Order Providing Time for Filing Responses to Petition Requesting the Commission to Hold Channels and Applications in Abeyance

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Station (Helena, Montana) BC Docket No. 80-523, RM-3543, RM-3780.

Adopted: July 25, 1983.
Released: July 28, 1983.

By the Chief, Policy and Rules Division.

1. On July 13, 1983, Capital Investments ("Capital") filed a Petition for Extension of Time requesting that the time for responding to an Expedited Petition filed June 28, 1983,[1] by KCAP Broadcasters, Inc. ("KCAP") be extended through July 27, 1983. KCAP's petition was an informal request pursuant to § 1.41 of the Commission's Rules that the Commission not accept new applications and withhold processing on pending applications for newly assigned FM channels at Helena, Montana, until final resolution of the captioned docket and any rule making growing out of that proceeding.

2. Capital states that "a number of parties" in this proceeding are discussing a settlement which could "assist" the Commission in resolving matters raised by this proceeding. According to Capital, an extension would permit continuation of the settlement discussion. Capital further states that KCAP has agreed to the request for an extension.

3. We believe it to be consistent with Commission policy to encourage settlements, especially in situations such as the instant proceeding involving several competing parties. The Commission has not yet given Public Notice of its action in this proceeding pursuant to § 1.4(b) of the Rules. Therefore the Commission has retained jurisdiction over this proceeding. See § 1.103(b) of the Commission's Rules. Accordingly, we shall provide a 30-day period from the date of Capital's request to allow interested parties to submit a response to the petition of KCAP.

4. Accordingly, it is ordered, that the date for filing responses to the petition of KCAP, referred to above, is August 12, 1983.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 83-21271 Filed 8-5-83; 8:45 am]
BILLING CODE 6712-01-M

[1] The Petition was never published in the Federal Register.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[Docket No. HM-145E, Advance Notice]

Reportable Quantity of Hazardous Substance

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the Secretary of Transportation to list all "hazardous substances," as defined by that act, as "hazardous materials" under the Hazardous Materials Transportation Act (HMTA). By a final rule issued on March 19, 1981 (46 FR 17738) the Department's Materials Transportation Bureau (MTB) fulfilled this requirement, but declined to apply regulations under the HMTA to those substances that were not already subject to the Hazardous Materials Regulations. However, MTB indicated that, when the Environmental Protection Agency (EPA) excercised its authority under section 102(a) of CERCLA to adjust the reportable quantities (RQs) for those substances, MTB would again examine the question of whether to subject them to regulation under the HMTA. By a Notice of Proposed Rulemaking issued on May 25, 1983, (48 FR 23552) EPA has proposed to adjust the RQs for many of the CERCLA "hazardous substances." This Advance Notice of Proposed Rulemaking discusses and solicits comments on issues relating to the application of regulations under the HMTA to those substances.

DATE: Comments must be received on or before October 12, 1983.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 8:30 A.M. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas J. Charlton, Chief, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 426-2075

SUPPLEMENTARY INFORMATION

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also known as the "Superfund" law, is the major Federal legislation designed to address the need for a comprehensive system to respond to releases of hazardous substances into the environment and to impose liability for then on responsible persons (42 USC 9601 et seq.). While a principal focus of concern under CERCLA has been releases from hazardous waste disposal facilities, the law also applies extensively to the transportation of hazardous substances. (See, for example, 42 USC 9601(9)).

The comprehensiveness of CERCLA is indicated by the breadth of the definition of the term, "hazardous substance," which includes substances designated by the Environmental Protection Agency (EPA) under six separate statutory authorities:

1. Section 311 of the Clean Water Act (CWA);
2. Section 3001 of the Solid Waste Disposal Act;
3. Section 307(a) of the CWA;
4. Section 112 of the Clean Air Act;
5. Section 7 of the Toxic Substances Control Act; and
6. Section 102 of CERCLA.

