste. RSPA does not dispute the historical usefulness of 49 CFR 171.3(c) for harmonizing non-Federal hazardous waste requirements with Federal requirements. However, RSPA believes that utilization of the ''covered subjects'' preemption authority in the Federal hazardous materials transportation law facilitates harmonization of non-Federal requirements with Federal law. This preemption language goes far beyond the limited provisions of 49 CFR 171.3(c).

As a fourth and final point, the Petition argues that deletion of the regulation undermines Congress' directive that a uniform program of regulation be utilized for the transportation of hazardous waste.

RSPA agrees that Congress has called for a uniform Federal program for the regulation of hazardous waste transportation.

RSPA believes that because deletion of 49 CFR 171.3(c) removes hazardous waste as a separate area of consideration, deletion of this regulation achieves Congress' goal of implementing a uniform, comprehensive system of regulation of hazardous waste transportation. As noted previously, the preemption provisions of the Federal hazardous materials transportation law address all issues pertaining to transportation of hazardous materials, including hazardous waste.

For the foregoing reasons, your petition for reconsideration is denied.

Sincerely,

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Issued in Washington, D.C., on September 20, 1996, under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–24715 Filed 9–30–96; 8:45 am]

BILLING CODE 4910–60–P

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49 CFR Part 172

[Docket HM–222B; Amdt. No. 172–149]

RIN 2137–AC76

Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review; Responses to Petitions for Reconsideration

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

ACTION: Final rule; Responses to petitions for reconsideration.

SUMMARY: RSPA is publishing two letters in which it denied petitions for reconsideration on provisions of a May 30, 1996, final rule dealing with reducing the requirements pertaining to training frequency and emergency response telephone numbers.

DATES: The effective date for the final rule published under Docket HM–222B on May 30, 1996 (61 FR 27166) remains October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, or Karin V. Christian, (202) 366–4400, Office of the Chief Counsel, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On May 30, 1996, RSPA published a final rule under Docket HM–222B (61 FR 27166) which amended the Hazardous Materials Regulations (HMR) based on its review of the HMR and on written and oral comments received from the public concerning regulatory reform. These changes included reducing the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers. RSPA's review of the HMR was based on the March 4, 1995, memorandum from President Clinton calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. The effective date of the rule was October 1, 1996, but immediate compliance was authorized.

RSPA has received three petitions for reconsideration in regard to the amendments made under Docket HM–222B. Two of the petitioners, the Air Transport Association of America and the Air Line Pilot Association (ALPA), requested that RSPA reconsider its decision to decrease the recurrent training requirements from two to three years. The Air Transport Association and ALPA requested that, for shippers of hazardous materials by air, the training frequency be increased from three years to one year. The other petitioner, the American Trucking Association, requested that RSPA reconsider its decision to grant exceptions from the 24-hour emergency response telephone number requirement for limited quantities and specific materials, such as engines, internal combustion. On September 20, 1996, RSPA denied the petitions for reconsideration in letters which have been sent to each petitioner. This document publishes verbatim the letters of denial as follows:

Response to American Trucking Associations

September 20, 1996.

Mr. Paul Bomgardner,

Hazardous Materials Specialist, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314–4677

Dear Mr. Bomgardner: This letter responds to your July, 18, 1996, Petition for Reconsideration (Petition) regarding a provision of the Final Rule issued under Docket HM–222B, published in the Federal Register on May 30, 1996, at 61 FR 27166. The Petition requests that the Research and Special Programs Administration (RSPA) reconsider the decision to amend 49 CFR 172.604 to except additional materials from the requirement to have a 24-hour emergency response telephone number.

