

706.302-71 [Amended]

9a. In section 706.302-71, paragraph (a)(2) is amended by removing "726.101" wherever it appears and replacing it with "726.7002", and paragraph (b) is amended by removing "726.103" and replacing it with "726.7004".

715.605 [Corrected]

4. On the same page in the third column, in amendatory instruction 15, insert "and 715.605 is reserved" after "removed".

716.501 [Corrected]

5. On page 39092, in the first column, in amendatory instruction 18, insert "and Subpart 716.5 is reserved" after "removed".

722.103 [Corrected]

6. In the second column on the same page, amendatory instruction 26 is corrected to read as follows:

26. The heading "722.103-70 Compensatory time off." is removed and Sections 722.103-2 and 722.103-4 respectively, and section 722.103-3 is added and reserved.

726.101-726.310 [Corrected]

7. On page 39093, in the third column, in the chart under amendatory instruction 37, insert "726.302" below "726.301 under "Old section", and "726.7008" below "726.7007" under "New section"; in instruction 37a, "Subpart 726.2 is" is corrected to read "Subparts 726.2 and 726.3 are".

733.103-71 [Corrected]

8. On page 39094, in the third column, under section 733.103-71, in paragraph (b) on the third line, "33.103(b)(3)" is corrected to read "33.103(d)(2)", and in paragraph (c) on the first line, "protestor" is corrected to read "protester".

733.103-72 [Corrected]

9. On the same page and column, in section 733.103-72, paragraph (b) is corrected to read as follows:

(b) Contracting Officer. The Contracting Officer is responsible for requesting an extension of time for acceptance of offers as described in FAR 33.103(f)(2).

733.27 [Corrected]

10. On page 39095, in the first column, in amendatory instruction 44 on the fourth line, "733.2701" and "733.2702" are corrected to read "733.270-1" and "733.270-2" respectively.

PART 737.2—CORRECTED

11. On the same page and column, in amendatory instruction 46, insert "and Part 737 is reserved" after "removed".

752. 7028 [Corrected]

12. On page 39096, in the second column, in lines six and seven of amendatory instruction 58, "living quarters allowance" is corrected to read "temporary quarters allowance".

Dated: September 18, 1996.

Marcus L. Stevenson,
Procurement Executive.

[FR Doc. 96-25059 Filed 9-30-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 171**

[Docket HM-207C, Amdt. No. 171-141]

RIN 2137-AC63

Exemption, Approval, Registration and Reporting Procedures; Miscellaneous Provisions

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

ACTION: Response to petition for reconsideration.

SUMMARY: RSPA is publishing a letter in which it denied a petition for reconsideration of a provision in the final rule in the HM-207C proceeding which revised procedures for applying for exemptions and established procedures for applying for approvals, and registering and filing reports with RSPA. That provision deleted a paragraph that specified when State or local hazardous waste requirements would be preempted.

EFFECTIVE DATE: The effective date for the final rule published under Docket HM-207C on May 9, 1996 (61 FR 21084) remains October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Stokes Molinar, Office of the Chief Counsel, (202) 366-4400, or Diane LaValle, Office of Hazardous Materials Standards, (800) 467-4922, RSPA, US Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590-0001.

SUPPLEMENTARY INFORMATION: On May 9, 1996, RSPA published a final rule which amended the Hazardous Materials Regulations by changing and clarifying RSPA's procedures and requirements for its exemptions, approvals, registration, reporting,

preemption, and enforcement procedures and programs. These changes and clarifications included a modification of 49 CFR 171.3 pertaining to hazardous waste.

RSPA deleted 49 CFR 171.3(c) concerning preemption of State or local hazardous waste transportation requirements. That section preempted a requirement if it applied because the material in issue was a waste material and if the non-Federal requirement applied differently from, or in addition to, the HMR requirements concerning packaging, marking, labeling, or placarding, format or contents of discharge reports, and format or contents of shipping papers (including hazardous waste manifests).

RSPA received one petition for reconsideration of this issue. On September 20, 1996, RSPA denied the petition for reconsideration in a letter which has been sent to the petitioner. This document publishes verbatim the letter of denial as follows:

September 20, 1996.

Mr. Charles Dickhut,

Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, Virginia 22314

Dear Mr. Dickhut: This letter responds to your May 22, 1996 Petition for Reconsideration (Petition) regarding a provision of the Final Rule issued under Docket HM-207C, published in the Federal Register on May 9, 1996, at 61 FR 21084. The Petition requests that the Research and Special Programs Administration (RSPA) reconsider the decision to delete 49 C.F.R. 171.3(c), which provided that certain requirements of a State or political subdivision pertaining to hazardous waste which applied differently from, or were in addition to, the Federal requirements would be found to be inconsistent with the Federal requirements.

The Petition is based upon four considerations. First, you state that "no mention, let alone justification, of RSPA's intent to delete the provision was included in the notice of proposed rulemaking on docket HM-207C," and you further state that "no support was voiced for this amendment. On the other hand, several comments asked that the provision be retained." Second, you state that 49 C.F.R. 171.3(c) has served as regulatory support for voluntary harmonization of non-Federal requirements with Federal requirements. Third, you contend that where voluntary harmonization has not been achieved, 49 C.F.R. 171.3(c) has been relied upon and cited by RSPA in each binding preemption determination issued since 1990 which has dealt exclusively with hazardous waste. Fourth, you assert that deletion of 49 C.F.R. 171.3(c) undermines the Congressional mandate for implementation of a uniform program of regulation for the transportation of hazardous waste.

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.

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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