



DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
WASHINGTON, D.C. 20590

DEPARTMENT OF TRANSPORTATION
Research and Special Programs
Administration

49 CFR Parts 171 and 173

[Docket No. HM-166-I; Notice No. 81-2]

Transportation of Liquefied Petroleum
Gas in Intrastate Commerce

AGENCY: Materials Transportation
Bureau, Research and Special Programs
Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation
Bureau (MTB) proposes to amend Part
173 of 49 CFR to authorize the use of
nonspecification cargo tanks for the
transportation of liquefied petroleum gas
(LPG) in intrastate commerce under
certain conditions. This action is
necessary because individual States
have adopted the Department's
Hazardous Materials Regulations which
require the use of DOT Specification
MC-330 or MC-331 cargo tanks. The
intended effect of this action is to allow
continued use of nonspecification cargo
tanks for the transportation of LPG in
intrastate commerce until they are taken
out of service and replaced with new
tanks that meet DOT requirements.

DATES: Comments must be received by
June 16, 1981.

ADDRESS: Address comments to:
Dockets Branch, Materials
Transportation Bureau, U.S. Department
of Transportation, Washington, D.C.
20590. Comments should identify the
docket and be submitted in five copies.
The Dockets Branch is located in Room
8426 of the Nassif Building, 400 Seventh
Street, SW., Washington, D.C. Public
dockets may be reviewed between the
hours of 8:30 a.m. and 5:00 p.m. Monday
through Friday.

FOR FURTHER INFORMATION CONTACT:
Darrell L. Raines, Chief, Exemptions and
Regulations Termination Branch, Office
of Hazardous Materials Regulation,
Materials Transportation Bureau, 400
7th Street, SW., Washington, D.C. 20590.
(202) 472-2726.

SUPPLEMENTARY INFORMATION: Since
passage of the Hazardous Materials
Transportation Act (HMTA) of 1974 (49
USC 1801 et seq.) the MTB has
encouraged the adoption of the
Hazardous Materials Transportation
Regulations 49 CFR Parts 170 to 179) by

the States in order to promote
uniformity in safety regulation
throughout the nation. Certain areas of
transportation safety demand a strong,
predominant Federal role. In the
HMTA's Declaration of Policy and in the
Senate Committee language reporting
out what became § 112 of the HMTA,
Congress indicated a desire for uniform
national standards in the field of
hazardous materials transportation and,
with the HMTA, gave the Department of
Transportation the authority to
promulgate those standards. Although
the HMTA has not totally precluded
State or local action in this area, it is the
MTB's opinion that, to the extent
possible, Congress intended to make
such State or local action unnecessary.

It has come to the attention of the
MTB that the adoption by individual
States of the Hazardous Materials
Transportation Regulations has created
an anomalous situation in certain States
for certain cargo tank owners and
operators. DOT regulations require
cargo tanks for LPG to be constructed in
compliance with either DOT Specification
MC-330 or MC-331. However, a number
of cargo tanks not subject to DOT
regulations (nor ICC regulations prior to
1967) have been constructed and used in
intrastate commerce for many years.
While they were manufactured in
accordance with certain consensus
standards and were otherwise qualified
for use, they do not meet the standards
now required in DOT regulations. The
result of a State's adoption and
enforcement of DOT regulations is to
immediately require that all cargo tanks
in that jurisdiction comply with DOT
specifications without provision for an
adequate transition period.

MTB also has been advised of a
difficulty encountered by a carrier based
in Nevada. For a number of years, this
carrier operated only small cargo tank
trucks (commonly referred to as
"bobtails") in intrastate commerce. Due
to a change in business conditions, it
became necessary for the carrier to
acquire a cargo tank semitrailer
(meeting DOT requirements) for carriage
of LPG from California to its base in
Nevada. Upon entering interstate
operations, all of the carrier's operation,
including operation of the small cargo
tanks, came under DOT jurisdiction. The
MTB believes that appropriate relief
should be provided to remedy a
situation that may not be uncommon

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and believes the conditions proposed in
this NPRM, in association with allowing
use of non DOT specification cargo
tanks, assure an adequate level of safety
for the transportation of LPG in small
cargo tanks during the transition period.

