

an overview of the

FEDERAL HAZARDOUS MATERIALS TRANSPORTATION LAW

(Federal hazmat law)

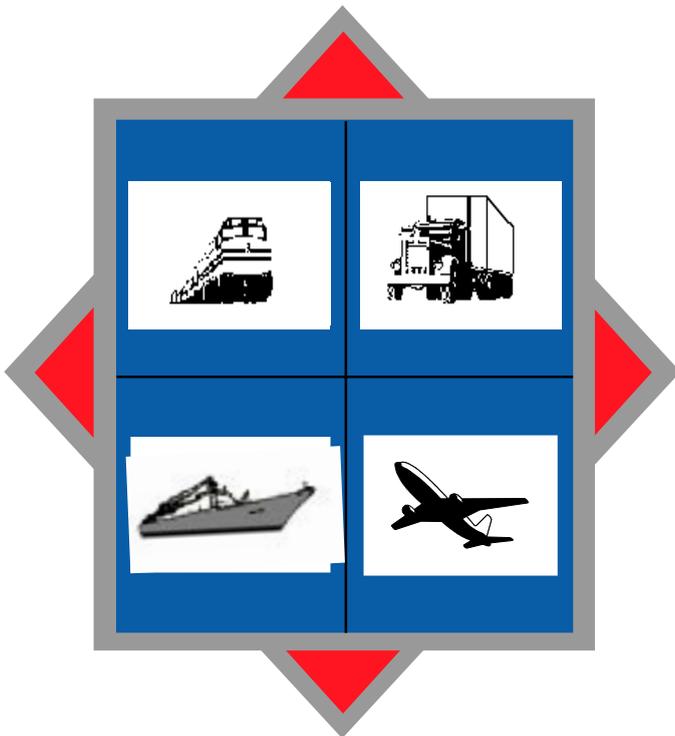


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FEDERAL HAZARDOUS MATERIALS TRANSPORTATION LAW

The Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. § 5101 et seq., (formerly the Hazardous Materials Transportation Act, 49 App. U.S.C. § 1801 et seq.) is the basic statute regulating hazardous materials transportation in the United States.

Congressional Purpose

The purpose of the law is to provide adequate protection against the risks to life and property inherent in transporting hazardous materials in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

REGULATORY AUTHORITY

The Secretary shall designate a material or a group or class of materials as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property. The Secretary shall issue regulations for the safe transportation of hazardous materials.

HAZARDOUS MATERIALS REGULATIONS

(HMR; 49 CFR PARTS 171-180)

The HMR Covers Five Areas

- Hazardous materials definition/classification (Part 172, Subparts A-B, Part 173);
- Hazard communication (Part 172, Subparts C-G);
- Packaging requirements (Parts 173, 178, 179, and 180);
- Operational rules (Parts 171, 173, 174, 175, 176 and 177); and
- Training (Part 172, Subpart H).

Applicability

The HMR apply to interstate, intrastate and foreign commerce. The HMR apply, under current regulations, to transportation in commerce by aircraft, railcars, vessels, and by motor vehicles operated by interstate carriers. [After September 30, 1998, the HMR will apply to transportation in commerce by any motor vehicle.]

The HMR also apply to intrastate motor carriers transporting:

- Hazardous wastes and hazardous substances (as determined under statutes administered by and regulations issued by the Environmental Protection Agency);
- Flammable cryogenic liquids in portable tanks and cargo tanks; and
- Marine Pollutants.

The HMR apply to persons who:

- Offer hazardous materials for interstate, foreign, and intrastate transportation in commerce (shippers) except offering to intrastate motor carriers generally is not regulated by the HMR until October 1, 1998;
- Transport hazardous materials in commerce (common, contract and private carriers), except intrastate motor carriers generally are not regulated until October 1, 1998;
- Offer or transport in commerce by any mode or carrier a hazardous waste, hazardous substance, flammable cryogenic liquid, or marine pollutant as described in the prior section;
- Manufacture, mark, maintain, recondition, repair or test packagings and their components, which are represented as qualified for use for hazardous materials.

