

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 171 and 172****[Docket HM-145D; Notice No. 82-2]****Hazardous Waste Manifest; Shipping Papers**

Note: This document contains a correction published on Monday March 8, 1982.

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT) and the Environmental Protection Agency (EPA) are proposing in this issue of the **Federal Register** requirements for a Uniform Hazardous Waste Manifest to resolve difficulties being encountered by shippers and carriers involved in the transportation of hazardous waste because of different State manifest requirements. EPA is proposing a standard format for the manifest and the Materials Transportation Bureau (MTB) is proposing to amend the Hazardous Materials Regulations to recognize their standardized hazardous waste manifest for all hazardous waste transportation in commerce within the United States.

MTB proposes to amend § 171.1 of the Hazardous Materials Regulations to delete the reference to EPA interim authorizations and to amend § 171.3 by deleting the Note to paragraph (c)(3). MTB also proposes two amendments pertaining to shipping papers; one is a revision to § 172.201 to recognize that a shipping paper, including a hazardous waste manifest, may consist of more than one page; the other is a revision to § 172.205 to include the EPA form number for the hazardous waste manifest.

DATE: Comments must be received no later than April 28, 1982.

ADDRESS: Address comments to: The Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that the docket number be identified and that five copies be submitted. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th 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: Lee E. Metcalfe, Office of Hazardous Materials Regulation, Materials

Transportation Bureau, Washington, D.C. 20590, (202) 426-2075.

SUPPLEMENTARY INFORMATION: On February 26, 1980, the Environmental Protection Agency (EPA) established a manifest system to assure that hazardous waste designated for delivery to an offsite treatment, storage or disposal facility actually reached its destination. The central element of that system is the "manifest", a control and transport document that accompanies the waste from its point of generation to its point of destination. On May 22, 1980 MTB issued final regulations, under Docket HM-145A (45 FR 34560), relative to the use and disposition of manifests.

Although EPA considered requiring a uniform manifest form when it developed its regulations, the Agency chose instead to require that specific information accompany the waste and did not require the use of a specified format for a manifest. EPA recognized that DOT's regulations already required shipping papers for the transportation of hazardous materials without a requirement for use of a specific form; therefore, EPA concluded that a shipping paper could be used satisfactorily as a manifest if additional information required by EPA was included. By not requiring a specific form, EPA's intent was to provide the regulated community with the option of adapting their existing DOT shipping papers to function as manifests as was requested by several commenters in response to the proposed rule.

Since the introduction of the Federal manifest system, there has been a proliferation of manifests as various States decided to develop and print their own forms. At least 21 States presently require generators to use specific manifest forms, often with varying additional information requirements. This has caused two major problems. First, the lack of uniformity in the manifests required by States has created a burden for both generators and transporters. Currently, a transporter carrying hazardous waste may be required to carry the manifest of each State in which he travels in order to comply with each State's manifest requirements. Failure to carry a particular State's manifest may delay or prevent shipments from reaching their destination, or subject the transporter to legal action. Under these conditions, a generator may be required to go through the costly and inefficient procedure of filling out several manifest forms with duplicative information in order to ensure that the waste shipment reaches the designated facility. Second, a generator with plants in more than one State cannot standardize its manifesting procedures company-wide because of a

lack of uniform requirements. This prevents multistate corporations from achieving efficiency in their information collection activities in a uniform manner.

In an effort to solve these problems, EPA and MTB asked two organizations representing the States and the regulated community to submit suggestions for a uniform manifest. The State group, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the industry group, the Hazardous Materials Advisory Council (HMAC), each developed a set of recommendations concerning the content and use of a uniform manifest which were submitted to EPA and MTB in March of 1981. EPA and MTB reviewed the recommendations prepared a draft manifest form and met with the ASTSWMO and HMAC committees in July of 1981. Since the current problems associated with the manifest involve both DOT and EPA, the Agencies have worked together to devise a regulatory solution. Therefore, several amendments are being proposed in this area. EPA is proposing to amend 40 CFR Parts 262 and 123 to introduce the Uniform Hazardous Waste Manifest form and to make the use of the form a requirement for State interim and final authorization. MTB is proposing to amend the Hazardous Materials Regulations to require that shippers and carriers of hazardous waste comply with EPA proposed amendments pertaining to the use of the proposed manifest, and to clarify that any State (or political subdivision of a State) law or regulation requiring a different, or additional manifest, is inconsistent with the Hazardous Materials Regulations.