In order to coordinate the implementation of CERCLA with the Department's administration of the Hazardous Materials Transportation act (HMTA), Congress adopted section 306(a) of CERCLA (42 U.S.C. 9656), which provides that each substance that is listed or designated as a "hazardous substance" under the Act shall be listed as a "hazardous material" under the HMTA. Section 306(b) provides that, with certain exceptions, carriers of CERCLA "hazardous substances" shall not be held liable under the CERCLA liability scheme until after the effective date of the listing of the released substance as a "hazardous material" in accordance with section 306(a).

MTB Regulations: At the time of the adoption of CERCLA, a large number of CERCLA "hazardous substances" were already subject to the Department's Hazardous Materials Regulations (HMR), as developed and administered by the Department's Materials Transportation Bureau (MTB). Those substances can be divided into three categories. First, substances that meet MTB's hazard class definitions, contained in 49 CFR Part 173, are fully regulated as hazardous materials. For

example, cyanide, while it is a CERCLA "hazardous substance" because it is designated under section 307 of the CWA, is already fully regulated under the HMR because it meets the hazard class definition for a Class B Poison (49 CFR 173.343).

Second, with regard to CERCLA "hazardous substances" that had been designated under section 311 of the CWA, those substances that were not already subject to the HMR had been subjected to them by a final rule issued by MTB on May 22, 1980, the purpose of which was to coordinate the administration of the HMTA with EPA's administration of the CWA (45 FR 34560). The effect of that rule was that, when such a substance is transported in a package containing a quantity of the substance which equals or exceeds the "reportable quantity" (RQ) for that substance, as determined by EPA, the shipment must conform with certain shipping paper and package marking requirements (49 CFR 173.1300). If a quantity of a hazardous substance equal to or exceeding its RQ is releases, the release must be immediately reported (49 CFR 171.17). Thus, for purposes of the HMR, "hazardous substance" is defined, in effect, as a material designated by EPA under section 311 of the CWA, but only when it is transported in a package containing at least the RQ of that substance. These "hazardous substances", along with their RQ's, were incorporated into the Hazardous Materials Table at 49 CFR 172.101.

Third, with regard to CERCLA "hazardous substances" that has been designated under section 3001 of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act (RCRA), i.e., "hazardous wastes," MTB issued a final rule, simultaneously with the rule discussed above, to coordinate the administration of the HMTA with EPA's administration of RCRA (45 FR 34560). That rule incorporated EPA's "cradle-to-grave" manifest system and other requirements for the transportation of hazardous wastes into the HMR (49 CFR 171.3), and defined the term, "hazardous waste," to mean, for purposes of the HMR, any material subject to the EPA manifest system (49 CFR 171.8). One effect of this definition is that shipments by shippers qualifying for EPA's small generator exemption (generally, those generating less than 1,000 kilograms of hazardous waste per month) of materials not satisfying a DOT hazard class definition are not presently subject to the HMR (See 40 CFR 261.5).

MTB Implementation of CERCLA Section 306(a): On March 19, 1981, MTB issued a final rule, listing all CERCLA "hazardous substances" as "hazardous materials" under the HMTA, in accordance with section 306(a) (46 FR 17738). In issuing that rule MTB had examined the issue of whether, in addition to "listing" the substances as hazardous materials, MTB should apply the Hazardous Materials Regulations (HMR) to shipments of those materials that were not already subject to them.

In section 102(b) of CERCLA, borrowing the concept of "reportable quantities" from the CWA, Congress assigned a statutory RQ of one pound to all CERCLA "hazardous substances" (except those for which EPA had already assigned RQs under section 311 of the CWA). Section 102(a) of CERCLA authorized EPA to set different RQs, as appropriate. Therefore, in adopting the rule in accordance with section 306 of CERCLA, MTB faced the issue of whether to treat all CERCLA "hazardous substances" as "hazardous substances" under the HMR, and thereby to impose shipping paper and package marking requirements on all shipments of packages of CERCLA "hazardous substances" equal to or exceeding the statutory RQ of one pound. Since the lists of CERCLA "hazardous substances" contain many common materials that are generally not regarded as hazardous in transportation (e.g., copper, zinc, and lead), and since the increased regulatory and paperwork burden would have been very substantial, MTB decided not to impose these requirements at that time.

