

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 172****[Docket No. RSPA-2002-11675 (HM-145M)]****RIN 2137-AD65****Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities****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" that appears in the table, "Hazardous Substances other than Radionuclides". This action is required by the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). These laws require RSPA to regulate all hazardous substances designated by the Environmental Protection Agency (EPA). This final rule will enable shippers and carriers to identify the affected CERCLA hazardous substances, comply with all applicable HMR requirements, and make the required notifications if a discharge of a hazardous substance occurs.

DATES: This amendment is effective on October 1, 2002. However, immediate compliance with the regulations as amended in this final rule is authorized.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen (202) 366-8553, Office of Hazardous Materials Standards, 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) at the RCRA/Superfund hotline at (800) 424-9346 or, in Washington, DC, (202) 382-3000.

SUPPLEMENTARY INFORMATION:**Background**

Section 202 of SARA (Public Law 99-499) amended Section 306(a) of CERCLA (Public Law 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). The Research

and Special Programs Administration (RSPA, we) 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, we have 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. RSPA did not issue a notice of proposed rulemaking prior to issuing this final rule. RSPA lacks discretion concerning the regulation of hazardous substances under the HMR, therefore, under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

Therefore, under the CERCLA scheme, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to a 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 final rule adjusts the "List of Hazardous Substances and Reportable Quantities" that appears in Table 1 of Appendix A to § 172.101, based on the following EPA final rules that added or removed entries to the EPA table—List of Hazardous Substances and Reportable Quantities under CERCLA in 40 CFR 302.4:

(1) March 17, 2000, rule (65 FR 14472) removed two listings (2,4,6-Tribromophenol and K140);

(2) November 8, 2000, rule (65 FR 67068) added two waste codes generated from the chlorinated aliphatics industry (K174 and K175); and

(3) November 20, 2001, rule (66 FR 57258) added three waste codes from petroleum refining (K176, K177 and K178).

In addition, this final rule corrects several errors to the "List of Hazardous Substances and Reportable Quantities" that appears in Table 1 of Appendix A to § 172.101:

(1) The group of waste codes (K156, K157, K158, K169, K170, K171, and K172) that appear in the table under "2,4,6-Tribromophenol" is moved to the

end of the list with the other K waste codes; and

(2) The RQs for "Chloromethyl methyl ether", "Dichloromethyl ether", "Methane, chloromethoxy-" and "Methane, oxybis(chloro-" from 1 pound to 10 pounds.

This final rule will enable shippers and carriers to identify CERCLA hazardous substances, comply with all applicable HMR and EPA requirements, and make 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 under 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard under 33 CFR 153.203.

Regulatory Analyses and Notices*A. 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). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not adopt any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to

hazardous materials and requirements related to the number, contents, and placement of those documents;

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

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), and (3) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This rule is required by law. Federal hazardous materials transportation law provides at Sec. 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The 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. The effective date of Federal preemption for these requirements is June 3, 2002.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments, does not impose substantial direct compliance costs, and is required by law, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking. Because this rule was not preceded by an NPRM, no assessment is required. EPA addressed the Regulatory Flexibility Act when it made the hazardous substances designations and changes reflected in this rule.

E. Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

F. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

The revisions in this final rule to the list of hazardous substances regulated under the HMR are based on EPA rulemakings that modified the EPA list of hazardous substances and reportable quantities required by CERCLA. Readers should consult the EPA rulemaking dockets for detailed information on the expected environmental impacts of these changes.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, part 172 of the Code of Federal Regulations, is amended as follows:

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

1. The authority citation for part 172 continues to read as follows:

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

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

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

* * * * *

TABLE 1 TO APPENDIX A—HAZARDOUS SUBSTANCES OTHER THAN RADIO-NUCLIDES

Hazardous substance	Reportable quantity (RQ) pounds (kilograms)
[REMOVE].	
* * * * *	
Dichloromethyl ether	1(0.454)
* * * * *	
2,4,6–Tribromophenol	100
K140	100
K156	1
K157	1
K158	1
K169	10
K170	1
K171	1
K172	1
* * * * *	
[REVISE].	
* * * * *	
Chloromethyl methyl ether	10 (4.54)
* * * * *	
Dichloromethyl ether	10 (4.54)
* * * * *	
Methane, chloromethoxy- ..	10 (4.54)
* * * * *	
Methane, oxybis(chloro-	10 (4.54)
* * * * *	
[ADD].	
* * * * *	
K156	1 (0.454)
K157	1 (0.454)
K158	1 (0.454)
K169	10 (4.54)
K170	1 (0.454)
K171	1 (0.454)
K172	1 (0.454)
K174	1 (0.454)
K175	1 (0.454)
K176	1 (0.454)
K177	5000 (2270)
K178	1 (0.454)

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Issued in Washington, DC on February 22, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,
Administrator, Research and Special Programs Administration.

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