The effect of such amendments would be twofold. First, the use of a nationally uniform manifest would be required for all off-site transport of hazardous waste. Second, no State could require a carrier to provide additional information on or with the manifest. Thus, a carrier could not be held legally liable for failure to carry a State's particular manifest form.

Neither the EPA nor DOT proposed amendments would prohibit a State from requiring additional information from the generator or the treatment, storage or disposal facility concerning a hazardous waste shipment. For example, a State may require that certain disposal related data be present at the facility before the facility accepts the waste. The proposed amendments do not preclude the transporter from voluntarily carrying such information but do prohibit any State from requiring him to do so.

Certain areas of transportation demand a strong predominant Federal role. In the Senate Committee language reporting on what became Section 112 of the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. 1801 et seq., the need for uniform national standards in the field of hazardous materials was strongly indicated. Section 112 of the HMTA expressly preempts any State or local requirement that is inconsistent with the HMTA or the regulations issued thereunder. MTB believes that national uniformity is necessary in this area and that an evolving patchwork of differing State requirements for manifests is clearly inconsistent with the Congressional purposes underlying the HMTA. Rather than addressing the differing requirements of the States through proceedings initiated pursuant to 49 CFR, Part 107, MTB believes it should modify its regulations to require use of the Uniform Hazardous Waste Manifest. To ensure there is no misunderstanding of the present statement of inconsistency, this proposal would delete the note following § 171.3(c)(3).

After considering alternatives for phasing in the Uniform Hazardous Waste Manifest, MTB and EPA have agreed to a proposed effective date. This approach was selected in order to avoid confusion concerning the compliance date; therefore, it is proposed that the uniform form would be required for all transportation of hazardous waste 180 days after the publication of the final rule. This time period was chosen to provide States and industry sufficient time to implement the new hazardous waste manifest.

MTB is proposing in this Notice to: (1) remove the qualifying language in § 171.1(a)(3)(i) pertaining to transportation of hazardous waste by motor vehicle in intrastate commerce, thereby making the Department's Hazardous Materials Regulations

applicable to all hazardous wastes transported off-site by motor vehicle; (2) cancel the Note following § 171.3(c)(3); (3) amend § 172.201 to recognize the use of continuation pages for shipping papers, with a showing of the number of pages constituting a shipping paper; and (4) to amend § 172.205(a) to require that proposed EPA Form 8700-22 (and 22A when appropriate) be used for display of mandatory hazardous waste information for all such transportation in commerce.

In consideration of the foregoing, it is proposed to amend Parts 171 and 172 of Title 49 Code of Federal Regulations as follows:

PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

1. Section 171.1 would be amended by the revision of paragraph (a)(3)(i) to read as follows:

§ 171.1 Purpose and scope.

- (a) * * *
- (3) * * *
- (i) Hazardous waste.

§ 171.3 [Amended]

2. Section 171.3 would be amended by removing the Note following paragraph (c)(3); and by removing the reference in Note 1 to paragraph (e) of "40 CFR 262.21 and 263.11" and inserting in its place "40 CFR 262.20(a) and 263.11".

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. Section 172.201 would be amended by adding paragraph (c) to read as follows:

§ 172.201 General entries.

- (c) *Continuation page.* A shipping paper may consist of more than one

page, if each page is numbered and the first page bears a notation specifying the total number of pages included in the shipping paper. For example, "Page 1 of 4 pages."

4. Section 172.205 would be amended by the revision of paragraph (a) to read as follows:

§ 172.205 Hazardous waste manifest.

(a) No person may offer, transport, transfer, or deliver a hazardous waste (waste) unless an EPA Form 8700-22 and 22A (when necessary) hazardous waste manifest (manifest) is prepared in accordance with 40 CFR 262.20 and is signed, carried, and given as required of that person by this section.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(3) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under terms of Executive Order 12291 and DOT implementing procedures (44 FR 11034) nor require 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. I certify that this proposed regulation, if published as a final rule, will not have a significant economic on a substantial number of small entities because small entities involved in the transportation of hazardous waste are already subject to DOT requirements for waste shipments implemented in November 1980. The hazardous waste manifest system was implemented by EPA in August 1980. This proposed rulemaking, if adopted, would merely require a standard format and content of that manifest.

Issued in Washington, D.C. on February 22, 1982.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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