MTB indicated, however, that it would reexamine the issue when EPA set RQs for the substances as authorized by section 102(a) of CERCLA: "At such time as EPA exercises its authority under section 102 to establish RQs for particular substances, MTB will determine the appropriateness of listing those substances as "hazardous substances' and assigning those RQs to them" (46 FR 17738).

Subsequently, MTB received petitions for reconsideration of the rule from the National Tank Truck Carriers, Inc., the American Trucking Association, and the American Association of Railroads, three national trade associations representing common carriers of hazardous materials. All of the petitioners objected to MTB's failure to impose shipping paper requirements on shipments of CERCLA "hazardous substances" in packages equal to or exceeding the statutory RQ of one pound. They argued that, since section 306(b) of CERCLA exempted carriers form liability under that act prior to the effective date of the listing required by section 306(a), Congress must have intended that carriers be given actual notice that they are transporting listed materials in order to be subject to liability under CERCLA, and that the HMR shipping paper requirements under that Act prior to the effective date of the listing required by section 306(a), Congress must have intended that carriers be given actual notice that they are transporting listed materials in order to be subject to liability under CERCLA, and that the HMR shipping paper requirements were intended as the means for providing that notice. They argued further that it was inappropriate to subject carriers to the liability and reporting and other requirements of CERCLA unless a means for notifying them of that fact were established.

On November 30, 1981, MTB published a denial of these petitions (46 FR 58086). MTB concluded that, while section 306(a) of CERCLA required the listing of CERCLA "hazardous substances" as "hazardous materials" under the HMTA, Congress had not expressed an intent to affect the Department's long-standing discretion under section 105 of the HMTA to determine whether, and to what extent, to regulate hazardous materials. MTB also restated its position that, given the tremendous paperwork burden that would be required to provide carriers with the notice they sought, it would be inappropriate to impose shipping paper requirements at that time, but that, when EPA adjusted the RQs, MTB would again examine the issue.

EPA Notice of Proposed Rulemaking: On May 25, 1983, EPA published a Notice of Proposed Rulemaking (NPRM) in which it proposed to exercise its authority under section 102(a) of CERCLA to adjust RQ's for CERCLA "hazardous substances" (48 FR 23552). MTB submitted comments to EPA on their notice which are provided as appendix A to this notice. Briefly, EPA has proposed RQ adjustments for 387 out of the 696 CERCLA "hazardous substances." The remainder are still under evaluation by EPA, and adjustments to them will be proposed when the evaluations have been completed. With regard to those substances for which EPA has completed its evaluations, it proposes either to retain the RQ of one pound or to establish a new RQ of 10, 100, 1000, or 5000 pounds. Interested persons are referred to the preamble of the NPRM for detailed discussion of the proposed adjustments and to the proposed rule itself for the proposed RQs.

Regulatory Considerations and Request for Comments

Executive Order 12291: In keeping with its commitment in issuing the rulemaking in accordance with section 306 of CERCLA, MTB is initiating the process of determining whether to incorporate EPA's adjusted RQ's into the HMR and to subject the CERCLA "hazardous substances" to regulation as "hazardous substances" under the HMR. In making that determination, MTB is subject to the provisions of Executive Order 12291, section 2 of which provides:

> In promulgating new regulations, * * * all agencies, to the extent permitted by law, shall adhere to the following requirements:
> (a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
> (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;
> (c) Regulatory objectives shall be chosen to maximize the net benefits to society;
> (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and
> (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future. [46 FR 13193].

