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DEPARTMENT OF  
TRANSPORTATION

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OFFICE OF HAZARDOUS  
MATERIALS TRANSPORTATION

BEFORE THE  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION,  
DEPARTMENT OF TRANSPORTATION

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Hazardous Materials in Intrastate Commerce  
Advanced Notice of Proposed Rulemaking

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COMMENTS OF  
THE RAILROAD COMMISSION OF TEXAS

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Dated: September 21, 1987

BEFORE THE RESEARCH AND  
SPECIAL PROGRAMS ADMINISTRATION

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HAZARDOUS MATERIALS IN  
INTRASTATE COMMERCE;  
ADVANCED NOTICE OF  
PROPOSED RULEMAKING

DOCKET NO. HM-200  
ADVANCED NOTICE NO. 87-6

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COMMENTS OF THE  
RAILROAD COMMISSION OF TEXAS

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On June 29, 1987, the Research and Special Programs Administration (RSPA) invited comments on "the need for and possible consequences of, DOT extending the application of its hazardous material regulations to all intrastate transportation of hazardous materials in commerce." 52 Fed. Reg. 24195 (copy attached). These comments address a possible consequence of the RSPA proposal.

The Railroad Commission of Texas has adopted the DOT's hazardous materials regulations as its own regulations to govern motor carriers. 16 TEX. ADMIN. CODE §5.172. On August 21, 1987, the Railroad Commission proposed the adoption of the hazardous materials regulations. 49 C.F.R. Parts 171-179, as requirements of the Railroad Commission to govern all railroads operating within the State of Texas. 12 TEX. REG. 2768.

The Railroad Commission is concerned that federal extension of the hazardous materials regulations to intrastate commerce might be misinterpreted as preemption of valid state adoption and enforcement of the regulations. Accordingly, it is requested that any rule proposal or adoption specifically state that state adoption and enforcement of the federal hazardous materials regulations is not preempted.

Respectfully submitted,

C. Tom Clowe, Jr., Director  
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§ 35.100 If this part shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties. Dated: June 15, 1987.

Joseph W. Cornell, Principal Deputy Assistant Secretary, Policy, Budget and Administration. [FR Doc. 87-14627 Filed 6-28-87; 8:45 am]

BULLNO CODE 4310-RK-N

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 20580. 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 20580. 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 20580, 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

additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Director shall remand the matter to the ALJ for consideration of such additional evidence.

(l) The Director may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Director shall promptly serve each party to the appeal with a copy of the decision of the Secretary and a statement describing the right of any person determined to be liable for a civil penalty or assessment or seek judicial review.

(j) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Director serves the defendant with a copy of the Secretary's decision, a determination that a defendant is liable under § 35.33 of this part is final and is not subject to judicial review.

§ 35.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this part will adversely affect any pending or potential criminal or civil action related to such claim or statement, the Secretary shall stay the process immediately. The Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 35.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Secretary.

(b) No administrative stay is available following a final decision of the Secretary.

§ 35.42 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Secretary imposing penalties or assessment under this part and specifies the procedures for such review.

§ 35.43 Collection of civil penalties and assessments.

Sections 3806 and 3806(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part.

§ 35.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 35.42 or § 35.43, or any amount agreed upon in a compromise or settlement under § 35.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 35.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 35.46 Compromise or settlement.

(a) Parties may take offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 35.42 or during the pendency of any action to collect penalties and assessments under § 35.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 35.42 of this part.

(e) The investigating official may recommend settlement terms to the reviewing official, the Secretary, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Secretary, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 35.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 35.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under

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 situation 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 22626) 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 Island, 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.

[FR Doc. 87-14541 Filed 6-28-87; 8:45 am]

BILLING CODE 4910-90-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 681

#### Western Pacific Spiny Lobster Fisheries, Availability of Amendment to Fishery Management Plan and Request for Comments

**AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an  
amendment to a fishery management  
plan and request for comments.

**SUMMARY:** NOAA issues this notice that the Western Pacific Fishery Management Council has submitted Amendment 5 to the Spiny Lobster Fishery Management Plan of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

**DATE:** Comments will be accepted through August 22, 1987.

**ADDRESSES:** Send comments to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available on request from the Council at 1164 Bishop Street, Room 1405, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808-523-1368.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act, which requires that the Secretary, upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

This amendment proposes (1) to establish a minimum legal size for slipper lobster, (2) to require escape vent panels in all lobster traps, (3) to require release of any slipper lobster carrying eggs, (4) to revise the daily lobster catch report, (5) to revise permit application forms, (6) to eliminate the annual processor's report, (7) to revise the trip processing and sales report, and (8) to change the name of the FMP. The receipt date for this amendment is June 24, 1987. Proposed regulations will be published within 15 days.

(16 U.S.C. 1801, *et seq.*)

Dated: June 24, 1987.

Samuel W. McKeen,  
Director, Office of Management and Budget.  
[FR Doc. 87-14702 Filed 6-24-87; 4:56 pm]  
BILLING CODE 3510-22-M

#### 50 CFR Part 683

#### Western Pacific Bottomfish and Seamount Groundfish Fisheries

**AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an  
amendment to a fishery management  
plan and request for comments.

**SUMMARY:** NOAA issues this notice that the Western Pacific Fishery Management Council has submitted Amendment 1 for the Fishery Management Plan for the Bottomfish and

Seamount Groundfish Fisheries of the Western Pacific Region (FMP) for review by the Secretary of Commerce (Secretary), and is requesting comments from the public.

**DATE:** Comments will be accepted through August 22, 1987.

**ADDRESSES:** Send comments to E. C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment are available on request from the Council at 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty Simonds (Executive Director, Western Pacific Fishery Management Council), 808-523-1368.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under provisions of the Magnuson Fishery Conservation and Management Act which requires that the Secretary, upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this amendment.

This amendment proposes measures to limit access to control fishing for bottomfish in the exclusive economic zone surrounding American Samoa and Guam and extends the due date of the Annual Report for the Bottom Fisheries of the Western Region. The receipt date for this amendment is June 30, 1987. Proposed regulations will be published within 15 days.

16 U.S.C. 1801 *et seq.*)

Dated: June 24, 1987.

Samuel W. McKeen,  
Director, Office of Management and Budget.  
[FR Doc. 87-14703 Filed 6-24-87; 4:26 pm]  
BILLING CODE 3510-22-M