

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171, 172, 173, 174, and 176****[Docket No. HM-214; Amendment Nos. 171-119, 172-128, 173-232, 174-71, and 176-32]****RIN 2137-AC31****Oil Spill Prevention and Response Plans****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule is applicable to bulk packagings containing oil, specifically cargo tanks (tank trucks), railroad tank cars, and portable tanks. RSPA is amending the Hazardous Materials Regulations to specify minimum standards for the safe transportation of oil that is currently unregulated, and to require the preparation of plans for preventing and responding to the discharge of oil. This rule also implements requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The preparation of plans for preventing and responding to the discharge of hazardous substances will be addressed in a separate rulemaking. In addition, requirements for pipelines are addressed in a separate rulemaking published under Docket No. PS-130, 58 FR 244 (January 5, 1993).

DATES: The effective date of this interim final rule is February 2, 1993. Persons subject to this rule must comply with its requirements by October 1, 1993, except for the requirements of § 171.5(c) which requires compliance by February 18, 1993. Comments must be received on or before April 5, 1993.

ADDRESSES: 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 number 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.

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 Robert A. Monniere, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-4400.

SUPPLEMENTARY INFORMATION:**I. Background**

In recent years, several major oil discharges damaged the marine environment of the United States. In response to those discharges, Congress passed the Oil Pollution Act of 1990 (OPA) (Pub. L. 101-380). OPA includes amendments to the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 *et seq.* These amendments mandate greater oil spill prevention efforts and oil spill response capability. The OPA is designed "to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." H.R. Rep. No. 653, 101st Cong., 2d Sess., 101, 148, reprinted in 1990 U.S. Code Cong. & Admin. News 779, 827. In addition to oil, certain requirements of OPA also apply to hazardous substances.

The statute directs the President to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from onshore facilities, and to contain such discharges. 33 U.S.C. 1321(j)(1)(C). In addition, the statute directs the President to issue regulations requiring 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).

On October 18, 1991, the President signed Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991). Section 2(b)(2) of E.O. 12777 delegates authority to establish procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports * * * to the Secretary of Transportation (the Secretary).

The Secretary re-delegated this OPA authority to the Commandant, United States Coast Guard; the Administrator, Maritime Administration; and the

Administrator, Research and Special Programs Administration (RSPA). 57 FR 8581 (March 11, 1992). The Secretary's re-delegation grants the RSPA Administrator authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in pipelines, motor carriers, and railways." 57 FR 8582.

In a more recent delegation, the RSPA Administrator received authority under section 2(d)(2) of E.O. 12777 to: (1) Issue regulations requiring submission of OPA response plans for pipelines, railroads, and motor carriers, (2) review and approve response plans for pipelines, and (3) authorize pipelines to operate pending approval of response plans. 57 FR 62484 (December 31, 1992). Under that same delegation, the Federal Highway Administrator has authority to review and approve OPA response plans for motor carriers and to authorize them to operate pending approval of response plans. Similarly, the Federal Railroad Administrator has authority to review and approve OPA response plans for railroads and to authorize them to operate pending approval of response plans.

The Coast Guard has response plan authority covering vessels and marine transportation-related (MTR) facilities including motor carriers and railroads, if those facilities are transferring oil or a hazard substance to or from a vessel. The Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 43534, August 30, 1991) and a notice of proposed rulemaking (NPRM) (57 FR 27514, June 19, 1992) containing proposed regulations implementing the OPA requirements applicable to vessels. The Coast Guard published an ANPRM (57 FR 8708, March 11, 1992) containing proposed regulations implementing the OPA requirements applicable to MTR facilities. In addition, on September 15, 1992, the Coast Guard issued two navigation and vessel inspection circulars (NVIC) that serve as guidelines for preparing response plans for certain vessels and marine transportation-related facilities (NVICs 7-92 and 8-92).

This rulemaking addresses the requirements of the OPA as they apply to motor carriers and railroads. It also addresses similar requirements for portable tanks. As used in this rule, an owner or operator of an onshore facility is the carrier as defined in 49 CFR 171.8.

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 Oil Pollution Act of

1990, Public Law 101-380, 104 Stat. 484, (OPA 90) which amends the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., 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 allow the timely implementation of OPA 90, RSPA 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.