Controlling Paperwork Burderns: By a final rule issued on March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) promulgated regulations under the Paperwork Reduction Act of 1980 that impose additional requirements on agencies considering the issuance of regulations that would require the "collection of information" (5 CFR Part 1320). As broadly defined in those regulations, the term, "collection of information" includes the shipping paper and package labeling requirements under the HMR (5 CFR 1320.7(c)(2)). Therefore, in considering whether to subject CERLA "hazardous substances" to those requirements, MTB is required to comply with those regulations.

In part, those regulations provide that agencies may not impose information collection requirements without first obtaining OMB approval (5 CFR 1320.4(a)). Those regulations also provide:

> To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:
> (1) The collection of information is the least burdensome necessary for the performance of the agency's functions to comply with legal requirements and achieve program objectives;
> (2) the collection of information is not duplicative of information otherwise accessible to the agency; and
> (3) The collection of information has practical utility * * * (5 CFR 1320.4(b)).

Regulatory Alternatives: MTB has determined that the following are the principal regulatory alternatives available to it when EPA issues its final rule to adjust RQs:

1. MTB may issue a rule to incorporate all CERCLA "hazardous substances" into the Hazardous Materials Table as "hazardous substances" under the HMR, applying the RQ for each substance in effect at that time (including the statutory RQ of one pound for those substances for which EPA has not concluded its evaluations).

2. With regard to those CERCLA "hazardous substances" for which EPA has completed its evaluations and established RQs, MTB may be issue a rule to incorporate those substances into the Hazardous Materials Table as "hazardous substances" under the HMR, but withhold further action on all other CERCLA "hazardous substances" until EPA has completed its evaluations and established RQs for them.

3. MTB may withhold further action until EPA has completed its evaluations and established RQs for all CERCLA "hazardous substances."

4. As a variation of Alternative 1, MTB may issue such a rule with regard only to those substances for which MTB possesses adequate information concerning the need for and consequences of such a rule, and for which the potential benefits outweigh the potential costs.

5. As a varation Alternative 2, MTB may issue such a rule with regard only to those substances for which MTB possesses adequate information concerning the need for and consequences of such a rule, and for which the potential benefits outweigh the potential costs.

6. As a variation of Alternative 3, MTB may issue such a rule with regard only to those substances for which MTB possesses adequate information concerning the need for and consequences of such a rule, and for which the potential benefits outweigh the potential costs.

7. MTB may do nothing. This would mean that the only hazardous substances regulated by the HMR would be those already listed in the Hazardous Materials Table.

8. MTB may decline to apply the HMR to hazardous substances by removing those already listed in the Hazardous Materials Table and by not adding any others. This would return DOT to its traditional role of safety regulation under HMTA.

Categories of Substances: In order to analyze these alternatives in accordance with E.O. 12291 and 5 CFR Part 1320, MTB requires additional information regarding the need for and consequences of adopting the EPA adjusted RQs, the associated costs and benefits, and the relative burdens and the practical utility of the various alternatives. For this purpose, CERCLA "hazardous substances" can be divided into four categories:

1. Those which are already subject to the HMR because they fall within one or more of the hazard classes defined in 49 CFR Part 173.

2. Those which are already subject to the HMR because they have been designated under section 311 of the CWA and are, therefore, incorporated into the HMR as "hazardous substances."

3. Those which are already subject to the HMR because they have been designated under section 3001 of RCRA and are, therefore, incorporated into the HMR as "hazardous wastes."[1]

4. Those which are not currently subject to the HMR.

With regard to Category 1 substances, the impact of the adoption of RQs under the regulatory alternatives generally appears to be relatively minor because most of these materials are already fully regulated under the HMR. The principal change would be that shipping papers would be required to display "RQ" and certain other information (49 CFR 172.203(c)). However, there may be important exception to this generalization. For example, materials classified as ORM–A under the HMR are subject to regulation only when transported on aircraft and/or vessels unless they are hazardous wastes in which case they are regulated by all modes. Designation of these materials as "hazardous substances" under the HMR would subject them to regulation when transported by other modes, as well. For example, tetrachloroethylene, a common drycleaning solvent classified under the HMR as an ORM–A, is a CERCLA "hazardous substance" because it is designated under both

