

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration**

49 CFR Parts 106, 107, 110, 130, 171, 172, 173, 174, 176, 178, 180

[Docket Nos. HM-214 and PC-1; Amdt. Nos. 106-9, 107-27, 110-2, 130-1, 171-120, 172-129, 173-233, 174-73, 176-33, 178-98, and 180-3]

RIN 2137-AC31

Oil Spill Prevention and Response Plans

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

ACTION: Interim final rule; request for comments and public meeting.

SUMMARY: This interim final rule implements the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, and amends requirements that RSPA issued on February 2, 1993. This interim final rule removes the designation as "hazardous materials" of oils that, before February 2, 1993, had not been so designated; requires response plans for oil shipments in bulk packagings (i.e., cargo tanks (tank trucks), railroad tank cars, and portable tanks) in a quantity greater than 42,000 gallons; and requires less detailed response plans for petroleum oil shipments in bulk packagings of 3,500 gallons or more. This rule responds to public and industry concerns that subjecting previously unregulated oils to regulation as hazardous materials is unnecessary and undesirable.

DATES: *Effective date.* This interim final rule is effective June 16, 1993.

Compliance dates: Persons subject to this rule must comply with its requirements by October 1, 1993, except for persons subject to the requirements of 49 CFR 130.31(b), who must comply immediately.

Comments. Comments must be received on or before July 30, 1993.

Public meeting. A public meeting will be held on June 28, 1993, from 9:30 a.m. to 5 p.m.

ADDRESSES: *Comments.* Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, room 8421, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments should identify the docket numbers and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The

Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) on the eighth floor. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Public meeting. The public meeting will be held in room 2230 of the Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590. Any person planning to attend should notify RSPA, by telephone or in writing, no later than two days prior to the meeting. To confirm plans to attend, contact Ms. Diane LaValle at (202) 366-8553.

FOR FURTHER INFORMATION CONTACT: Thomas Allan, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, Telephone (202) 366-4488 or Charles Holtman, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, Telephone (202) 366-4400.

SUPPLEMENTARY INFORMATION: On February 2, 1993, RSPA published an interim final rule (IFR), 58 FR 6864, with request for comments, concerning oil spill prevention and response plans. The IFR implemented requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (FWPCA). It did so through amendments to the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180, which are issued under the Hazardous Materials Transportation Act (HMTA). Details concerning the FWPCA statutory requirements and delegation of authority under that Act are contained in the preamble to that IFR. On April 20, 1993, RSPA reopened and extended the public comment period from April 5 to June 3, 1993, and announced a May 13, 1993 public hearing.

Under the IFR, many oils not previously regulated as hazardous materials (particularly animal, vegetable, mineral and lube oils) were designated as hazardous materials and then subjected to the requirements of the HMR. That regulatory approach has been the focus of extensive industry and public interest in the IFR, as reflected by the more than 250 public comments submitted to the docket and extensive remarks made at the day-long public hearing.

It has become clear that implementation of the FWPCA through designation of all oils as "hazardous materials" has unforeseen and potentially costly effects. These include

increased insurance costs, applicability of numerous State and local regulatory requirements which attach to "hazardous materials," and railroad interlining requirements.

RSPA's goal is to provide adequate protection for the environment while imposing minimal costs and burdens on the regulated community. To avoid unnecessary costs and burdens while implementing the FWPCA, RSPA is taking a different approach.

First, it is rescinding the implementation through or under the HMR and rejecting any use of the HMTA to accomplish the requirements of the FWPCA. Second, it is creating a new part 130 in title 49 of the CFR solely for implementation of the FWPCA. Thus, the HMTA and FWPCA requirements will be separate.

This action should eliminate confusion about which statutory and RSPA regulatory requirements apply to any particular "oil." Any oil which meets the existing definitions of a hazardous material (e.g., flammable or combustible) will continue to be regulated as a hazardous material under 49 CFR parts 171-180. Any oil subject to regulation under the FWPCA (which includes animal and vegetable oils) will be regulated as an oil under 49 CFR part 130. Any oil which is a hazardous material and is subject to regulation under the FWPCA will be regulated under both parts 171-180 and part 130.

The new part 130 contains comprehensive response plan requirements for shipments of bulk packagings containing oil in quantities greater than 42,000 gallons (1,000 barrels). These bulk packagings may be cargo tanks (tank trucks), railroad tank cars, or portable tanks. These requirements fulfill the FWPCA mandate that the President issue regulations requiring response plans to be prepared by an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. 33 U.S.C. 1321(j)(5).

RSPA has preliminarily determined that it is unnecessary to require any response plans or impose any prevention requirements with respect to non-petroleum oils in quantities of 42,000 gallons or less. This is based on a preliminary finding that non-petroleum oils generally appear to possess a lower level of aquatic toxicity than petroleum oils. Comments are solicited on this determination and finding.

Therefore, part 130 contains basic response plan and prevention

regulations applicable only to petroleum oils. It contains basic response plan requirements for shipments of any petroleum oil in a bulk packaging of 13,248 liters (3,500 gallons) or more.

