

49 CFR Part 173

Docket No. HM-166 K, Notice No. 81-7]

Transportation of Anhydrous Ammonia in Intrastate Commerce**AGENCY:** Materials Transportation Bureau, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau proposes to amend Part 173 of Title 49 CFR to authorize the use of nonspecification cargo tanks, and of specification cargo tanks with a design pressure of 250 psig, for the transport of anhydrous ammonia 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 and MC-331 cargo tanks with a design pressure of 265 psig. The intended effect of this action is to allow continued use of nonspecification cargo tanks and specification cargo tanks with a design pressure of 250 psig for the transportation of anhydrous ammonia in intrastate commerce until they are taken out of service and replaced with new tanks that meet DOT requirements:

DATE: Comments must be received by November 23, 1981.

ADDRESS COMMENTS TO: Dockets Branch, Material 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: Thomas J. Charlton, Chief, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 Seventh Street, SW., Washington, D.C. 20590, telephone number (202) 426-2075.

SUPPLEMENTARY INFORMATION: Since passage of the Hazardous Materials Transportation Act (HMTA) of 1974 (49 U.S.C. 1801 et seq.) the MTB has encouraged the adoption of the Hazardous Materials Regulations (HMR) (49 CFR Parts 170 to 179) by the States in order to promote uniformity in safety regulations throughout the nation. Certain areas of transportation demand a strong predominant Federal role. In the HMTA's Declaration of Policy and in the Senate Committee language reporting out what became section 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.

On May 22, 1980, the MTB promulgated a rule designating certain hazardous materials as hazardous substances under the HMTA and assigned them reportable quantities (RQ's). (See FR Volume 45, No. 101, Thursday, May 22, 1980, page 34560-34705.) In that rulemaking, DOT asserted its authority over the intrastate shipment of hazardous substances by motor carrier and made the provisions of the HMR apply to the carriage of these substances. Anhydrous ammonia was one of the materials designated a hazardous substance with a reportable quantity of 100 lbs, and its transport in this or larger amounts per package anywhere in the United States was made subject to the HMR, including specification containers.

It has come to the attention of the MTB that the adoption by individual States of the Hazardous Materials Transportation Regulations and the assertion of DOT's authority over the intrastate transport of hazardous substances has created an anomalous situation in certain states for certain cargo tank owners and operators. DOT regulations require cargo tanks for anhydrous ammonia to be in compliance with either DOT Specification MC-330 or MC-331 at a design pressure of 265 psig. However, a number of cargo tanks not subject to DOT (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, including the ASME Code, and were otherwise qualified for use, they do not meet, or were not marked and certified to meet, the standards now required by DOT regulations. The result of a state's adoption and enforcement of DOT regulations and the designation of anhydrous ammonia as a hazardous substance is to immediately require that all cargo tanks in that jurisdiction comply with DOT specification without an adequate transition period.

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

- (a) * * *
- (1) * * *

This proposal is limited in its applicability to intrastate transportation by highway in jurisdictions where the use of these cargo tanks has been permitted in the past. It includes intrastate operations by a motor carrier that may operate other motor vehicles in interstate commerce.

The proposed revision would allow the continued use (in states where such use is permitted), of a cargo tank for the transportation of anhydrous ammonia that is not marked according to Specification MC-330 or MC-331 or one that has a design pressure of 250 psig, 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) was manufactured prior to January 1, 1981; (4) is painted white or aluminum; (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 regulations except the specification requirements.

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 regulation is not adopted, there may be a serious economic hardship on small anhydrous ammonia carriers because their nonspecification cargo tanks will no longer be authorized for transportation of anhydrous ammonia in several states. New DOT specification tanks would have to be purchased and deliveries to users of anhydrous ammonia could be severely disrupted.

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

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGING

1. In § 173.315 a new note, Note 17, would be added to the table in § 173.315(a)(1). The note would be referenced in the last two columns of the table (with headings of "Type" and "Minimum design pressure," respectively) for the first material entry "Anhydrous ammonia."

Table

Kind of gas	Maximum permitted filling density		Specification container required	
	Percent by weight ¹	Percent by volume ²	Type ³	Minimum design pressure (psig)
Anhydrous ammonia (See Notes 14 and 17 and paragraph (1) of this section.	56	62; see Note 5	DOT-51, MC-330, MC-331; see Notes 12 and 17.	260 see Note 17.

¹ See note 1.

² See paragraph (f) of this section.

³ See notes 2.

NOTE 17.—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 anhydrous ammonia if it—

- (1) Has a minimum design pressure no lower than 250 psig;
- (2) Was manufactured in conformance with the ASME code prior to January 1, 1981, according to its ASME name plate and manufacturer's data report;
- (3) Is painted white or aluminum;
- (4) Complies with Note 12 of this paragraph;
- (5) Has been inspected and tested in accordance with § 173.33 as specified for Specification MC-330 or MC-331;
- (6) Was used to transport anhydrous ammonia prior to January 1, 1981;
- (7) Is operated exclusively in intrastate commerce (including its operation by a motor carrier otherwise engaged in interstate commerce) in a state where its operation was permitted by the laws of that State (not including the incorporation of this subchapter) prior to January 1, 1981; and
- (8) Is operated in conformance with all other requirements of this subchapter.

49 U.S.C. 1803, 1804, 1808: (49 CFR 1.53, Appendix 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 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 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 September 15, 1981.

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

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