[1] There is considerable overlap among these first three categories. For example, sodium cyanide is regulated under the HMR as a poison B, it has been designated as a "hazardous substance" under section 311 of the CWA, and, when carried for disposal, it is a "hazardous waste" under section 3001 of RCRA. Consideration of this overlapping is essential to determine the impact of the regulatory alternatives on any given material.

section 307 of the CWA and section 3001 of RCRA. EPA is still assessing the effects of this substance, and has proposed retaining the statutory RQ of one pound at least until those assessments are completed. Therefore, if MTB were to adopt that RQ, currently unregulated shipments of tetrachloroethylene by highway and rail in packages exceeding one pound would become subject to the HMR.

With regard to Category 2 substances, the adoption of RQs under the regulatory alternatives would only affect substances for which EPA has adjusted the RQ from that which had been assigned under section 311 of the CWA. For example, EPA has proposed to adjust the RQ for pentachlorophenol, a common wood preservative, from ten pounds to one pound. Thus, if pentachlorophenol were frequently transported in packages containing more that one pound, but less than ten pounds, of the substance, MTB's adoption of an adjusted RQ of one pound could result in a significant increase in the number of shipments subject to the HMR. On the other hand, EPA has proposed to increase the RQs for some of these substances, which might result in a reduction of the number of shipments subject to the HMR. It should be noted that, as discussed above, the original purpose of MTB's adopting RQ's for these materials was to coordinate its program with that of EPA, and that that purpose would no longer be served if DOT were to retain the current RQs after EPA has changed them.

With regard to Category 3 substances, as discussed above, only shipments of hazardous waste that are subject to EPA's manifest requirements are currently subject to the HMR. Therefore, application of the HMR to all shipments of hazardous waste in packages containing more that the RQ for that waste could result in a substantial increase in the number of shipments subject to the HMR. For example, assuming that packages contain at least the RQ, shipments originating with shippers who qualify for EPA's small generator exemption would become subject to the HMR.

Finally, with regard to Category 4 substances, the impact of the adoption of RQs under the regulatory alternatives would be similar to the impact on Category 3 substances that are not subject to EPA's manifest requirements. For example, diethylphthalate (other than waste diethyl phthalate) is currently not subject to the HMR. However, EPA has poposed an RQ for diethyl phthalate, of 100 pounds. Therefore, under the regulatory alternatives, all shipments of diethyl phthalate in packages exceeding 100 pounds would become subject to the HMR.

Questions to be Addressed by Comments: The above discussion of the potential impacts of the regulatory alternatives is based on preliminary observations. By this advance notice, MTB solicits more specific information from the public in order to conduct the analyses required by E.O. 12291 and 5 CFR Part 1320. Specifically, MTB solicits responses to the following questions:

1. What is the anticipated frequency of shipments that are not currently subject to the HMR, but that would become subject to them if MTB were to adopt RQs under the regulatory alternatives?

2. What new cost would the adoption of RQs under the regulatory alternatives impose on shippers and carriers of CERCLA "hazardous substances?"

3. What is the anticipated frequency of releases from these shipments that would exceed the RQ, and what is the likehood of clean-up efforts resulting from the reporting of these releases?

4. What are the anticipated environmental benefits of such clean-up efforts?

5. With regard to these releases, what is the likehood that clean-up would occur even if MTB did not adopt one of the regulatory alternatives?

6. What would be the effect of the adoption of RQs under the regulatory alternatives on internationl commerce?

7. What would be the effects of the adoption of RQs under the regulatory alternatives on the potential for liability and on the insurability of shippers and carriers of CERCLA "hazardous substances?"

8. Some CERCLA "hazardous substances" are hazardous only in certain forms. For example, while lead and other heavy metals are designaed as CERCLA "hazardous substances," they are hazardous only when they occur in very small particles. Therefore, EPA has proposed to exempt from reporting releases of these metals except for particles that are less than 100 micrometers in diameter. Are there other CERCLA "hazardous substances" that are hazardous only in certain forms to which MTB could similarly limit the applicability of the HMR?