The 3,500-gallon bulk packaging criterion is the same as the HMTA bulk packaging registration requirement, 49 App. U.S.C. 1805(c)(1)(C), and the Federal Highway Administration's financial responsibility requirement, 49 CFR part 387.

Part 130 also contains prevention requirements for oils above 42,000 gallons and petroleum oils in packagings with a capacity of 3,500 gallons or more. These requirements relate to communication, packaging, emergency response information, and training. Unlike the previous IFR, this rule applies these selected, critical prevention requirements and does not require adherence to all the requirements contained in the HMR. To ensure that the plans are put into practice, part 130 also requires that the applicable plan be implemented when a discharge of oil occurs during transportation.

In accordance with 5 U.S.C. 553(b)(3)(B), this interim final rule is issued without prior notice of proposed rulemaking and opportunity to comment. The FWPCA contains statutory deadlines for the preparation and submission of response plans for onshore facilities (including, but not limited to, motor vehicles and rolling stock). After these deadlines, carriers not in compliance with the Act are prohibited from transporting oil in bulk packagings.

In order to continue the timely and uninterrupted implementation of the FWPCA, RSPA has determined that good cause exists for finding that notice and comment is impracticable and contrary to public interest. RSPA believes that any further delay in issuing these regulations would create an undue hardship on the regulated community and have the potential to disrupt the sale and delivery of oil. These same reasons provide good cause for making the comprehensive response plans effective upon publication.

Although an opportunity for public comment on this particular approach has not been provided prior to issuing this interim final rule, RSPA seeks public comment to assure that the rule is feasible and workable. If appropriate, RSPA will amend the provisions of this rule. RSPA also will hold a public meeting on this rule. As an interim final rule, this regulation is fully in effect and binding upon publication in the Federal Register.

Although no further regulatory action by RSPA is essential to implement this rule, RSPA encourages interested persons to participate in this rulemaking by submitting written views, data, or information on this interim final rule. Persons submitting comments should include their names and addresses, identify this rulemaking by the docket number stated in the heading of this rule and the specific section of the rule to which each comment applies, and give the basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

Regulatory Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because of significant public and congressional interest. This rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

In accordance with section 10(e) of the Procedures, RSPA has determined that a Regulatory Analysis is not required because these regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA prepared a Regulatory Evaluation, which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The Regulatory Evaluation is available for review in the Dockets Unit.

Regulatory Flexibility Act

I certify this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Executive Order 12612

This rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). These regulations have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control number 2137-0590 (expiration date: August 31, 1993).

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

49 CFR Part 130

Oil, Response plans, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and under the authority of 33 U.S.C. 1321, 49 CFR parts 106, 107, 110, 130, 171, 172, 173, 174, 176, 178, and 180 are amended as follows:

1. Subchapter A of title 49, subtitle B, chapter I, is added and the heading reads as follows:

SUBCHAPTER A—HAZARDOUS MATERIALS TRANSPORTATION, OIL TRANSPORTATION, AND PIPELINE SAFETY

PART 106—RULEMAKING PROCEDURES

2. The authority citation for Part 106 is revised to read as follows:

Authority: 49 App. U.S.C. 1653, 1657(e), 1672, 1803, 1804, 1808; 2002, and 11472(b)(1); 33 U.S.C. 1321.

3. Part 106 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

4. Appendix A to part 106 is amended by adding paragraph (a)(4) to read as follows:

Appendix A to Part 106

* * * * *

(a) * * *

(4) Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)), as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (Pub. L. 101-380; 33 U.S.C. 1321).

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

5. The authority citation for Part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808-1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

6. Part 107 is transferred from subchapter B to subchapter A of chapter I of 49 CFR.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

6a. The authority citation for Part 110 continues to read as follows:

Authority: 49 App. U.S.C. 1815; 49 CFR part 1.

6b. Part 110 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

7. Subchapter B of chapter I of title 49 is revised to read as follows:

SUBCHAPTER B—OIL TRANSPORTATION

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

Sec.

130.1 Purpose.

130.2 Scope.

130.3 General requirements.

130.5 Definitions.

130.11 Communication requirements.

130.21 Packaging requirements.

130.31 Response plans.

130.33 Response plan implementation.

Authority: 33 U.S.C. 1321.

§ 130.1 Purpose.

This part prescribes prevention and response requirements of the Department of Transportation applicable to transportation of oil.

§ 130.2 Scope.

(a) The requirements of this part apply to—

(1) Any petroleum oil in packaging having capacities of 3500 gallons or more; and

(2) Any oil in a quantity of 42,000 gallons or more per packaging.

(b) The requirements of this part have no effect on—

(1) The applicability of the Hazardous Materials Regulations set forth in subchapter C of this chapter; and

(2) The discharge notification requirements of the United States Coast Guard (33 CFR part 153) and the EPA (40 CFR part 110).

§ 130.3 General requirements.

No person may offer or accept for transportation or transport oil subject to this part unless that person—

(a) Complies with this part; and

(b) Has been instructed on the applicable requirements of this part.

§ 130.5 Definitions.

In this subchapter:

EPA means the U.S. Environmental Protection Agency.

