

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 172**

[Docket No. HM-145K; Amdt Nos. 171-133; 172-141]

RIN 2137-AC71

Hazardous Substances

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

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the "List of Hazardous Substances and Reportable Quantities" which appears in an appendix to the Hazardous Materials Table. This action is necessary to comply with the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) to mandate that RSPA regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA). The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances, thereby enabling them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA finds that under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

DATES: This amendment is effective on February 2, 1996. However, immediate compliance with the regulations as amended herein is authorized.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366-8553, Office of Hazardous Materials Standards, or George Cushmac (202) 366-4545, Office of Hazardous Materials Technology, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA). Call the RCRA/Superfund hotline at (800) 424-9346 or, in Washington, DC, (202) 382-3000.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 202 of SARA (Pub. L. 99-499) amended Section 306(a) of CERCLA (Pub. L. 96-510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101-5127). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law. 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a) as amended by Section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQ's, before RSPA can amend its list of hazardous substances. In the preamble to the final rule on this subject issued under Docket HM-145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.

This document adjusts the "List of Hazardous Substances and Reportable Quantities" that appears in Appendix A to § 172.101, based on a final rule EPA published on June 12, 1995 (60 FR 30926) which added 47 hazardous air pollutants, designated by the 1990 Clean Air Act (CAA) Amendments to the list of hazardous substances, and adjusted the RQ's for 8 hazardous wastes codes.

To keep its "List of Hazardous Substances and Reportable Quantities" consistent with EPA's list of CERCLA hazardous substances and reportable quantities, RSPA is amending the HMR in accordance with EPA's final rule. In addition, RSPA is making one non-substantive editorial change to the definition of "Hazardous substance" in § 171.8 by identifying completely the petroleum exclusion for hazardous substances as defined in 40 CFR 300.5.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to

make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements at 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard at 33 CFR 153.203.

II. Regulatory Analyses and Notices

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), RSPA has determined that a notice of proposed rulemaking and an opportunity for public comment and review are impracticable and unnecessary. SARA mandates that the Department of Transportation list and regulate, as hazardous materials under 49 CFR Parts 171-180, hazardous substances designated by EPA under CERCLA. EPA is the sole agency authorized to designate hazardous substances and their reportable quantities. Therefore, public comment and review are unnecessary because: (1) The public was afforded time to comment when EPA published its notice of proposed rulemaking concerning that agency's change in the subject RQ's; and (2) RSPA does not have the authority to designate hazardous substances or determine their reportable quantities.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous materials that cover certain covered subjects and are substantially the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the designation of hazardous materials. This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. Section 5125(b)(1) of title 49 U.S.C. provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be February 2, 1996. This rule is mandated by CERCLA, and does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous substances, some of which are small entities; however, the economic impact of this rule is minimal.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

Issued in Washington, DC on July 25, 1995, under authority delegated in 49 CFR Part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

In consideration of the foregoing, Parts 171 and 172 of Title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.8, in the definition of “Hazardous substance”, the concluding text following the table is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Hazardous substance * * *

The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Appendix A to § 172.101 of this subchapter, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

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PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In Appendix A to § 172.101, Table 1 is amended by removing, revising and adding in alphabetical order the following entries to read as follows:

Appendix A to § 172.101—List of Hazardous Substances and Reportable Quantities

* * * * *

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
[REMOVE]		
Benzene, dimethyl	Xylene (mixed)	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
Cresol(s)	Cresylic acid	1000 (454)
m-Cresol	Phenol, methyl- m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Cresylic acid	Cresols	1000 (454)
m-Cresol	Phenol, methyl- m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Phenol, methyl	Cresol(s)	1000 (454)
	Cresylic acid.	