9. If MTB were to extend the applicability of its shipping paper and package marking requirements through the adoption of RQs under the regulatory alternatives, would the increased frequency of their use tend to diminish their effectiveness as hazard warnings?

10. What other factors should MTB consider in determining the need for and consequences of the regulatory alternatives?

11. What other factors should MTB consider in determining the potential benefits and the potential costs to society of the regulatory alternatives?

12. What other information would be of value to MTB in conducting the analyses required by E.O. 12291?

13. To assist MTB in fulfilling the requirement of 5 CFR Part 1320, which of the regulatory alternatives, necessary for the proper performance of the agency's function, would be the least burdensome?

14. What is the "practical utility", as that term is defined at 5 CFR Part 1320.7(q), of the "collection of information" that would result from the adoption of RQs under the regulatory alternatives?

List of Subjects

49 CFR Part 171

Experts, Hazardous materials transportation, Imports, Reporting and recordkeeping requirements, Waste treatment and disposal.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers, Waste treatment and disposal.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

Issued in Washington, D.C. on July 29, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

Appendix A—MTB Comments on EPA NPRM "Notification Requirements; Reportable Quantity Adjustments"

In response to EPA's Notice of Proposed Rulemaking (NPRM), entitled, "Notification requirements; Reportable Quantity Adjustments" (48 FR 23552), the Materials Transportation Bureau (MTB) of the U.S. Department of Transportation submits the following comments.

At the outset, MTB notes and concurs with EPA's expressed intention "to work with DOT to develop a cordinated (sic) and integrated set of regulations so that shippers and carriers of hazardous substances will be subject to only one set of regulations" (48 FR 23560). This intention comports fully with the long-standing policy of both agencies to work together in areas of shared regulatory

responsibility to ensure that regulatory duplications, overlaps, inconsistencies, and gaps do not occur.

In accordance with this policy, MTB has previously expressed its commitment to examine the question of whether to subject CERCLA "hazardous substances" to additional regulation under the Hazardous Materials Transportation Act (HMTA) at such time as EPA exercises its authority under section 102(a) of CERCLA to adjust the reportable quantities (RQs) for those substances. The enclosed Advance Notice of Proposed Rulemaking (ANPRM) is MTB's initial step in conducting this examination, and any comments that EPA may have on that ANPRM will be greatly appreciated and fully considered.

Very briefly, the primary purpose of the ANPRM is to solicit information necessary to conduct the analyses that MTB is required to perform by Executive Order (E.O.) 12291 before issuing regulations to subject CERCLA "hazardous substances" to additional regulation under the HMTA. As EPA's contractor, ICF, Inc., has observed, "the extension of the HMR (MTB's Hazardous Materials Regulations) to CERCLA hazardous substances is a discretionary action, and . . . the effects of that extension (such as shipping paper costs) should be attributed to DOT's regulatory action, not EPA's adjustment regulation."

While MTB fully concurs with this conclusion, since EPA has the authority under CERCLA to designate "hazardous substances" and to establish RQs for them, EPA's actions, in effect, establish the starting point for MTB's considerations. Therefore, those actions clearly have a very substantial influence on the ultimate effect of any action by MTB to subject CERCLA "hazardous substances" to additional regulation under the HMR. For example, if a given CERCLA "hazardous substance," is frequently transported in packages containing 15 pounds of the substance, EPA's determination that the RQ for that substance should be 10 pounds, rather than 100 pounds, would result in many more shipments of the substance, being subject to the HMR if MTB were to extend the applicability of the HMR to that substance. Therefore, although E.O. 12291 properly places on MTB the ultimate responsibility to examine the impacts of extension of the HMR, it would be appropriate for EPA, in the process of adjusting RQs, to consider the influence of its actions on those impacts.

