

## **Hazmat Transport Training for Railroad Workers Required Under Rule Redefining Hazmat 'Employee'**

Railroads will have to provide hazardous material training for some 7,000 additional employees under a Pipeline and Hazardous Materials Safety Administration final rule published Dec. 9 (70 Fed. Reg. 73,156).

The rule broadens the definition of hazardous material "employee" and "employer" and specifies railroad signalmen and maintenance-of-way employees as covered by the new definition.

The final rule revises the agency's hazardous materials rules to reflect the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, or the federal highway bill. The bill was signed into law Aug. 10 by President Bush.

The agency rule redefines hazmat employees and employers and increases the time carriers and shippers must keep shipping papers, in line with the highway bill. It also adjusts the agency's jurisdiction so that if a mailed package is an imminent hazard, hazmat rules will apply.

The rule was issued as a final rule without notice or comment because the amendments originate within the highway bill and are mandated and self-executing, according to the agency. For the most part, the changes become effective Jan. 9, 2005.

The agency did make an exception to the Jan. 9 effective date, allowing railroads until Oct. 1, 2006, to train maintenance-of-way employees and railroad signalmen as required under the new final rule.

### **New Definition of Hazmat Employer**

The final rule defines a hazmat employer as a person "who employs or uses at least one hazmat employee on a full-time, part time, or temporary basis."

Previously, the rule had indicated employers were only required to provide training to individuals they employed. Now they could be required to provide hazmat training to other individuals.

It is possible that the rewriting of the final rule could increase the number of individuals who must receive hazmat training, Larry Bierlein, general counsel to the Association of Hazardous Material Shippers, told BNA Jan. 9.

"It muddies the waters," he said. Providing an example, Bierlein said that under the final rule, it is possible to imagine that an employer that hires someone to mow the lawn using gasoline, a hazardous material, could be required to give hazmat training to the individual. Before, it was clear that the person needed to employ the individual before training could be required.

### **Training for Railroad Workers**

Under the new rule, maintenance-of-way and railroad signalmen will receive general safety and security awareness hazardous material training. The agency estimates the cost of training to the railroads at \$462,000, with retraining costs averaging \$154,000 annually.

However, the railroad maintenance-of-way employees and signalmen are not required to receive "function-specific training" on hazardous materials because they do not perform functions specifically regulated under the rules. Function-specific training might include appropriate packing instructions for certain hazardous materials or understanding certain U.N. hazardous material numbers.

The agency also exempts railroad maintenance-of-way and signalman from hazmat security training because it is not mandated by the highway bill. It says, however, that it may require such training of employees in a future rulemaking.

### **Papers, Postal Laws, and Special Permits**

The rule also reflects highway bill changes that will have carriers retain a copy of a shipping paper for one year after the date they receive the paper, and requires shippers to retain a copy of the shipping paper for two years.

The final rule also reworks the jurisdiction of the hazardous material rules, so that in the case that a mail package is an "imminent hazard," the hazardous material rules and postal regulations will govern the package. Prior to the change, the hazardous material rules did not cover matters governed by the postal law.

The agency also changed the term "exemption" to "special permit." Special permits allow carriers and shippers exemptions from the hazmat rule, as long as sufficient safety guards are established.  
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