

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 173 and 180**

[Docket HM-200; Amdt. Nos. 171-150, 173-259, and 180-11]

RIN 2137-AB37

**Hazardous Materials in Intrastate Commerce**

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

ACTION: Final rule.

**SUMMARY:** This final rule requires that all intrastate shippers and carriers comply with the Hazardous Materials Regulations (HMR) with certain exceptions. This action is necessary to comply with amendments to the Federal hazardous materials transportation law mandating that DOT regulate the transportation of hazardous materials in intrastate commerce. The intended effect of this rule is to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States.

**DATES:** *Effective date:* October 1, 1997.*Permissive compliance date:*

Compliance with the requirements as adopted herein is authorized as of April 8, 1997. This time period provides sufficient time for receipt and resolution of any petitions for reconsideration received on this final rule.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

Currently, the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) do not apply to highway transportation by intrastate carriers, except for the transportation of hazardous substances, hazardous wastes, marine pollutants, and flammable cryogenic liquids in portable tanks and cargo tanks. The HMR apply to all hazardous materials transported in commerce by rail car, aircraft, or vessel. A July 1986 report by the Office of Technology Assessment (OTA), then an agency of Congress, entitled "Transportation of Hazardous Materials," highlighted the need for national uniformity in the regulation of hazardous materials transportation and packaging requirements.

In response to the OTA report, RSPA published an advance notice of proposed rulemaking in the Federal Register on June 29, 1987 [52 FR 24195] which requested comments on extending the application of the HMR to all intrastate transportation in commerce as a means of promoting national uniformity and transportation safety. In 1990, the Federal hazardous material transportation law was amended to require the Secretary to regulate hazardous materials transportation in intrastate commerce. 49 U.S.C. 5103(b)(1)

RSPA proposed to extend the application of the HMR to all intrastate transportation of hazardous materials in commerce in a notice of proposed rulemaking (NPRM) published on July 9, 1993 [58 FR 36920]. A correction to the NPRM was published on July 15, 1993 [58 FR 38111]. The NPRM requested comments on the need for, and possible consequences of, extending the application of the HMR to all intrastate transportation of hazardous materials in commerce.

More than 200 comments were received in response to the NPRM. While most of the commenters supported the idea of uniformity, a significant number requested relief from the application of the HMR (or portions thereof). Among the concerns expressed were the appropriateness of regulating: (1) Small quantities of hazardous materials that are used incidental to a primary business that is other than transportation; and (2) the operation of small cargo tank motor vehicles.

The major objections raised were that: (1) uniform treatment of all intrastate hazmat shippers and carriers under the HMR would be extremely detrimental to rural and small businesses, including petroleum marketers and farmers; (2) although all States have adopted the HMR, certain States have deviated from the regulations, particularly regarding highway shipments, e.g., by "grandfathering" non-DOT specification cargo tanks, or exempting farm operations; and (3) regulation of user quantities of hazardous materials transported incidental to the primary responsibility of the carrier (i.e., materials of trade) could create burdens for these carriers.

In response to comments to the NPRM, RSPA published a supplemental notice of proposed rulemaking (SNPRM) in the Federal Register on March 20, 1996 [61 FR 11484]. The three proposals addressed in the SNPRM were exceptions from the HMR for: (1) "Materials of trade," (2) non-specification small cargo tank motor vehicles (i.e., less than 13,250 liters

(3,500 gallon) capacity) used exclusively in intrastate transportation of flammable liquid petroleum products, and (3) certain requirements addressing use of registered inspectors for these small cargo tank motor vehicles used to transport flammable liquid petroleum fuels.

**II. Summary of Regulatory Amendments**

RSPA received more than 1200 comments on the SNPRM from a variety of organizations, including trade associations, petroleum marketers, public service commissions, state police, farmers and farm co-operatives, water and power companies, members of Congress, State and Federal government agencies, waste haulers and fertilizer associations.

**A. Extension of the HMR to Intrastate Transportation**

Commenters in support of the expansion of the HMR to intrastate carriage stated that deviations from a uniform domestic scheme should be minimized. One commenter stated that the report by OTA entitled "Transportation of Hazardous Materials" was right on target by identifying the need for uniformity in transportation of hazardous materials, and that the action taken by RSPA in response to the report and the Federal hazardous materials transportation law was correct.

Petroleum marketers and the agricultural community, many of whom are small businesses, opposed extending the HMR to intrastate movement of hazardous materials. Some of these commenters stated that the additional requirements, such as for shipping papers and placarding, would provide little or no benefit to public safety when compared to the increased cost of regulation. These commenters urged RSPA to issue an exception from the regulations that recognizes the needs of agricultural producers by waiving the application of certain requirements of the HMR. Other commenters expressed concerns about the requirements for specification cargo tanks used to transport hazardous materials (other than combustible liquids) and stated that the cost of retrofitting non-specification cargo tanks would be prohibitive.

As required by the Federal hazardous materials transportation law, this rule extends the application of the HMR to intrastate transportation of hazardous materials by highway and provides exceptions for: (1) Materials of trade transported by interstate and intrastate motor carriers; (2) certain non-