

## § 171.2

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(v) A fee related to the transportation of a hazardous material is not fair or is used for a purpose that is not related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) Subject to the limitations in paragraph (f)(1) of this section, each facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.

(3) The procedures for DOT to make administrative determinations of preemption are set forth in subpart E of part 397 of this title with respect to non-Federal requirements on highway routing (paragraph (f)(1)(iv) of this section) and in subpart C of part 107 of this chapter with respect to all other non-Federal requirements.

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When a violation is a continuing one and involves transporting of hazardous material or causing them to be transported, each day of the violation is a separate offense. Each person who knowingly violates § 171.2(l) or willfully or recklessly violates a provision of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which a violation

involves the release of a hazardous material which results in death or bodily injury to any person.

[68 FR 61937, Oct. 30, 2003; 70 FR 20031, Apr. 15, 2005, as amended at 70 FR 73162, Dec. 9, 2005; 71 FR 8488, Feb. 17, 2006; 71 FR 44931, Aug. 8, 2006]

### § 171.2 General requirements.

(a) Each person who performs a function covered by this subchapter must perform that function in accordance with this subchapter.

(b) Each person who offers a hazardous material for transportation in commerce must comply with all applicable requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or under subchapter A of this chapter. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter, with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

(c) Each person who performs a function covered by or having an effect on a specification or activity prescribed in part 178, 179, or 180 of this subchapter, an approval issued under this subchapter, or an exemption or special permit issued under subchapter A of this chapter, must perform the function in accordance with that specification, approval, an exemption or special permit, as appropriate.

(d) No person may offer or accept a hazardous material for transportation in commerce or transport a hazardous material in commerce unless that person is registered in conformance with subpart G of part 107 of this chapter, if applicable.

(e) No person may offer or accept a hazardous material for transportation in commerce unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter.

(f) No person may transport a hazardous material in commerce unless the hazardous material is transported in accordance with applicable requirements of this subchapter, or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. Each carrier who transports a hazardous material in commerce may rely on information provided by the offeror of the hazardous material or a prior carrier, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect.

(g) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter governing its use in the transportation of a hazardous material in commerce unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of this subchapter. No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of an exemption, a special permit, approval, or registration issued under this subchapter or subchapter A of this chapter unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, and retested in accordance with the applicable requirements of the exemption, special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. The requirements of this paragraph apply whether or not the packaging or container is used or to be used for the transportation of a hazardous material.

(h) The representations, markings, and certifications subject to the prohibitions of paragraph (g) of this section include:

(1) Specification identifications that include the letters "ICC", "DOT", "CTC", "MC", or "UN";

(2) Exemption, special permit, approval, and registration numbers that include the letters "DOT", "EX", "M", or "R"; and

(3) Test dates associated with specification, registration, approval, retest, exemption, or special permit markings indicating compliance with a test or retest requirement of the HMR, or an exemption, special permit, approval, or registration issued under the HMR or under subchapter A of this chapter.

(i) No person may certify that a hazardous material is offered for transportation in commerce in accordance with the requirements of this subchapter unless the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by applicable requirements of this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter. Each person who offers a package containing a hazardous material for transportation in commerce in accordance with the requirements of this subchapter or an exemption or special permit, approval, or registration issued under this subchapter or subchapter A of this chapter, must assure that the package remains in condition for shipment until it is in the possession of the carrier.

(j) No person may, by marking or otherwise, represent that a container or package for transportation of a hazardous material is safe, certified, or in compliance with the requirements of this chapter unless it meets the requirements of all applicable regulations issued under Federal hazardous material transportation law.

(k) No person may, by marking or otherwise, represent that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel if the hazardous material is not present.

(l) No person may alter, remove, deface, destroy, or otherwise unlawfully

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tamper with any marking, label, placard, or description on a document required by Federal hazardous material transportation law or the regulations issued under Federal hazardous material transportation law. No person may alter, deface, destroy, or otherwise unlawfully tamper with a package, container, motor vehicle, rail car, aircraft, or vessel used for the transportation of hazardous materials.

(m) No person may falsify or alter an exemption or special permit, approval, registration, or other grant of authority issued under this subchapter or subchapter A of this chapter. No person may offer a hazardous material for transportation or transport a hazardous material in commerce under an exemption or special permit, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority. No person may represent, mark, certify, or sell a packaging or container under an exemption or special permit, approval, registration or other grant of authority issued under this subchapter or subchapter A of this chapter if such grant of authority has been altered without the consent of the issuing authority.

[68 FR 61937, Oct. 30, 2003, as amended at 70 FR 43643, July 28, 2005; 70 FR 73162, Dec. 9, 2005]

#### § 171.3 Hazardous waste.

(a) No person may offer for transportation or transport a hazardous waste (as defined in § 171.8 of this subchapter) in interstate or intrastate commerce except in accordance with the requirements of this subchapter.

(b) No person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person:

(1) Has marked each motor vehicle used to transport hazardous waste in accordance with § 390.21 of this title even though placards may not be required;

(2) Complies with the requirements for manifests set forth in § 172.205 of this subchapter; and

(3) Delivers, as designated on the manifest by the generator, the entire

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quantity of the waste received from the generator or a transporter to:

(i) The designated facility or, if not possible, to the designated alternate facility;

(ii) The designated subsequent carrier; or

(iii) A designated place outside the United States.

NOTE: Federal law specifies penalties up to \$250,000 fine for an individual and \$500,000 for a company and 5 years imprisonment for the willful discharge of hazardous waste at other than designated facilities. 49 U.S.C. 5124.

(c) If a discharge of hazardous waste or other hazardous material occurs during transportation, and an official of a State or local government or a Federal agency, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to prevent further consequence, that official may authorize the removal of the waste without the preparation of a manifest. [NOTE: In such cases, EPA does not require carriers to have EPA identification numbers.]

NOTE 1: EPA requires shippers (generators) and carriers (transporters) of hazardous wastes to have identification numbers which must be displayed on hazardous waste manifests. See 40 CFR parts 262 and 263. (Identification number application forms may be obtained from EPA regional offices.)

NOTE 2: In 40 CFR part 263, the EPA sets forth requirements for the cleanup of releases of hazardous wastes.

[Amdt. 171–53, 45 FR 34586, May 22, 1980, as amended by Amdt. 171–53, 45 FR 74648, Nov. 10, 1980; Amdt. 171–78, 49 FR 10510, Mar. 20, 1984; Amdt. 171–107, 54 FR 40068, Sept. 29, 1989; Amdt. 171–111, 55 FR 52466, Dec. 21, 1990; 56 FR 66157, Dec. 20, 1991; Amdt. 171–2, 59 FR 49132, Sept. 26, 1994; Amdt. 171–141, 61 FR 21102, May 9, 1996; 73 FR 57004, Oct. 1, 2008]

#### § 171.4 Marine pollutants.

(a) Except as provided in paragraph (c) of this section, no person may offer for transportation or transport a marine pollutant, as defined in § 171.8, in intrastate or interstate commerce except in accordance with the requirements of this subchapter.

(b) The requirements of this subchapter for the transportation of marine pollutants are based on the provisions of Annex III of the 1973 International Convention for Prevention of