Although an opportunity for public comment 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 will consider holding public hearings to obtain comments at a later date, if needed. 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.

II. Introduction

RSPA is requiring protection of the environment through response plan regulations applicable to the transportation of oil in bulk packagings. "Bulk packaging," as defined in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), includes containers with a maximum capacity greater than 450 liters as a receptacle for a liquid. Therefore, there should be no misunderstanding of the term "bulk packaging" by the transportation industry. Current standards for most hazardous materials use this breakpoint

as the determinant to apply detailed requirements for packaging, marking and placarding that are appropriate to the greater threat that bulk quantities pose to life, property and the environment. These regulations are issued under sections of the FWPCA, 33 U.S.C. 1321(j) and the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. app. 1804. Under these requirements, a carrier of oil in bulk packagings is required to have a current, written basic response plan.

The basic plan must describe the manner of response to discharges in transportation, consider the maximum potential discharge, identify those persons to be contacted in the event of a discharge, identify those persons who will respond to a discharge, and be on file at specific locations.

In addition to the basic plan, RSPA is requiring more extensive planning requirements for each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons). Any person who transports oil in a bulk packaging in a quantity greater than 1,000 barrels must prepare and file, with a designated DOT official, an extensive response plan meeting the requirements of 33 U.S.C. 1321(j)(5).

Extensive response plans must identify a qualified individual having full authority to implement removal actions, identify the method of immediate communications between that individual and Federal and response personnel, identify and ensure the availability of private personnel and equipment necessary to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge, and be consistent with the National Contingency Plan (NCP) and Area Contingency Plans (ACPs).

The NCP is a plan that outlines response actions for Federal agencies, in coordination with state and local agencies, in order to minimize the damage resulting from the discharge of oil or a hazardous substance. An ACP is a plan for a specific geographic area that describes responsibilities of the carrier and Federal, state, and local agencies in removing a worst case discharge, and in mitigating or preventing a substantial threat of such a discharge and the equipment necessary to remove a worst case discharge. ACPs are prepared by Area Committees, composed of Federal, state and local personnel, and under the direction of the Federal On-Scene Coordinator (OSC) for each area. For coastal areas, a Captain of the Port is the Federal OSC and for inland areas, an EPA regional administrator is the Federal OSC.

Because revisions to the NCP were not completed by August 18, 1992, owners and operators may base their response plans on the existing NCP published in 40 CFR part 300. ACPs are in various stages of development and in most areas will not be completed in time for facility owners or operators to consult when developing their response plans. Until the applicable ACP is completed, response plans submitted to meet the February 18, 1993 deadline should be consistent with the ACP or local contingency plan in effect on August 18, 1992. A response plan submitted after February 18, 1993 must be consistent with the applicable ACP or local contingency plan in effect when the response plan is submitted. If the NCP or ACP is revised within six months of the date of submission, the carrier's response plan may conform to the prior NCP or ACP.

III. Pollution Response Plans for Shipments of Oil in Bulk Packagings

RSPA is requiring protection of the environment through pollution response plan regulations applicable to the transportation of oil in bulk packagings. § 171.5 applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Under § 171.5(b), each carrier of a bulk packaging containing oil in a quantity of 1,000 barrels or less is required, under 33 U.S.C. 1321(j)(1)(C), to have a basic response plan.

In addition to having a basic response plan, under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels is required, pursuant to 33 U.S.C. 1321(j)(5), to submit an extensive response plan meeting all the requirements of § 1321(j)(5). This more burdensome requirement is discussed in Section IV below.

In terms of volume carried, most packaged shipments of oil (e.g., gasoline, fuel oil and most crude oil) covered by the FWPCA are already regulated as hazardous materials under the HMR. Therefore, RSPA has decided not to issue a new, self-contained set of rules specifically to implement OPA 90 for transportation of oil in bulk packagings. In order to avoid duplicative regulatory schemes and to carry out the statutory mandates of the FWPCA and the HMTA, RSPA instead is amending the current hazardous materials transportation regulations.