An excellent example of EPA's apparent consideration of these impacts is the treatment in the NPRM of metals that are CERCLA "hazardous substances" because they are designated as "toxic pollutants" under section 307 of the CWA. Recognizing that these metals (such as lead, copper and zinc) are hazardous only in the form of very small particles, EPA stated that "no reporting of releases of massive forms of these substances is required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers" (48 FR 23601). This limitation of the form of the substances makes it much more practicable for MTB to subject these substances to regulation under the HMR; large numbers of innocuous shipments containing these metals in other forms would not be subject to regulation.

Similar limitations may also be appropriate for other CERCLA "hazardous substances." For example, asbestos, while demonstrably hazardous in some forms, in a commonly used industrial material that is frequently transported as a part of products that pose little risk, such as brake linings and asbestos-cement pipes. To subject shipments of these products to the HMR because they contain a quantity equal to or greater than the RQ for asbestos (currently one pound) would very probably not be cost-effective. However, if EPA were to limit the forms of asbestos that are subject to the RQ to those forms that present the hazards for which asbestos was designated a CERCLA "hazardous substance" (e.g., unbonded particles), application for the HMR only to those forms of asbestos would be more feasible.

Apart from these general comments relating to coordination between EPA and MTB, MTB has several specific comments relating to the section of the preamble of the NPRM entitled, "Additional criteria considered but not currently used for adjusting reportable quantities." First, EPA states, "until passage of CERCLA, not all releases of CERCLA hazardous substances have been uniformly subject to DOT reporting requirements" (48 FR 23567). This statement implies that, *since* passage of CERCLA, all releases of those substances have been uniformly subject to DOT reporting requirements. As discussed in the enclosed ANPRM, and in the rulemaking actions cited therein, DOT has not extended application of the HMR, including the reporting requirements, to CERCLA "hazardous substances" that were not already subject to them.

Second, MTB disagrees with EPA's suggestion that "Release Potential" might be an appropriate criterion on which to base adjustments to RQs. As EPA states elsewere in the NPRM:

> This rulemaking proposes adjustments to the statutory RQs based upon specific scientific and technical criteria which correlate with *the possibility of hazard or harm upon the release of a substance in a reportable quantity*. These revised RQs, therefore, enable the Agency to focus its resources on those releases which are *most likely to pose potential threats to public health and welfare and the environment* (48 FR 23560) (emphasis added).

The likelihood of release of a substance is irrelevant to these considerations; the "possibility of hazard or harm" and the "potential threats to public health and welfare and the environment" caused by a given release are the same whether the release was likely or unlikely to occur. Therefore, the need for EPA to be notified and to undertake response is likewise the same.

With regard to the specific factors identified by EPA in that section, MTB also disagrees with the suggestion that "Transportation Mode" or "Packaging and Containerization" might be appropriate factors for consideration in determining the likelihood of releases. With regard to transportation mode, the NPRM states, "If some hazardous substances are generally shipped by a transportation mode that exposes them to a particularly high risk of large releases, the RQ may be reduced . . ." (48 FR 23567). It is, of course, the purpose of the HMR to assure that all hazardous materials are transported, by whatever mode, in a manner that does not pose an unreasonable risk of release. Generally, each mode poses equivalent risks of release. In transportation between two specific points in may be possible to determine that one mode presents a lower risk than another, but that conclusion could be established only after a detailed risk analysis and would apply only to that particular situation. For example, while a risk analysis might demonstrate that, for transportation between New Orleans and Houston, barging would pose a minutely lower risk than rail, that conclusion would obviously be absurd for transportation between Denver and Phoenix. Further, other factors, such as condition of equipment, track, or roadway, have a much greater influence on transportation risk than does mode of transportation.