The final rule in Docket HM–222B excepted the following materials from the requirement to have a 24-hour emergency response telephone number: limited quantities of hazardous materials; and

materials described under the shipping names ''Engines, internal combustion''; ''Battery powered equipment''; ''Battery powered vehicle''; ''Wheelchair, electric''; ''Carbon dioxide, solid''; ''Dry ice''; ''Fish meal, stabilized''; ''Fish scrap, stabilized''; ''Castor bean''; ''Castor meal''; ''Castor flake''; ''Castor pomace''; and ''Refrigerating machine''. This change is effective October 1, 1996; however, voluntary compliance with this change, and the other amendments made under Docket HM–222B to the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180 was authorized as of May 30, 1996.

The basis for the Petition was that the exception would create a ''training nightmare'' and possibly promote non-compliance. The Petition went on to say that drivers and stock workers will have to memorize the list of materials and proper shipping names listed in § 172.604 and that this change will causes additional burdensome training which only tends to add confusion to the regulations and costs to compliance.

RSPA acknowledges that the exceptions from the 24-hour emergency response telephone number adopted under Docket HM–222B may cause a minimal increase in the training costs of carriers of hazardous materials. However, this cost is far outweighed by the cost savings to shippers of hazardous materials who do not have to maintain a 24-hour emergency response telephone number. RSPA notes that many of the materials, such as ''Engines, internal combustion,'' which have been excepted from this requirement present a very limited hazard in transportation. Other materials excepted from this requirement, such as dry ice, are not subject to the HMR when transported by highway and are currently being transported without emergency response information accompanying the shipments. The exceptions provided in this final rule only apply to the maintenance of a 24-hour telephone number. Shipments subject to the HMR which are transported by highway would still be accompanied by shipping papers and emergency response information. Motor carriers, therefore, will still have access to appropriate initial actions to mitigate incidents. Based on the foregoing, RSPA is denying ATA's petition to rescind the amendment dealing with exceptions from the 24-hour emergency response telephone number requirement.

Sincerely,

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Response to Air Transport Association of America and Air Line Pilots Association

September 20, 1996

Captain Larry Farris,

Chairman, Dangerous Goods Committee, Air Line Pilots Association, Post Office Box 1189, Herndon, VA 22070

Mr. Frank J. Black,

Director, Cargo Services and Secretary, Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC 20004–1707.

Dear Messrs. Farris and Black: The Research and Special Programs Administration (RSPA) denies your petitions for reconsideration on the provisions in RSPA's final rule in Docket HM–222B that decreased the training frequency for hazmat employees from two to three years.

The final rule in Docket HM–222B decreases the training frequency for hazmat employees from two to three years (49 CFR 172.704). See 61 FR 27166 (May 30, 1996). This change is effective October 1, 1996; however, voluntary compliance with this change, and the other amendments made under Docket HM–222B to the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, was authorized as of May 30, 1996.

On June 21, 1996, the Air Transport Association of America (ATA) and on June 28, 1996, the Air Line Pilot's Association (ALPA) petitioned RSPA to rescind its decision to decrease the recurrent training requirements from two to three years. The ATA and ALPA requested that, for shippers of hazardous materials by air, the training frequency be increased from three years to one year. The ATA stated that: ''[w]e feel strongly that reducing the training frequency will adversely affect safety. It is common knowledge that many unsophisticated shippers do a very poor job of training today. The extension of time will only make it worse.'' The ATA went on to say that it is important that training and awareness of the HMR be properly reinforced at every opportunity. ALPA stated that it believes that RSPA has compromised public safety by extending the training cycle to three years and that it has elected wrongly to divert from the international regulations. ALPA went on to say that the transportation environment by air is different than other modes and that it is very important that those persons shipping and/or offering hazmat have knowledge and current recent awareness of potential dangers which hazardous materials may pose while being transported in this environment.

RSPA stated in the preamble to the final rule that one of the most important regulatory requirements in the HMR is its training requirements. Proper training increases a hazmat employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials. An effective training program reduces hazardous materials incidents resulting from human error and mitigates the effects of incidents when they occur. In the final rule, RSPA went on to say that the ''importance of RSPA's training requirements is not diminished by a decrease in the frequency of training from two to three years.''