REGULATORY FUNCTIONS

Research and Special Programs Administration (RSPA)

RSPA issues the HMR. RSPA also has issued procedural and registration regulations (49 CFR, Parts 106 and 107).

RSPA's regulatory functions include:

- Issuing rules and regulations governing the safe transportation of hazardous materials;
- Issuing, renewing, modifying, and terminating exemptions;
- Issuing, modifying, and terminating approvals for specific activities;
- Receiving and maintaining important records (e.g., cylinder test reports, certain manufacturer certifications, and incident reports); and
- Making (or issuing) administrative determinations of whether State, local, or Indian tribe requirements:
 - (1) are preempted by the Federal hazmat law, or
 - (2) may remain in effect, under a waiver of preemption.
- Representing DOT in international organizations and working to assure the compatibility of domestic regulations with the regulations of bodies such as:
 - International Maritime Organization (IMO),
 - International Civil Aviation Organization (ICAO),
 - United Nations Economic Commission for Europe and Economic and Social Council (UNECEESC), and
 - International Atomic Energy Agency (IAEA).

The Federal Highway Administration (FHWA)

FHWA regulatory functions for hazardous materials include: highway routing of hazardous materials, and highway safety permits.

The United States Coast Guard (USCG)

USCG regulatory functions for hazardous materials include bulk transport by vessel.

ENFORCEMENT

Under delegations from the Secretary (49 CFR Part 1), enforcement authority under the Federal hazmat law is shared by RSPA and four modal administrations: FHWA, USCG, Federal Railroad Administration (FRA) and Federal Aviation Administration (FAA).

RSPA Enforcement Jurisdiction

RSPA has primary enforcement jurisdiction over container manufacturers, reconditioners, and retesters (except with respect to modal-specific bulk containers, which are the responsibility of the applicable modal administration), and a shared authority over shippers of hazardous materials.

FHWA Enforcement Jurisdiction

FHWA, through its Office of Motor Carrier Field Operations, enforces all regulations applicable to motor carriers (common, contract, and private) shippers by highway, and manufacturers of cargo tanks.

FHWA enforces the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397) and the hazardous materials regulations. FHWA regulates highway routing of hazardous materials and issues safety permits.

In 49 CFR Part 387, FHWA prescribes financial responsibility levels for carriers of hazardous materials.

FRA Enforcement Jurisdiction

FRA enforces all regulations applicable to rail carriers, shippers by rail, and manufacturers of tank cars. FRA also administers Federal railroad safety laws (49 U.S.C. § 20101 et seq.). FRA may issue orders to deal with dangers caused by the transportation of hazardous materials over unsafe track or by unsafe rail carriers.

FAA Enforcement Jurisdiction

FAA enforces all regulations applicable to air carriers and shippers by air. FAA is responsible for establishing procedures for monitoring and enforcing regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

USCG Enforcement Jurisdiction

USCG enforces all regulations applicable to vessel carriers and shippers by water.

Under the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the USCG has been delegated authority to respond to discharges of oil into United States waters. Under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 960 et seq.), the USCG has been delegated authority, as the designated On-Scene Coordinator, to respond to the release of hazardous substances into the environment within the United States coastal zone.

Enforcement Sanctions

The Federal hazmat law provides the following enforcement sanctions:

Compliance Orders

Compliance orders (49 U.S.C. § 5121)

Civil Penalties

Civil penalties for “knowingly” violating regulations (49 U.S.C. § 5123):

- A minimum penalty of \$250 per violation;
- A maximum assessment of \$27,500 per violation per day

Note: Container manufacturing penalties are limited to \$27,500 per violation.

Criminal Penalties

Criminal penalties for willful violations of up to \$500,000 and five years' imprisonment (49 U.S.C. § 5124):

Penalty Assessment Criteria

- (1) nature and circumstances of violation,
- (2) extent and gravity of violation,
- (3) degree of respondent's culpability,
- (4) respondent's history of prior violations,
- (5) respondent's ability to pay,
- (6) effect of penalty on respondent's ability to stay in business, and
- (7) such other matters as justice may require (especially corrective actions).