Under these regulations, persons transporting, in intrastate, interstate or foreign commerce, oil in a package with a capacity over 450 liters are required to have a current basic written plan that:

(1) Describes the manner of response to discharges in transportation;
 (2) Considers the maximum potential discharge of the contents from the package;

(3) Identifies persons and agencies (and their addresses and phone numbers) to be contacted concerning any discharge;

(4) Identifies who will respond to a discharge; and

(5) For motor carriers, is retained on file at the carrier's principal place of business and locations where dispatching occurs; or, for railroads, is retained on file at the carrier's principal place of business and the dispatcher's office.

In their development of generic response plans which conform with these requirements, carriers are expected to address plausible spill scenarios consistent with actual or potential threats they may experience in day-to-day operations. Thus, plans should reflect a wide range of situations, such as a slow leak from a discharge valve at an enroute location, to a catastrophic failure of a tank and a full release of the contents into a waterway. For each plausible situation, the plan must reflect a reasoned approach to containment and recovery operations by carrier or contractor personnel with the experience and capability to respond in a timely manner.

Carriers of oil are not required to prepare a separate plan for each cargo tank, tank car, and portable tank. Rather, they may develop nationwide, regional, or other types of generic pollution response plans. Plans prepared to meet the requirements of other agencies (e.g., the EPA) may be used or supplemented to meet the requirements of this regulation.

Comments are invited on the 450-liter threshold used in this rule. On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for determining who must prepare a response plan.

IV. Additional Requirements for Shipments of a Bulk Packaging Containing Oil in a Quantity Greater Than 1,000 Barrels

Under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of that section. Under 33 U.S.C. 1321(j)(5)(B)(iii) and (D), an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" or "significant and

substantial harm" to the environment by discharging oil into or on the navigable waters, or adjoining shorelines, must prepare and submit a response plan to the Secretary by February 18, 1993.

The statute does not define "substantial harm," or "significant and substantial harm." Section 1321 defines "onshore facility" as "any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. 1321(a)(10).

Although plans for "significant and substantial harm" facilities must be reviewed and approved by the Secretary, plans for "substantial harm" facilities do not require Secretarial review or approval. The response plan must, "to the maximum extent practicable," address both a "worst case discharge" of oil from the facility and "a substantial threat of such a discharge."

Each owner or operator of a non-marine transportation facility (MTR) required to prepare a response plan under section 1321(j)(5) must submit a response plan by February 18, 1993. After this date, an owner or operator must cease handling, storing, or transporting oil until it submits a response plan. In addition, after August 18, 1993, each owner or operator of any of these facilities may handle, store, or transport oil only if they are operating each facility in compliance with a response plan. Moreover, after August 18, 1993, each owner or operator of a "significant and substantial harm" facility may not handle, store, or transport oil at such a facility, unless or until the facility's response plan is approved.

If, however, a response plan has been submitted but not approved, the appropriate DOT modal administrator may authorize the facility to operate for up to two years after submission of the plan provided the owner or operator certifies that it has ensured the availability of private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Each extensive response plan prepared under 33 U.S.C. 1321(j)(5)(C) must:

(1) Be consistent with the requirements of the NCP and ACP;

(2) Identify the qualified individual having full authority to implement removal actions;

(3) Require immediate communications between the qualified individual and the appropriate Federal official and those persons providing

personnel and equipment for the spill response;

(4) Identify, and ensure by contract or by other means approved by the appropriate DOT modal administrator, the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge, including a discharge resulting from a fire or an explosion, and to mitigate or prevent a substantial threat of such a discharge;

(5) Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, 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 a discharge;

(6) Be updated periodically; and

(7) Be resubmitted for approval of each significant change.

Because these OPA 90 response plan requirements apply to cargo tanks and railroad tank cars, RSPA worked with the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA) to analyze existing regulatory requirements and spill experience and, based thereon, determined an appropriate threshold for applying these extensive response plan requirements.

A. Existing Regulatory Requirements

A comprehensive regulatory regime exists which reduces the likelihood that any individual bulk packaging containing oil, because of its location, could cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. Most oils (e.g., gasoline, fuel oil and most crude oil) are regulated as hazardous materials under the HMR.