We do not believe that safety has been compromised by decreasing the training frequency from two to three years. Under the training requirements in the HMR, any person who performs a function subject to the HMR may not perform that function unless trained in accordance with the requirements that apply to that function. In addition, a hazmat employer must ensure that each hazmat employee is thoroughly instructed in the requirements that apply to functions performed by that employee. If RSPA adopts a new regulation, or changes an existing regulation, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function-specific requirements without regard to the three year training cycle. It is not necessary to completely retrain the employee sooner than the required three year cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. For example, if a new requirement is added to the shipping paper requirements, a hazmat employee must be instructed regarding the new requirement prior to preparation of a shipping paper or performance of a similar function affected by the new or revised rule. It is not necessary to test the hazmat employee or retain records of the instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle. Under HM–222B, RSPA revised the training rules to make it clear that RSPA does not intend that millions of detailed records be created and retained and associated testing be conducted each time a hazmat employee is instructed in regard to a change in the regulations within the three year cycle.

RSPA also does not believe that it was wrong to divert from the international regulations by decreasing the training frequency from two to three years. The decrease in training frequency for persons who offer for transportation and transport hazardous materials in domestic transportation does not in any way impede international transportation. A person who complies with the international requirement to retrain every two years will also satisfy the domestic requirement to retrain every three years.

The ATA and ALPA petitions exceed the scope of the Docket HM–222B rulemaking, which involved changing a two-year training cycle to a three-year training cycle. The petitions also fail to explain whether or how the proposed air transportation requirement would apply to shippers that offer for transportation by both air transportation and one or more other modes of transportation. The multi-modal impact, as well as cost/benefit ramifications, of this proposal deserves public notice and comment.

RSPA believes that there are alternatives to a regulatory requirement that will enhance the safety of hazardous material transported by air. We are distributing informational brochures to educate the flying public. We are also preparing a video to better inform shippers of the requirements for hazardous materials transported by air. Finally, we will be expanding our training efforts for shippers, carriers, and Federal enforcement personnel.

In conclusion, neither ATA nor ALPA provided any information that would warrant changing the frequency of training from three years to one year. Furthermore, you have not demonstrated that the benefits of your proposal would outweigh the costs. If you have additional information, we request that you provide it in a petition for rulemaking. Our rules on petitions for rulemaking are found in § 106.31. These rules were amended in a Final Rule published on June 14, 1996 (61 FR 30175).

Sincerely,

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Issued in Washington, DC on September 20, 1996, under the authority delegated in 49 CFR part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–24714 Filed 9–30–96; 8:45 am]

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49 CFR Part 172 and 173

[Docket HM–220A; Amdt Nos. 172–150 and 173–258]

RIN 2137–AC59

Periodic Inspection and Testing of Cylinders; Response to Petitions for Reconsideration, Clarification and Editorial Correction

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

ACTION: Final rule; response to petitions for reconsideration, clarification and editorial correction.

SUMMARY: On May 28, 1996, RSPA published a final rule under Docket HM–220A which amended the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for the transport of compressed gases in commerce. The intent of these changes was to enhance public safety by clarifying the regulations for those persons who perform periodic inspection and testing of these cylinders. This final rule responds to petitions for reconsideration, further clarifies the regulations for cylinder retest, and makes minor editorial corrections.

EFFECTIVE DATE: The effective date of these amendments is October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Theresa Gwynn, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On May 28, 1996, RSPA published a final rule under Docket HM–220A (61 FR 26750) that revised the HMR by clarifying current inspection and retest requirements for compressed gas cylinders used to transport hazardous materials in commerce. The final rule also incorporated certain long-standing regulatory interpretations, and added several new provisions. RSPA received four petitions for reconsideration of provisions in the final rule. These petitions were from representatives of compressed gas suppliers and fire extinguisher manufacturers, including petitions from the National Propane Gas Association (NPGA) and the Fire Equipment Manufacturers Association (FEMA). In this document, RSPA responds to these petitions, clarifies two additional provisions and corrects three editorial errors.