Injunctive Relief

Injunctive relief (49 U.S.C. § 5122)

Hearings

Formal administrative hearings on the record are not required by the Federal hazmat law, but are available at the option of the alleged violator.

STATUTORY PREEMPTION

The Federal hazmat law, at 49 U.S.C. § 5125, and the HMR at 49 C.F.R. Part 107 Subpart C, provide that, unless authorized by another Federal law, any requirement of a State, local or Indian tribe is preempted if:

- Compliance with both (1) the State, local, or Indian tribe requirement, and (2) any requirement of the Federal hazmat law (or of a regulation issued under the Federal hazmat law) is not possible; or
- The State, local, or Indian tribe requirement as applied or enforced is an obstacle to accomplishing and carrying out the Federal hazmat law (or a regulation issued under it); or
- The State, local, or Indian tribe requirement concerns a “covered subject” and is NOT “substantively the same” as any provision of, or a regulation under, the Federal hazmat law concerning that subject.

“Covered subjects” are:

- Designation, description, and classification of hazardous materials;
- Packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- Preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements related to the number, content, and placement of such documents;
- Written notification, recording and reporting of the unintentional release in transportation of hazardous materials; and

- Designing, manufacturing, fabricating, marking, maintaining, 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.

Note: “Substantively the same” means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar changes are permitted.

Section 5125(c) of 49 U.S.C. provides that, beginning two years after issuance of Federal highway routing standards, State and Indian tribe highway routing designations, limitations and requirements relating to hazardous materials, will be preempted unless they meet Federal procedural and substantive requirements.

FHWA has issued regulations and will issue preemption determinations on highway routing of hazardous materials.

Waiver of Preemption

Waiver of preemption - Notwithstanding the preemption of a State or local requirement, 49 U.S.C. § 5125(e) provides that the Department may waive preemption upon a showing by the jurisdiction that its requirement:

- Affords an equal or greater level of protection to the public as is afforded by the Federal requirement; and
- Does not unreasonably burden commerce.

RSPA and FHWA may issue preemption determinations and waiver of preemption determinations to address preemption issues under the Federal hazmat law. Courts may review the determinations.

PUBLIC SECTOR TRAINING AND PLANNING GRANTS

Training

The Federal hazmat law mandates (49 U.S.C. § 5107) that the Secretary issue regulations which require hazardous materials (hazmat) employers to train, test, and maintain training records for all hazmat employees (49 CFR, Subpart H, §§ 172.700 - 172.704). Training areas include the safe packaging, loading, unloading, handling, storing and transporting of hazardous material and emergency preparedness for responding to an incident involving the transportation of hazardous materials.

Grants Program

Under amendments to the Federal hazmat law, DOT has an enhanced role in emergency response planning and training. RSPA manages a reimbursable grant program to enhance existing State and local hazardous materials emergency response programs.

This program, authorized by 49 U.S.C. § 5116:

- Enhances implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA); and
- Provides funds (75% pass-through to local governments) to States and Indian tribes for planning and training for emergency response to hazardous materials accidents and incidents.

Under 49 U.S.C. § 5108, RSPA funds the grant program with registration fees collected from certain transporters and shippers of hazardous materials in commerce.

EMERGENCY RESPONSE

Incident Reporting

Carriers must report immediately by telephone certain more serious transportation incidents (49 CFR § 171.15). For those and other less serious incidents, a written report must be submitted to DOT (49 CFR § 171.16).

The carrier must notify the U.S. Coast Guard National Response Center (NRC), [(800) 424-8802 or (202) 267-2675]. The NRC contacts Departmental personnel and the National Transportation Safety Board (NTSB), if the situation warrants.

The NRC is linked to CHEMTREC, a service operated by the Chemical Manufacturers Association (CMA), which can provide detailed information on the nature and action of most chemicals transported in the United States.