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
m-Cresol	m-Cresylic acid.	
o-Cresol	o-Cresylic acid.	
p-Cresol	p-Cresylic acid.	
Xylene (mixed)	Benzene, dimethyl	1000 (454)
m-Benzene, dimethyl	m-Xylene.	
o-Benzene, dimethyl	o-Xylene.	
p-Benzene, dimethyl	p-Xylene.	
[REVISE]		
* * *	* * *	*
DDE	4,4'-DDE	5000 (2270)
4,4'-DDE	DDE	5000 (2270)
D023 o-Cresol		100 (45.4)
D024 m-Cresol		100 (45.4)
D025 p-Cresol		100 (45.4)
D026 Cresol		100 (45.4)
F004		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		100 (45.4)
K088		10 (4.54)
Spent potliners from primary aluminum reduction.		
K090		10 (4.54)
Emission control dust or sludge from ferrochromiumsilicon production		
K091		10 (4.54)
Emission control dust or sludge from ferrochromium production		
* * *	* * *	*
[ADD]		
* * *	* * *	*
Acetamide		100 (45.4)
4-Aminobiphenyl		1 (0.454)
o-Anisidine		100 (45.4)
Benzene, dimethyl-	Xylene; Xylene (mixed); Xylenes (isomers and mixtures)	100 (45.4)
Benzene, m-dimethyl-	m-Xylene	1000 (454)
Benzene, o-dimethyl-	o-Xylene	1000 (454)
Benzene, p-dimethyl-	p-Xylene	100 (45.4)
Biphenyl		100 (45.4)
1,3-Butadiene		10 (4.54)
Calcium cyanamide		1000 (454)
Caprolactam		5000 (2270)
Carbonyl sulfide		100 (45.4)
Catechol		100 (45.4)
Chloramben		100 (45.4)
Chloroacetic acid		100 (45.4)
2-Chloroacetophenone		100 (45.4)
Chloroprene		100 (45.4)
Cresols (isomers and mixture)	Cresylic acid (isomers and mixture) Phenol, methyl-	100 (45.4)
m-Cresol	m-Cresylic acid	100 (45.4)
o-Cresolo	-Cresylic acid	100 (45.4)
p-Cresol	p-Cresylic acid	100 (45.4)
Cresylic acid (isomers and mixture)	Cresols (isomers and mixture); phenol, methyl-	100 (45.4)
m-Cresylic acid	m-Cresol	100 (45.4)
o-Cresylic acid	o-Cresol	100 (45.4)
p-Cresylic acid	p-Cresol	100 (45.4)
Diazomethane		100 (45.4)
Dibenzofuran		100 (45.4)
Diethanolamine		100 (45.4)
N,N-diethylaniline		1000 (454)
Diethyl sulfate		10 (4.54)
N,N-dimethylaniline		100 (45.4)
Dimethylformamide		100 (45.4)
1,2-Epoxybutane		100 (45.4)
Ethylene glycol		5000 (2270)
Hexamethylene-1,6-diisocyanate		100 (45.4)
Hexamethylphosphoramide		1 (0.454)

TABLE 1.—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES—Continued

Hazardous substance	Synonyms	Reportable quantity (RQ) pounds (kilograms)
Hexane .....	.....	5000 (2270)
Hydroquinone .....	.....	100 (45.4)
MDI	Methylene diphenyl diisocyanate	5000 (2270)
4,4'-Methylenedianiline .....	.....	10 (4.54)
Methylene diphenyl diisocyanate	MDI	5000 (2270)
Methyl tert-butyl ether .....	.....	1000 (454)
4-nitrobiphenyl .....	.....	10 (4.54)
n-Nitrosomorpholine .....	.....	1 (0.454)
Phenol, methyl-	Cresols (isomers and mixture); Cresylic acid (isomers and mixture).	100 (45.4)
p-Phenylenedimine .....	.....	5000 (2270)
beta-Propioaldehyde .....	.....	1000 (454)
Propoxur (baygon) .....	.....	100 (45.4)
Styrene oxide .....	.....	100 (45.4)
Titanium tetrachloride .....	.....	1000 (454)
Trifluralin .....	.....	10 (4.54)
2,2,4-Trimethylpentane .....	.....	1000 (454)
Vinyl bromide .....	.....	100 (45.4)
Xylene	Benzene, dimethyl-; Xylene (mixed); Xylenes (isomers and mixture).	100 (45.4)
m-Xylene	Benzene, m-dimethyl-	1000 (454)
o-Xylene	Benzene, o-dimethyl-	1000 (454)
p-Xylene	Benzene, p-dimethyl-	100 (45.4)
Xylene (mixed)	Benzene, dimethyl-; Xylene; Xylenes (isomers and mixture)	100 (45.4)
Xylenes (isomers and mixture)	Benzene, dimethyl-; Xylene; Xylenes (mixed)	100 (45.4)
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