Petitions Granted

Retest Intervals for Fire Extinguishers using CO_2

FEMA and another petitioner requested that RSPA reconsider the language adopted in § 173.34(e)(19)(ii). Both petitioners stated that the revisions could be easily misconstrued to allow DOT 3A, 3AA, and 3AL cylinders used as fire extinguishers to be retested at a 12-year interval ''regardless of their lading'' instead of a 5-year interval. In addition, they stated that because fire extinguishers containing carbon dioxide or certain carbon dioxide mixtures may be corrosive to cylinders, a 12-year retest is insufficient to detect possible corrosion before an unsafe condition might occur.

It is not RSPA's intent for a cylinder containing a corrosive extinguishing agent to be granted a 12-year periodic inspection and retest, nor is it authorized in the final rule. Section 173.34(e)(19) specifically states that ''[a] DOT specification cylinder used as a fire extinguisher in compliance with § 173.309 may be retested in accordance with this paragraph (e)(19).'' Under § 173.309, cylinders used for fire extinguishers may only contain extinguishing agents that are nonflammable, non-poisonous, *non-corrosive and commercially free from corroding components,* and must be charged with nonflammable, nonpoisonous, *dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of corroding components.*

RSPA stated in the preambles to the notice of proposed rulemaking (60 FR 54008; October 18, 1995) and the final rule that any fire extinguisher containing a fire extinguishing medium or propellant gas not meeting the requirements in § 173.309(b) (1) and (2) may not be shipped under those provisions. Therefore, they do not qualify under § 173.34(e)(19) for the 12-year retest interval. For greater emphasis, RSPA is adding Special provision 18, in column 7, for the entry ''Fire extinguishers *containing compressed or liquefied gas*'' in the Hazardous Materials Table. This special provision is added in § 172.102 and contains the lading restriction currently found in § 173.309(b). It further provides that any lading not conforming to these requirements, including mixtures of 30% or more carbon dioxide by volume, must be described by a proper shipping name other than ''Fire extinguishers *containing compressed or liquefied gas*''. In § 173.309(b) paragraph (b) (1), (2), and (3) are removed, and the introductory text is revised for consistency with this change.

Computing Wall Stress for Overfill Authorization

In the final rule, RSPA adopted an option in Note 3 of § 173.302(c)(3) to provide an alternative for the determination of average wall stress limitation through the computation of the Elastic Expansion Rejection limit (REE) by using CGA Pamphlet C–5. A petitioner wrote RSPA in regard to a May 20, 1991, letter of interpretation from the Office of Hazardous Materials Standards (RSPA) which stated, ''* * * an elastic expansion rejection limit marked on a cylinder may be used to comply with § 173.302(c)(3).'' Upon further review, RSPA is allowing the use of REE values computed in accordance with CGA Pamphlet C–5 or marked on cylinders by the manufacturer. This change is incorporated in Note 3.

Petition Denied

Request for Adoption of NPGA Safety Bulletin 118 as an Alternative Standard for Visual Inspection

In the May 28 final rule, RSPA adopted and updated, as material incorporated by reference, several Compressed Gas Association (CGA) Pamphlets. Among these, CGA Pamphlet C–6, ''Standards for Visual Inspections of Steel Compressed Gas Cylinders'', was updated from the 1984 to the 1993 edition.

The NPGA petitioned RSPA to reconsider the language in § 173.34(e)(3) and (10), requiring cylinders to be visually inspected, internally and externally, in accordance with CGA Pamphlet C–6. NPGA stated:

The present provisions of § 173.34(e)(10) read as follows:

(10) Cylinders made in compliance with the specifications listed in the table below and used exclusively in the service indicated may, in lieu of the periodic hydrostatic retest, be given a complete external visual inspection at the time such periodic retest becomes due. External visual inspection as described in CGA Pamphlet C–6 will, in addition to the following requirements prescribed herein, meet the requirements for visual inspection. When this inspection is