Emergency Response Partnerships

DOT supports State and local emergency response. The Department encourages the growth of industry mutual assistance programs which involve a strong industry partnership with local government personnel responsible for emergency response.

To enhance the effectiveness of emergency response along the border, in 1996, RSPA and sister agencies in Canada and Mexico jointly issued a North American Emergency Response Guidebook which was published in three languages (English, French, and Spanish).

The emergency response guidebook cross-references commodities listed in the Hazardous Materials Table by proper shipping name and by ID#. The guidebook contains specific guides which:

- Alert first responders to potential dangers arising from the threat of fire, explosion or health hazards; and
- Recommend initial emergency actions regarding evacuation/isolation of the affected area, firefighting, leaking containers, spill containment and first aid.

The success of the guidebook is dependent on shipper and carrier compliance with all hazard communication requirements (i.e., shipping papers, labels, marking, placards, and emergency response information). The Department has distributed over 5 million copies of its guidebook to first responders such as firefighters and police.

The CMA in collaboration with DOT has developed several programs which address emergency response:

1. Emergency response training through emergency response team workshops;
2. A first responder videotape training program; and
3. CHEMNET, a mutual aid network of shippers and for-hire contractors providing direct on-site assistance, for chemical emergencies.

DOT has also funded demonstration projects in various communities designed to increase State and local involvement in planning and managing hazardous materials emergency preparedness programs.

HAZMAT TRAINING SOURCES

Videos, training materials, fact sheets, newsletters and other safety-related information are available from U.S. DOT.

Obtain these materials from:

**U.S. Department of Transportation
Research and Special Programs Administration
Office of Hazardous Materials Initiatives and Training
400 Seventh Street, S.W., DHM-51
Washington, DC 20590-0001**

(202) 366-2301 FAX: (202) 366-7342

E-Mail: TRAINING@rspa.dot.gov

Awareness, Compliance and Enforcement Training

**U.S. Department of Transportation
Transportation Safety Institute
Hazardous Materials and Transportation Safety Division
715 S. Metropolitan, Suite 700, DTI-30
Oklahoma City, OK 73108-2057
(405) 949-0036/Ext. 374 FAX: (405) 231-4134
E-Mail: HAZMAT-TSI@mmacmail.jccbi.gov**

Training is available through conferences, colleges, State/local Governments and private sources. Obtain this information from:

Hazardous Materials Information Exchange (HMIX)

**Access the HMIX bulletin board through your computer:
(708) 252-3275 or hmix.dis.anl.gov (146.137.100.54)**

- **Hazardous Materials INFO-LINE**

(800) HMR49-22
(467-4922)

[Nationwide]

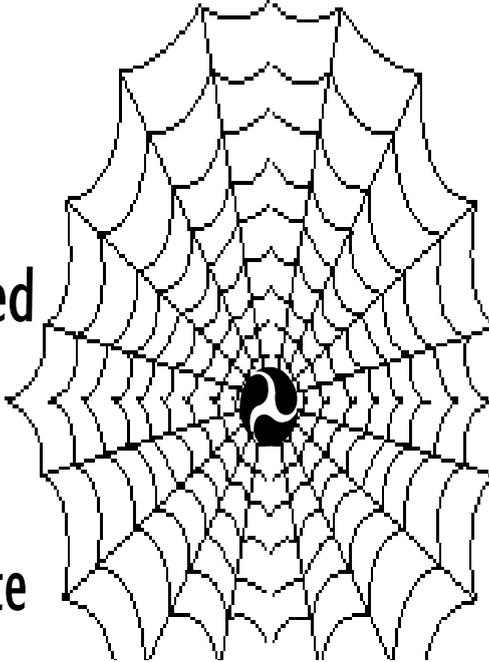
(202) 366-4488

[Washington, DC]

New internet website, effective Dec. 1, 1997

<http://hazmat.dot.gov>

Have
you
crawled
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new
website
yet?



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