The HMR set forth requirements for classification, description, packaging, marking, labeling and placarding of hazardous materials. The HMR also contain requirements for HAZMAT employee training and for reporting of hazardous materials releases. Also, 49 CFR part 172, subpart G of the HMR, entitled Emergency Response Information, prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation. Operators of motor vehicles and trains carrying hazardous materials are required to carry emergency response information on each truck or train, including: A description of the hazardous material, the immediate hazards to health, the risk of fire or

explosion, immediate precautions to take in the event of an accident or incident, immediate methods for handling fires, initial steps to be taken in the event of a spill or leak in the absence of a fire, and immediate first aid actions.

The Federal Motor Carrier Safety Regulations (FMCSR) apply to for-hire and private commercial motor vehicles (CMV) carrying property including vehicles used for the transportation of hazardous materials in interstate commerce and, in certain cases, intrastate commerce. Part 397 of the FMCSR, entitled, Transportation of Hazardous Materials, Driving and Parking Rules, contains regulations governing the attendance and surveillance of motor vehicles, routing guidelines, parking requirements, and other regulations that promote safety and protect the environment.

Rail transportation of most oil is subject to the HMR and other regulations. FRA has extensive regulations, issued under the Federal Railroad Safety Act (FRSA), which promote safety and protect the environment. In addition, FRA and the Federal Emergency Management Agency recently completed work on emergency response planning documents. FRA's Hazardous Materials Emergency Response Plan Guidance Document for Railroads emphasizes the preventive nature of planning and the importance of preparedness to mitigate the effect of an accident, especially one involving hazardous materials.

Transport vehicles (railroad tank cars, motor carrier cargo tanks, and intermodal portable tanks) are most vulnerable to spills during the loading and unloading process. The Coast Guard and EPA are issuing regulations that cover these operations.

B. Spill Data

Over the past decade, the combined domestic movements of petroleum by highway and rail, in any one year, have not exceeded five percent of the total volume of petroleum transported. Existing spill data reflect a small number of oil spills, and these spills from cargo tanks and railroad tank cars generally involve small quantities.

There are 3.6 million commercial motor vehicles with a gross vehicle weight rating over 10,000 lbs. registered in the United States. Approximately 120,000 commercial motor vehicles transport oil and derivatives in bulk cargo tanks. Another 2.5 million commercial motor vehicles transport oil and derivatives in non-bulk packagings.

In 1990, trucks accounted for 29.8 billion ton miles (2.8 percent) of the

1,075.2 billion ton miles of crude and petroleum products transported in the United States. Approximately 42,000 motor carriers may be subject to OPA 90 response plan requirements. Of the annual 66.7 million shipments of gasoline, fuel oil, and home heating oil by cargo tanks, one in 245,000 shipments results in a spill during transportation. Approximately 12 of those 273 spills enter a waterway.

The FRA identified approximately 600 freight railroads which may be affected by OPA 90 response plan requirements. FRA, based on data supplied by the industry, also identified 47 railroads that list a petroleum product as one of their top three transported commodities.

Annually, there are approximately 844,500 shipments of petroleum products. Of those shipments, approximately 60 result in release of the material. Over the last eight years, according to reports filed with RSPA's Hazardous Materials Information System, only one of those spills entered a waterway.

Additional data indicate the low probability of release in rail transportation of those types of materials addressed in this rulemaking. The following data are for combustible liquids, many of which are petroleum oils. They demonstrate that, for combustible liquids transported by rail, less than one-tenth of one percent of the tank cars involved release any cargo during transportation (including loading and unloading):

UNINTENTIONAL RELEASES OF COMBUSTIBLE LIQUIDS TRANSPORTED BY RAILROAD

	1988	1989	1990	1991
Cars originated	66,299	90,636	90,245	114,287
Percent releasing any cargo11	.09	.08	.06

The maximum possible spill into water from a single tank car is approximately 42,000 gallons, and the average spill size is about 1,800 gallons.

C. Conclusions

On the basis of the foregoing incident and spill statistics and the regulatory requirements currently applicable to transportation of oil in bulk packagings, RSPA believes there is a low risk of substantial environmental harm resulting from such spills. Therefore, RSPA concludes that shipments of bulk packagings containing oil in a quantity of 1,000 barrels or less could not, based on location, be reasonably expected to

cause "substantial harm" to the environment by discharging into or on navigable waters or adjoining shorelines.