With regard to "packaging and containerization," CERCLA "hazardous substances" that are subject to the packaging requirements of the HMR are required to be packaged in such a way that releases will not occur during the normal course of transportation. In the event of an accident involving properly

packaged materials, the type of packaging will generally have little effect on the likelihood or quantity of release. With regard to package size, MTB agrees with EPA that there is likely to be a correlation between the size of package and the size of release. As discussed previously, to the extent that EPA can establish RQs so that only releases from packages of a sufficient size to pose a substantial threat are subject to reporting requirements, application of the HMR will be more practicable. Again, however, the relevant concern is the severity of the release, rather than its likelihood.

[FR Doc. 83-21424 Filed 8-5-83; 8:45 am]
BILLING CODE 4910-60-M

49 CFR Parts 172, 173, and 179

[Docket No. HM-139F; Notice No. 83-5]

Conversion of Individual Exemptions into Regulations of General Applicability

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The MTB is considering amending the regulations governing the transportation of hazardous materials to incorporate therein a number of changes based on existing exemptions which have been granted to individual applicants allowing them to perform particular functions in a manner that varies from that specified by the regulations.

Adoption of these exemptions as rules of general applicability would provide wider access to the benefits of transportation innovations recognized as effective and safe. In addition, these proposed changes would eliminate the need for recordkeeping by the exemption holder(s); eliminate the need for marking the exemption number on the package and shipping paper(s), and, eliminate the need for MTB to receive, review, docket, evaluate, and issue a renewal of the exemption every two years.

DATE: Comments must be received by October 12, 1983.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. 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: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590 (202-472-2726).

SUPPLEMENTARY INFORMATION: Each of the proposed amendments described in the following table is founded upon either: (1) Actual shipping experience gained under an exemption, or (2) the data and analysis supplied in the application for an exemption. In each case the resulting level of safety being afforded the public is considered at least equal to the level of safety provided by the current regulations.

These proposals would not significantly affect the cost of regulatory enforcement, nor would additional costs be imposed on the private sector, consumer, or Federal, State or local governments, since these proposals would merely authorize the general use of shipping alternatives previously available to only a few users under exemptions. The safety record of shipments under the identified exemptions demonstrates that significant environmental impacts would not result from any of the proposals. Adoption of an amendment derived from an existing exemption would obviate the need for the exemption and effectively terminate it. Upon such termination the holder of the exemption and parties thereto would be individually notified. Adoption of an amendment derived from an application for exemption should provide the relief sought, in which event the exemption request would be denied and the applicant so notified. In the event the Bureau decides not to adopt any of these proposals, each pertinent application would be evaluated and acted upon in accordance with the applicable provisions of the exemption procedures in 49 CFR Part 107, Subpart B. Consequently, persons commenting on the propopsals may wish to address both the proposed amendment and the exemption application.

Each mode of transportation for which a particular exemption is authorized or requested is indicated in the "Nature of Exemption or Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo Vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

The MTB certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities. Also, because the proposals made in this Notice relate to exemptions which have already been approved by the Materials Transportation Bureau, we have further determined that the Notice—(1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be so minimal; (4) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (5) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

List of Subject Terms

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials, transportation, Packaging and containers.

49 CFR Part 179

Railroad safety.

Exemption No.	Applicant holder	Regulation affected	Nature of exemption or application	Proposed amendment
DOT-E 5662	Dow Chemical Co Great Lakes Chemical Corp	§ 173.353(a) § 173.353a(a)	Authorizes shipments of Methyl Bromide with more than 2% chloropicrin mixture, liquid; Methyl bromide and nonflammable, nonliquefied compressed gas mixture, liquid; Methyl bromide-ethylene dibromide mixture, liquid (RQ-1000/454); and Methyl bromide, liquid (*including up to 2% chloropicrin*) in DOT Specification 51 portable tanks. (Modes 1, 2 and 3.).	To add paragraph (g)(8) to § 173.353 to read as follows: (8) Specification 51 (§ 178.245 of this subchapter). Steel portable tanks having a design pressure of not less than 250 pounds per square inch and equipped with a spring loaded safety relief device To revise § 173.353a(a) to include reference to § 173.353(a)(8).