

DEPARTMENT OF TRANSPORTATION**Research and Special Programs
Administration****49 CFR Parts 171, 173, 174, 175, 176,
and 177****[Docket No. HM-145E, Amdt. Nos. 171-92,
173-200, 174-62, 175-40, 176-25, and 177-
69]****Reportable Quantity of Hazardous
Substances****AGENCY:** Research and Special Programs
Administration. (RSPA). DOT.**ACTION:** Final rule.

SUMMARY: This document removes an
obsolete hazardous substance discharge
reporting requirement from the
Hazardous Materials Regulations and
adopts a note in place thereof that
draws attention to existing reporting
requirements contained in U.S.
Environmental Protection Agency
Regulations. This action is necessary to

remove an obsolete and misleading requirement from the regulations.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Charlton, Standards Division Office of Hazardous Materials Transportation, RSPA, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On June 23, 1986, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM-145E (51 FR 22902) entitled: Reportable Quantity of Hazardous Substances. The notice proposed to amend DOT's Hazardous Materials Regulations (HMR, 49 CFR Parts 171 through 179) by incorporating into the HMR many new hazardous substances with their reportable quantities and adjusting the reportable quantities of hazardous substances already in the HMR. In addition, the NPRM proposed to change the definition of "hazardous substance", as it is defined in § 171.8 of the HMR, and to change the reporting requirement for discharges of hazardous substances found at § 171.17. Both proposals were in response to actions taken by the U.S. Environmental Protection Agency (EPA) in a final rule published in the *Federal Register* on April 4, 1985, (50 FR 13456) pursuant to that agency's authority under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

On October 18, 1986, the President signed the Superfund Amendment and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499). In amending CERCLA, Congress required, *inter alia* that within 30 days the Secretary of Transportation list and regulate all hazardous substances designated under section 101(14) of CERCLA. In response to this Congressional mandate, RSPA published a final rule on November 21, 1986, under Docket HM-145F (51 FR 42174). The rule listed and regulated all hazardous substances at the reportable quantities designated by EPA pursuant to their authorities under section 102 of CERCLA and incorporated all hazardous substances into the HMR. It dealt with most of the issues raised in Docket HM-145E with the exception of the reporting requirement at § 171.17. The amendments adopted herein deal with that issue.

Hazardous substances first appeared in the HMR in 1980. They were designated by EPA, each with a reportable quantity, in 1978 pursuant to section 311 of the Federal Water Pollution Control Act (FWPCA). While the original FWPCA substances were

later incorporated into the list of CERCLA hazardous substances, they were water pollutants, and the FWPCA required that "discharges" of these materials be reported. "Discharges" were defined in the FWPCA as spills to the waters of the United States or adjoining shorelines. EPA and the Coast Guard, who have spill response and clean up responsibility for both oil and hazardous substances under the FWPCA, published separate regulations requiring that discharges of these materials be reported to the Coast Guard's National Response Center (NRC). The Coast Guard reporting requirements are found at 33 CFR Part 153, and EPA's at 40 CFR Part 117. When RSPA placed these original hazardous substances in the § 172.101 Table in 1980, it also placed a reporting requirement for their discharge in the HMR at § 171.17 which was similar to the EPA and the Coast Guard requirements. Section 171.17 presently requires that the owner or operator of a facility (including a transport vehicle) report to the NRC any discharge of a hazardous substance into the navigable waters or upon adjoining shorelines as soon as he has knowledge of the discharge.

In addition to adding many hazardous substances to those already designated pursuant to the FWPCA, CERCLA expanded the scope of spill reporting to the biosphere (i.e., navigable waters, ground water, earth, and air). Under CERCLA, a "release" (a term which replaced "discharge") of a hazardous substance in a reportable quantity to any of these environmental media must be reported under CERCLA. With advent of CERCLA, the reporting requirement at § 171.17 has become both obsolete and misleading, since it references only spills threatening water. Section 103 of CERCLA contains specific requirements to report "releases" to the NRC. In addition, EPA published a second hazardous substance reporting regulation in 40 CFR Part 302 requiring reporting of "releases" of hazardous substances to the NRC.