In addition, many carriers currently transporting oil, subject to the FWPCA, have already implemented procedures, required by the HMR, that satisfy some of the response plan requirements added by the OPA 90 (training and emergency response information requirements). Furthermore, it is not feasible for every railroad and every cargo tank carrier to prepare detailed plans for combatting discharge of oil in the event of a spill near every riverbank, bridge, culvert or other such location on every route the carriers' vehicles may traverse. These carriers' plans must, of necessity, be somewhat basic and generic.

Section 171.5(b) requires response planning for a far broader spectrum of facilities transporting oil than is required by section 1321(j)(5) of the FWPCA. These requirements, issued under the authority of the Hazardous Materials Transportation Act and 33 U.S.C. 1321(j)(1), apply not only to rail and motor carriers but also to air and water carriers transporting bulk packagings containing oil.

In summary, there are sufficient existing regulations and historical spill data to justify excepting carriers of bulk packagings containing oil in a quantity of 1,000 barrels or less, from the requirements to prepare and file extensive response plans. 33 U.S.C. 1321(j)(5). Those shipments in cargo tanks or tank cars could not reasonably be expected, because of their locations, to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. While requiring the broad spectrum of carriers to prepare and submit the more extensive section 1321(j)(5) response plans would be an unnecessary burden on both industry and government, RSPA believes that instructions for preparing and submitting the more extensive plans should become part of the HMR to be available for those few carriers that must prepare such response plans. Therefore, RSPA is establishing a 1,000-barrel threshold for rolling stock and motor vehicles.

Any person who transports a bulk packaging containing oil in a quantity greater than 1,000 barrels must file an extensive response plan (§ 171.5(c)) with RSPA's Associate Administrator for Hazardous Materials Safety (for a portable tank), the Federal Highway Administrator (for a cargo tank), and the Federal Railroad Administrator (for a tank car). Plans prepared to meet the

requirements of other agencies (e.g., the Environmental Protection Agency) may be used or supplemented to meet the requirements of this regulation.

Since only a few facilities have the potential to exceed the 1,000-barrel threshold, only a few carriers (possibly none) may be required to file extensive response plans under this rule, and therefore the rule's economic impact is minimal. RSPA is aware of approximately 15 tank cars used to transport oil that have capacities that meet or exceed 1,000 barrels; however, it has not been determined with certainty that they are loaded to their capacities thereby making them subject to the extensive planning requirement.

Comments are specifically requested on whether any bulk packagings are used to transport oil in quantities exceeding 1,000 barrels. Comments also are invited on whether any different or additional criteria should be used to determine which facilities should be required to file the extensive response plans under 33 U.S.C. 1321(j)(5). On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for requiring submission of response plans.

V. Review by Section

Section 171.1

This section expands the scope of the HMR to regulate the transportation of oil by intrastate, as well as interstate, carriers.

Section 171.5

This new section applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Each carrier of oil in a bulk packaging must, under 33 U.S.C. 1321(j)(1)(C), have a basic response plan. In addition to having a basic response plan, each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of section 1321(j)(5).

Section 171.8

The definition of "oil" in the FWPCA, with a slight clarifying modification, is added in this section.

Section 171.11

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Civil Aviation Organization's Technical Instructions, conformance with the shipping paper

and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Maritime Organization's IMDG Code, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12a

This section is revised to require, for shipments of oil that are transported in bulk packagings from Canada, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.15

This section is revised to require immediate reporting of incidents involving oil to the National Response Center. This requirement is necessary to assure that appropriate response organizations receive timely notification of incidents involving oil.

Section 172.101

The Hazardous Materials Table (HMT) is revised by designating as a Class 9 hazardous material, "oils," as defined in § 171.8, which were previously unregulated because they did not meet the criteria for any other hazard class. Those materials offered for transportation or transported in domestic commerce must be described by the proper shipping name "Oil, n.o.s., with flash point not less than 93°C (200°F)," as indicated by the letter "D" in column 1. This material is assigned to packing group III, based on the minor degree of danger which it presents during transportation. The Class 9 label is prescribed in column 6 for use with shipments in bulk packagings, other than tank cars and cargo tanks. Column 8A of the HMT refers to the exception in § 173.155 from all requirements of the HMR for Class 9 oil that does not meet the definition of a hazardous waste or hazardous substance and is offered for transportation or transported in a non-bulk packaging. Also, the low-hazard material non-bulk packaging requirements specified in § 173.203 is added to column 8B to provide a packaging reference for waste oil. The low-hazard material bulk packaging requirements specified in § 173.241 is added to column 8C. The letter "A" is added to column 10A to specify that the material may be stowed "on deck" or "under deck" on a cargo vessel and a passenger vessel.

