

## 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;