Oil means oil of any kind or in any form, including, but not limited to,

petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, an oil mixed with waste other than dredged spoil.

Package means a packaging plus its contents.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the packing requirements of this part.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof.

Petroleum oil means any oil extracted from geological hydrocarbon deposits, including fractions and derivatives thereof.

RSPA means the Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Transports or Transportation means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

§ 130.11 Communication requirements.

(a) No person may offer oil subject to this part for transportation unless that person provides the person accepting the oil for transportation a document indicating the shipment contains oil.

(b) No person may transport oil subject to this part unless a readily available document indicating that the shipment contains oil is in the possession of the transport vehicle operator during transportation.

§ 130.21 Packaging requirements.

Each packaging used for the transportation of oil must be designed, constructed, maintained, closed, and loaded so that, under conditions normally incident to transportation, there will be no release of oil to the environment.

§ 130.31 Response plans.

(a) After September 30, 1993, no person may transport oil subject to this part unless that person has a current basic written plan that:

(1) Sets forth the manner of response to discharges that may occur during transportation;

(2) Takes into account the maximum potential discharge of the contents from the packaging;

(3) Identifies who will respond to a discharge;

(4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center;

(5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

(b) After February 18, 1993, no person may transport an oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons) unless that person has a current comprehensive written plan that:

(1) Conforms with all requirements specified in paragraph (a) of this section;

(2) Is consistent with the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans;

(3) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing spill response personnel and equipment;

(4) Identifies, and ensures by contract or other means the availability of, private personnel (including address and phone number), the equipment necessary to remove, to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge;

(5) Describes the training, equipment testing, periodic unannounced drills, and response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of such a discharge; and

(6) Is submitted, and resubmitted in the event of any significant change, to the Associate Administrator for Hazardous Materials Safety (for portable tanks), to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks) at 400 Seventh Street, SW., Washington, DC 20590-0001.

§ 130.33 Response plan implementation.

If a discharge of oil occurs during transportation, the person transporting the oil shall take appropriate action to implement each plan required by § 130.31.

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

8. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 49 CFR part 1.

§ 171.1 [Amended]

9. In § 171.1, paragraph (a)(3)(v) is removed.

§ 171.2 [Amended]

10. In § 171.2, remove the words "subchapter B" and add, in their place, the words "subchapter A" in paragraphs (c) and (d)(3).

§ 171.5 [Removed]

11. Section 171.5 is removed.

§ 171.8 [Amended]

12. In § 171.8, the definition for "Oil" is removed.

§ 171.11 [Amended]

13. In § 171.11, paragraph (d)(14) is removed.

§ 171.12 [Amended]

14. In § 171.12, paragraph (b)(17) is removed.

§ 171.12a [Amended]

15. In § 171.12a, paragraph (b)(16) is removed.

16. In § 171.15, the Note at the end of this section is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

Note: Under 40 CFR 302.6 EPA requires persons in charge of facilities (including transport vehicles, vessels and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800-424-8802 or (toll) 202-267-2675.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

17. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

18. In the § 172.101 Table, the entry for "Oil, n.o.s., with a flashpoint not less than 93° C(200° F)" is removed.

§ 172.203 [Amended]

19. In § 172.203, paragraph (o) is removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

20. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§§ 173.22 and 173.124 [Amended]

21. In part 173, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 173.22(a)(2)(iv) and § 173.124(a)(1)(ii)(A).

22. In § 173.140, paragraph (b) is revised to read as follows:

§ 173.140 Class 9—Definitions.

(b) Any material that meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

23. In § 173.150, paragraphs (f)(3)(viii) and (f)(4) introductory text are revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

(f) * * *
(3) * * *
(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, and 177.834 of this subchapter.

(4) A combustible liquid that is not a hazardous substance, a hazardous waste, or a marine pollutant is not subject to the requirements of this subchapter if it is a mixture of one or more components that—

§ 173.155 [Amended]

24. In § 173.155, paragraph (d) is removed.

PART 174—CARRIAGE BY RAIL

25. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, app. A to part 1.

§ 174.25 [Amended]

26. In § 174.25, paragraph (b)(6) is removed.

PART 176—CARRIAGE BY VESSEL

27. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR 1.53, app. A to part 1.

§ 176.70 [Amended]

28. In § 176.70 the words ", and shipments of oil in bulk packagings," in paragraph (a) are removed.

PART 178—SPECIFICATIONS FOR PACKAGINGS

29. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§§ 178.320, 178.337-18 and 178.345-15 [Amended]

30. In 49 CFR part 178, remove the words "subchapter B" and add, in their

place, the words "subchapter A" in § 178.320, in the definition of "Manufacturer", § 178.337-18(a), and § 178.345-15(a).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

31. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. App. 1803; 49 CFR part 1.

§ 180.3 and 180.413 [Amended]

32. In 49 CFR part 180, remove the words "subchapter B" and add, in their

place, the words "subchapter A" in § 180.3(a), (b)(3) and (b)(5) and § 180.413(a)(1) and (a)(2).

Issued in Washington, DC on June 11, 1993, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93-14230 Filed 6-14-93; 9:47 am]

BILLING CODE 4910-60-P