Section 172.203

Paragraph (o) is added to this section to require the word "oil" to be added, in parentheses, when not specifically identified in the proper shipping name of any hazardous material which is an "oil."

Section 173.140

This section is amended to add oil to the definition of Class 9. If oil meets the definition of another hazard class, however, the class of the material must be determined in accordance with § 173.2a. Oil that does not meet the definition of another hazard class must be classified as a Class 9 material and shipped under the proper shipping name of "Oil, n.o.s. with flash point not less than 93°C (200°F)," or under another more appropriate proper shipping name for a Class 9 material.

Section 173.150

This section is revised to add oil to the list of other flammable and combustible liquids which must conform to specifically designated requirements of the HMR.

Section 173.155

Paragraph (d) is added to this section to except shipments of oil, other than a hazardous waste or hazardous substance, in a non-bulk packaging from all requirements of the HMR.

Section 174.25

This section is amended to require that the word "oil" appear on switching orders, receipts and tickets in association with shipping descriptions for materials meeting the definition of "oil."

Section 176.70

This section is amended to add "oil" as a material for which specific stowage requirements are prescribed for transportation by vessel.

Federal Preemption Under the HMTA

The HMTA, at 49 U.S.C. app. 1804, preempts any non-Federal (i.e., state, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements

respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991 final rule (56 FR 8616), RSPA added a new preemption standard to § 107.202 to mirror the requirements of the HMTA. States, political subdivisions, or Indian tribes are allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning the shipment of bulk packagings containing oil only if they are substantively the same as the requirements adopted in Docket HM-214. In a May 13, 1992 final rule (57 FR 20424), RSPA defined the phrase "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted."

The HMTA, at 49 U.S.C. (App. 1804(a)(5)), provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the *Federal Register* the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance. The date of Federal preemption for this rule is February 2, 1995. Comments are requested as to the effective date of the Federal preemptive effect of this rule.

Regulatory Analyses and Notices

A. 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 the 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 draft 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 draft Regulatory Evaluation, which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The draft Regulatory Evaluation is available for review in the Dockets Unit. Comments are requested on the estimated costs and benefits of this rule.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule will have minimal impact on shippers and carriers of oil, some of whom may be small business entities. Most of those shippers and carriers are already subject to the HMR, thus, for them there are only minimal additional requirements. This rule only slightly expands the response planning requirements applicable to small entities and does not require any of them to file OPA 90 response plans with the DOT.

Based on limited information available concerning the size and nature of entities likely affected by this rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification as a result of a review of comments received in response to this rule. The rule will have no direct impact on small units of government.

C. Executive Order 12612

This rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision (49 U.S.C. app. 1804(a)(4)) that preempts state and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

However, 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.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

OMB No.—New; Administration: Research and Special Programs Administration; **Title:** Preparation of Response Plans for Shipments of Oil; **Need for Information:** The Oil Pollution Act of 1990 requires carriers of bulk packagings containing oil to prepare a plan for responding to a worst case discharge or the threat of such a discharge; **Proposed Use of Information:** This information is designed to eliminate, to the extent possible, uncertainty on the part of carrier personnel regarding their role and responsibility in potential, and actual, spill scenarios; **Burden Estimate:** 1.363 million hours; **Respondents:** 42,000 motor carriers (30,899 cargo tank truck companies, 11,000 trucking companies engaged in the transportation of portable tanks), and approximately 600 freight railroads; **Forms:** None; **Average Burden Hours per Respondent:** 2.6 (20-year average); **Initial Year Burden:** 32 hours.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may be provided to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, room 3228, Washington, DC 20503, Attention: Desk Officer for RSPA.

