

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs  
Administration**

**49 CFR Parts 171 through 179**

[Docket HM-200, Advance Notice No. 87-6]

**Hazardous Materials in Intrastate  
Commerce; Advance Notice of  
Proposed Rulemaking**

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

**ACTION:** Advance notice of proposed  
rulemaking (ANPRM).

**SUMMARY:** This publication invites  
comments on the need for, and possible  
consequences of, DOT extending the  
application of its hazardous material  
regulations (HMR, 49 CFR Parts 171-179)  
to all intrastate transportation of  
hazardous materials in commerce.

**DATE:** Comments must be received by  
September 28, 1987.

**ADDRESS:** Address comments to:  
Dockets Unit, Office of Hazardous  
Materials Transportation (DHM-30),  
U.S. Department of Transportation,  
Washington, DC 20590. Comments  
should identify the docket and notice  
number and be submitted, if possible, 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 Room 8426 of  
the Nassif Building, 400 Seventh Street  
SW, Washington, DC 20590. Office  
hours are 8:30 a.m. to 5:00 p.m. Monday  
through Friday.

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

**SUPPLEMENTARY INFORMATION:** RSPA is  
considering whether to extend the  
application of the HMR to all intrastate  
transportation in commerce as a means  
of promoting national uniformity and

transportation safety. At the present time, the HMR generally do not apply to intrastate carriage by highway, with the exception of three types of hazardous materials. Hazardous wastes, hazardous substances, and flammable cryogenic liquids in portable tanks and cargo tanks (see § 171.1(a)). The HMR apply to the intrastate carriage by highway of these three types of hazardous materials, but to no others. The HMR apply to all hazardous materials transported in commerce by railcar, aircraft, and vessel.

Section 103(1) of the Hazardous Materials Transportation Act (HMTA, 49 App U.S.C. 1801-1811) specifies that

"commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside such State or (B) which affects trade, traffic, commerce, or transportation described in clause (A).

Section 105(a) of the HMTA (49 U.S.C. 1804(a)) grants the Secretary of Transportation the authority to issue regulations for the safe transportation of hazardous materials in commerce.

Plainly, the Secretary has the authority to extend the application of the HMR to cover all intrastate transportation of hazardous materials which affects interstate commerce. Because of the complexity of the U.S. transportation system, such an extension would, in effect, cover all intrastate hazardous materials transportation in commerce.

In the past, DOT has discussed the issue of regulating the intrastate transport of hazardous materials a number of times. In 1976 DOT amended and reissued the HMR under the authority of the HMTA. That rulemaking (Docket HM-134, 41 FR 38175, September 9, 1976) discussed the expansion of DOT's authority under the Act, to allow the regulation of all hazardous materials transportation affecting interstate commerce. The following statement appeared in the preamble of the final rule:

Clearly, the scope of this new regulatory authority as described by section 103(1) of the HMTA, is broader than that which has been exercised under 18 U.S.C. 831. The Bureau now contemplates exercising this expanded HMTA authority through individual rulemaking proceedings which it would initiate as the need for extending the hazardous materials regulations to particular intrastate situations affecting interstate commerce come [sic] into focus [41 FR 38175, September 9, 1976].

RSPA has initiated rulemakings to exercise its expanded authority as clear needs presented themselves. Under Docket HM-145A, the application of the HMR was extended to the intrastate

transportation of hazardous waste materials. The NPRM under that docket (May 25, 1978; 43 FR 22628) stated:

The HMTA defines "commerce" to include interstate commerce and intrastate transportation that affects interstate commerce (HMTA, section 103(1), see also HM-134, 41 FR 38175, September 9, 1976). The fact that the RCRA [Resource Conservation and Recovery Act] applies to all waste transportation, regardless of whether interstate commerce is directly involved, amounts to a finding that intrastate commerce in hazardous wastes affects interstate commerce. The necessity of assured delivery to a permitted disposal facility, as against possible diversion of shipments to improper disposal sites, requires regulation of intrastate movements. To the generator/shipper, or to the carrier of a hazardous waste, it may not be clear whether a given shipment is being offered for interstate or intrastate transportation, since the accompanying shipping paper may show alternate consignee facilities. This uncertainty also may hamper enforcement efforts, if the proposed DOT amendments restricted their application solely to interstate transportation. In view of this, the proposal herein would apply to both interstate and intrastate transportation of hazardous wastes by all modes.

Subsequent rulemaking actions extended application of the HMR to the intrastate transportation of hazardous substances (May 22, 1980; 45 FR 34560) and flammable cryogenic liquids in portable tanks and cargo tanks (June 16, 1983; 48 FR 27674).

The Office of Technology Assessment (OTA) of the U.S. Congress has published a report entitled "Transportation of Hazardous Materials" (July, 1986). The OTA report suggested that safety would be enhanced by RSPA's applying the HMR to all movements under its jurisdiction. The report specifically mentioned the reporting of hazardous materials incidents and container requirements for hazardous materials as candidates for extension of the requirements to intrastate transportation. It is partially in response to the OTA report that RSPA is publishing this ANPRM.

RSPA agrees that the proposed action may produce safety benefits due to increased uniformity of requirements and to covering activities which up to now have either not been regulated or, if subject to state regulation, have not been regulated in a uniform manner. Examples of areas where safety benefits may result from the proposals in this ANPRM include: The use of DOT specification packagings, the requirements for maintenance and retesting of packagings, and the hazard communication requirements. Packaging and communications are examples where uniformity is important and

testing and maintenance where there is little or no state regulatory activity.

On the other hand there may be adverse impacts on businesses (especially small businesses engaged in local distribution), farmers, and consumers. Farmers hauling fertilizer (other than hazardous substances in reportable quantities) for application on their land could come under Federal jurisdiction for the first time. Without knowing the full extent of either the safety benefits or the adverse impacts, RSPA is not able to make an assessment of the overall impact of its proposal and is soliciting comments on any potential impacts which might occur should the ANPRM be adopted as a final rule.

While recent surveys of state requirements indicate that most states have adopted the HMR in whole or in part as state requirements, RSPA does not have complete and specific information on the states that may have special exceptions (such as for private carriage) or have grandfathered certain non-DOT specification packagings (such as cargo tanks). The extent of such exceptions will affect both the benefits and the costs of extending the HMR to intrastate commerce. Commenters are encouraged to address these and other topics as specifically as possible. The inclusion of data on populations affected and costs of compliance would be helpful.

In addition to comments addressed to the aforementioned issues, RSPA requests constructive comments in response to the following questions.

1. Should RSPA extend application of the HMR to all intrastate transportation of hazardous materials?

2. Should RSPA consider exceptions to the application of the HMR to the intrastate transportation of hazardous materials by highway?

3. If RSPA decides to apply the HMR to the intrastate transportation of hazardous materials by highway, what time frame should be allowed for compliance with the new requirements? Should different time frames be allowed for different requirements (e.g., communications vs. packaging, bulk packaging vs. non-bulk)? If so, what should these time frames be?

4. Section 103(5) of the HMTA includes within the definition of "state" the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa and Guam. Should any special consideration be given to the implementation of the HMR requirements in these or other jurisdictions if this proposal is adopted?

Issued in Washington, DC on June 22, 1987,  
under the authority delegated in 49 CFR Part  
106, Appendix A.

**Alan I. Roberts,**

*Director, Office of Hazardous Materials  
Transportation.*

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