This proposal is limited in its
applicability to intrastate commerce,
including a cargo tank operated by a
motor carrier that may operate other
motor vehicles in interstate commerce.

The proposed revision would allow
the continued use of a cargo tank for
transportation of LP gas that is not
marked according to Specification MC-
330 or MC-331, provided it (1) is marked
and conforms to the edition of the
ASME Code in effect when it was
manufactured; (2) has a minimum design
pressure of 250 psig; (3) has a capacity
of 3500 gallons or less; (4) was
manufactured prior to January 1, 1981;
(5) conforms to NFPA Pamphlet 58; (6)
has been inspected and tested in
accordance with § 173.33 as specified
for Specification MC-330 or MC-331;
and (7) it is operated in conformance
with the regulations except the
specification requirements.

The procedure proposed in this NPRM
will allow the continued safe use of
cargo tanks constructed in conformance
with the ASME Code when a State
upgrades its regulatory program by
adopting the Hazardous Materials
Transportation Regulations, as well as
allowing continued use of such tanks for
local shipments by interstate carriers.
MTB has been advised by industry
representatives that all new tanks are
being manufactured in compliance with
DOT specifications; therefore, new
construction after January 1, 1981, is not
covered by this NPRM.

It is also proposed to update the
reference in § 171.7(d)(6) to Pamphlet 58
of the National Fire Protection
Association since this is the edition
currently available from that
organization.

The MTB has determined that this
proposed regulation will not, if
promulgated, have a significant
economic impact on a substantial
number of small entities.

If this proposed regulation is not
adopted, there will be a serious
economic hardship on small LPG
carriers because their nonspecification
cargo tanks will no longer be authorized
for transportation of LP gas in several
States. New DOT specification tanks

would have to be purchased and delivery to LPG customers would be severely disrupted.

In consideration of the foregoing, 49 CFR Parts 171 and 173 would be amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7, paragraph (d)(6) would be revised to read:

§ 171.7 Matter incorporated by reference.

(d) * * *

(6) NFPA Pamphlet No. 58 is titled, "Standard for the Storage and Handling of Liquefied Petroleum Gases," 1979 edition.

2. In § 173.315, Note 2 following the table and paragraph (k) would be revised to read:

§ 173.315 Compressed gases in cargo tanks and portable tank containers.

Note 1. * * *

Note 2.—See § 173.32 for authority to use other portable tanks and for manifolding cargo tanks, see § 173.301(d).

(k) A nonspecification cargo tank meeting, and marked in conformance with the edition of the ASME Code in effect when it was fabricated may be used for the transportation of liquefied petroleum gas if it—

(1) Has a minimum design pressure of 250 psig;

(2) Has a capacity of 3,500 gallons or less;

(3) Was manufactured prior to January 1, 1981, as verified by its ASME certificate;

(4) Conforms to NFPA Pamphlet 58;

(5) Has been inspected and tested in accordance with § 173.33 as specified for Specification MC-330 or MC-331;

(6) Is operated exclusively in intrastate commerce, including its operation by a motor carrier otherwise engaged in interstate commerce; and

(7) Is operated in conformance with the other requirements of this subchapter (e.g. Part 172).

(49 U.S.C. 1803, 1804, 1808; (49 CFR 1.53, App. A to Part 1, and paragraph (a)(4) of Appendix A to Part 106).

Note.—The Materials Transportation Bureau has determined that this proposed regulation is not a major rule under the Terms of Executive Order 12291 and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and an environmental assessment are available for review in the Docket. I certify that this proposed regulation if published as a final rule, will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, D.C. on May 5, 1981.

Alan I. Roberts,
Associate Director for Office of Hazardous Regulation, Materials Transportation Bureau.

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