Under 44 U.S.C. chapter 35 and 5 CFR 3121.18, DOT is submitting a request for emergency clearance of the requirements in § 171.5(c) which requires compliance by February 18, 1993, as mandated by 33 U.S.C. 1321(j)(5)(E). In addition, RSPA is submitting a request for other information collections in this rule which will be reviewed under normal clearance procedures. These information collections would become effective on October 1, 1993.

During the interim, it is suggested that persons who have submitted spill prevention and mitigation plans, or will be doing so in response to other OPA 90 requirements, review these plans to determine that they meet the requirements specified in § 171.5(b). A general information collection requirement may be authorized by OMB (after notice and comment) prior to the October 1, 1993 compliance date specified in this rule.

E. 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.

F. National Environmental Policy Act

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations have no significant impact on the quality of the environment, and no environmental impact statement is required. In addition, the regulatory evaluation for this rule contains the costs and benefits to government, industry, and the environment.

List of Subjects**49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Oil, Reporting and record keeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and record keeping 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.

In consideration of the foregoing, parts 171, 172, 173, 174, and 176 of title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. 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; 33 U.S.C. 1321; 49 CFR part 1.

2. In § 171.1, paragraph (a)(3)(v) is added to read as follows:

§ 171.1 Purpose and scope.

- (a) * * *
- (3) * * *
- (v) Oil.

* * * * *

3. Section 171.5 is added to read as follows:

§ 171.5 OIL.

(a) *General.* The requirements of this section for the transportation of oil implement provisions of section 311(j) of the 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), and of the Hazardous Materials Transportation Act.

(b) *Response plans for shipments of oil in bulk packagings.* After September 30, 1993, no person may transport oil in a bulk packaging unless that person has a current 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 (see Note following § 171.15); and

(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.

(c) *Response plans for shipments of bulk packagings containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons).* After February 18, 1993, no person may transport a bulk packaging containing oil in a quantity greater than 1,000 barrels unless that person has a current written plan that:

(1) Conforms with all requirements specified in paragraph (b) 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) and 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 a discharge; and

(6) Is submitted, and resubmitted in 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).

4. In § 171.8, a definition for "oil" is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

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, and oil mixed with wastes other than dredged spoil.

* * * * *

5. In § 171.11, paragraph (d)(14) is added to read as follows:

§ 171.11 Use of ICAO technical instructions.

* * * * *

(d) * * *

(14) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

6. In § 171.12, paragraph (b)(17) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(17) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

7. In § 171.12a, paragraph (b)(16) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

(b) * * *

(16) When a bulk packaging contains a hazardous material that meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

8. In § 171.15, the Note is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

Note: 40 CFR parts 117 and 302, and 33 CFR part 153, require persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any discharge of oil or 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) 202-267-2875.

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

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

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 33 U.S.C. 1321; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In the § 172.101 Table, the following entry is added in appropriate alphabetical order:

§ 172.101 Hazardous materials table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packaging group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Oil, n.o.s., with a flashpoint not less than 93 °C (200 °F).	9	NA9277	111	Class 9 ...		155	203	241			A	

11. In § 172.203, paragraph (o) is added to read as follows:

§ 172.203 Additional description requirements.

(o) *Oil*. Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be entered, in parentheses, in association with the basic description.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 is revised to read as follows:

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

13. 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, a marine pollutant, or oil.

14. 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 §§ 171.5, 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, a marine pollutant, or oil is not subject to the requirements of this subchapter if it is a mixture of one or more components that—

15. In § 173.155, paragraph (d) is added to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

(d) *Oil*. Except for hazardous wastes, hazardous substances, and marine pollutants the requirements of this subchapter do not apply to oil in non-bulk packagings.

PART 174—CARRIAGE BY RAIL

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

Authority: 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, app. A to part 1.

17. In § 174.25, paragraph (b)(1)(i), reference to "§ 172.10" is revised to read "§ 172.101", and paragraph (b)(6) is added to read as follows:

§ 174.25 Additional information on way bills, switching orders and other billings.

(b) * * *

(6) Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be

entered, in parentheses, in association with the basic description.

* * * * *

PART 176—CARRIAGE BY VESSEL

18. 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]

19. In § 176.70 the words “, and shipments of oil in bulk packagings,” are added to paragraph (a) following the words “Marine pollutants.”

Issued in Washington, DC on January 19, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93-1866 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-60-P