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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs  
Administration**

**49 CFR Part 171**

[Docket No. HM-145F; Amdt. No. 171-90]

**Hazardous Substances**

**AGENCY:** Research and Special Programs  
Administration (RSPA), Department of  
Transportation (DOT).

**ACTION:** Revision to the final rule  
(Amendment No. 171-90).

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**SUMMARY:** This document revises the  
definition of "hazardous substance" in  
49 CFR 171.8, as adopted in a final rule  
published on November 21, 1986 (51 FR  
42174; Amendment No. 171-90), to  
clarify that the definition does not apply  
to petroleum products that are

lubricants or fuels. The revision reinstates an exception for petroleum products that appeared in the definition of "hazardous substance" prior to the November 21 final rule.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lee Jackson, (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This document revises the definition in 49 CFR 171.8 of a "hazardous substance", as adopted in a final rule published on November 21, 1986 (Amendment No. 171-90; 51 FR 42174). The final rule revised DOT's definition for a "hazardous substance" by deleting both the reference to the § 172.101 Hazardous Materials Table and the exception for petroleum products that are lubricants or fuels. Deletion of the exception was based on the fact that such an exception is contained in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA; Pub. L. 96-510). As defined in section 101(14) of CERCLA, the term "hazardous substance" does not include "... petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance . . . and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)".

The deletion of the petroleum products exception from DOT's

definition of a "hazardous substance" has generated numerous inquiries. It appears that removing this exception from the definition has caused confusion and led many people to the conclusion that the exception no longer exists. This is not what RSPA intended.

Upon further consideration, RSPA believes that despite the fact that an exception for petroleum products exists in CERCLA, it is appropriate to include a similar exception in the definition of a "hazardous substance" in 49 CFR 171.8. Therefore, RSPA is reinstating the exception in the hazardous substance definition essentially as it appears prior to the November 21 final rule, with the addition of a reference to applicable EPA regulations in 40 CFR 300.6.

The revision contained in this rule imposes no new regulatory requirement, will not affect the cost of regulatory enforcement nor impose added costs on industry, consumers, Federal, state or local governments. Consequently, public notice is dispensed with this rule is effective immediately.

**Administrative Notices**

The RSPA has determined that this amendment (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures [44 FR 11034]; (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) will not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). Based on limited

information concerning the size and nature of entities likely affected, I certify that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 49 CFR Part 171**

Hazardous materials transportation, Definitions.

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1806; Pub. L. 96-499; and 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition for "hazardous substance" is amended by adding the following sentence after the table which appears in the definition:

**§ 171.8 Definitions and abbreviations.**

This definition does not apply to petroleum products that are lubricants or fuels (see 40 CFR 300.6).

Issued in Washington, DC on June 26, 1987 under authority delegated in 49 CFR Part 1.

**M. Cynthia Douglas,**  
*Administrator, Research and Special Programs Administration.*

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**Research and Special Programs Administration**

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