In its NPRM (Docket HM-145E), RSPA proposed either to revise § 171.17 to reflect the expanded reporting media, or to remove § 171.17 from the HMR. RSPA received one comment on the proposed revisions to § 171.17 from EPA, urging that § 171.17 be retained but corrected to reflect the CERCLA requirements. No other persons commented on hazardous substances reporting. Based on a review of this issue, RSPA is removing § 171.17 and references to that section from the HMR. However, RSPA is incorporating a note drawing attention to existing EPA regulations requiring that an owner or

operator of a CERCLA-covered facility report each hazardous substance release to the NRC. RSPA has taken this action because § 171.17 duplicates rules promulgated by both EPA and Coast Guard. There is no basis to conclude another reporting requirement, using the authority of the Hazardous Materials Transportation Act (HMTA), would enhance safety or environmental protection. Indeed, it could confuse the regulated community. RSPA believes that it is better to reference EPA regulatory requirements than to attempt to duplicate them in the HMR.

Review by Sections

Section 171.15, which requires immediate reporting of certain hazardous materials spills, is revised by including a note drawing attention to EPA requirements at 40 CFR Part 302 to report releases of hazardous substances to the National Response Center.

Section 171.17 is removed and reserved.

Section 173.118a is revised by removing the reference to § 171.17 in paragraph (b)(6).

Section 174.45 is revised by removing the reference to § 171.17.

Section 175.45 is revised by removing paragraph (d) which references § 171.17.

Section 176.48 is revised by removing the reference to § 171.17 in paragraph (b).

Section 177.807 is revised by removing the reference to § 171.17.

Administrative Notices

Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act [49 U.S.C. 4321 *et seq.*]. A regulatory evaluation is available for review in the Docket.

Impact on Small Entities

Based on limited information concerning the size and nature of the entities likely to be affected, I certify this rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

The following list of *Federal Register* Thesaurus of Indexing Terms apply to this rulemaking:

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

In consideration of the foregoing, Parts 171, 173, 174, 175, 176, and 177 of Title 49, Code of Federal Regulations would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808, and 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, a note is added after paragraph (c), as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(c) . . .

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

§ 171.17 [Removed and reserved]

3. Section 171.17 is removed and reserved.

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 1809; 49 CFR 1.53(e), 1.53, App. A to Part 1, 49 U.S.C. 1855, 1855(c).

5. In § 173.118a, paragraph (b)(6) is revised to read as follows:

§ 173.118a Exceptions for combustible liquids.

(b) . . .

(6) Reporting incidents as prescribed by §§ 171.15 and 171.16 of this subchapter; and

PART 174—CARRIAGE BY RAIL

6. The authority citation for Part 174 is revised to read as follows:

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

7. Section 174.45 is revised to read as follows:

§ 174.45 Reporting hazardous materials incidents.

When any incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

PART 175—CARRIAGE BY AIRCRAFT

8. The authority citation for Part 175 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806, 1807, 1808; 49 CFR 1.53(c), 1.53, App. A to Part 1.

9. In § 175.45, paragraph (d) is removed as follows:

§ 175.45 Reporting hazardous materials incidents.

(d) [Reserved]

PART 176—CARRIAGE BY VESSEL

10. The authority citation for Part 176 is revised to read as follows:

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

11. In § 176.48, paragraph (b) is revised to read as follows:

§ 176.48 Situation requiring report.

(b) When an incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

12. The authority citation for Part 177 is revised to read as follows:

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

13. Section 177.807 is revised to read as follows:

§ 177.807 Reporting hazardous materials incidents.

When an incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

Issued in Washington, DC, on March 12, 1987, under authority delegated in 49 CFR 1.53.

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