

developed a definition for small providers of local exchange service (LECs). The closest applicable definition under the SBA rules is Wired Telecommunications Carriers.

According to the most recent data, there are 2,050 incumbent and other LECs. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, The Commission estimates that fewer than 2,050 providers of local exchange service are small entities or small incumbent LECs that may be affected by the rules adopted herein.

13. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the most recent data, there are 229 carriers engaged in the provision of interexchange services. Of these 229 carriers, 181 reported that they have 1,500 or fewer employees and 48 reported that alone, or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are less than 229 small entity IXCs that may be affected by the rules adopted herein.

14. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. The Commission does not have data specifying the number of these carriers that are not independently

owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 989 or fewer small wireless service providers that may be affected by the rules.

#### **IV. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements**

15. None.

#### **V. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. In the *Fifth Report and Order*, the Commission addresses the need for a national space reservation policy, the conversion of virtual collocation arrangements to physical collocation arrangements, and whether incumbent LECs may require the use of point of termination (POT) bays. It rejects the alternative of adopting more stringent regulations as suggested by some commenters. The Commission concludes that disputes regarding an incumbent LEC's policies on space reservations and the conversion of virtual collocation arrangements should be addressed on a case-by-case basis. It also concludes that while the use of POT bay is permissible, incumbent LECs may not unilaterally compel their use.

#### **Paperwork Reduction Act Analysis**

18. The actions contained in the *Fifth Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

#### *Ordering Clauses*

19. Pursuant to sections 1-4, 201-03, 251-54, 256, and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 151-54, 201-03, 251-54, 256, and 303(r), the *Fifth Report and Order* is adopted.

24. Pursuant to sections 1-4, 201-03, 251-54, 256, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201, 202, 251-54, 256, and 303(r), the actions taken in the *Fifth Report and Order* shall become effective October 30, 2002.

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 51**

Interconnection, Telecommunications carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Research and Special Programs Administration**

#### **49 CFR Parts 173 and 177**

[Docket No. RSPA-01-10373 (HM-220D)]

RIN 2137-AD58

#### **Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Extension of Compliance Dates and Corrections**

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

**ACTION:** Final rule; extension of compliance dates and corrections.

**SUMMARY:** This document extends the compliance dates and makes minor corrections for certain requirements adopted in a final rule published under Docket No. RSPA-01-10373 (HM-220D) on August 8, 2002 (67 FR 51626), which amended requirements applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. RSPA is taking action in response to appeals stating that the October 1, 2002 effective date is unreasonable. This action provides additional time, until May 30, 2003, for RSPA to fully evaluate and determine the merits of issues raised by appellants concerning these requirements and their requests for clarification of certain other

requirements. These appeals will be fully addressed in a later document. Because these amendments do not impose new requirements, notice and public comment are unnecessary.

**DATES:** *Effective Date:* This rule is effective on October 1, 2002.

*Compliance Date:* However, certain regulatory actions will not occur until the date specified in the regulatory text.

**FOR FURTHER INFORMATION CONTACT:** Sandra Webb, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. 01-10373 (HM-220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The August 8, 2002 final rule, amended the HMR to:

(1) Prohibit a filled cylinder with a specified service life from being offered for transportation in commerce after its service life has expired.

(2) Remove authorization for the manufacture of DOT specification cylinders using aluminum alloy 6351-T6. Cylinders manufactured with this aluminum alloy have a greater risk of failure than other aluminum cylinders.

(3) Incorporate by reference new and updated Compressed Gas Association (CGA) standards and updated American Society for Testing and Materials (ASTM) standards.

(4) Require each person who performs a requalification function that requires marking of an inspection or retest date on a cylinder to have approval from the Associate Administrator for Hazardous Materials Safety (Associate Administrator).

(5) Standardize requirements for repair and rebuilding of DOT-4 series cylinders, other than the DOT 4L.

(6) Allow the application of requalification markings on cylinders by using alternative methods that produce durable, legible marks.

(7) Require pressure relief devices on all DOT-3 series specification cylinders to be set at test pressure with a tolerance of -10% to +0 beginning at the first requalification due on or after the effective date of this final rule.

In addition, we consolidated requirements for obtaining approval to be a cylinder requalifier, or an independent inspection agency, or to have chemical tests or analyses

performed outside the United States on cylinders manufactured outside the United States in a new Subpart I in Part 107.

We received approximately 20 appeals of the implementation of HM-220D, either in total or in part. We received appeals from representatives of industrial gas trade associations, gas distributors, shippers, carriers, cylinder manufacturers and requalifiers.

*Extension of Compliance Date*

Most appellants request that we extend the October 1, 2002 effective date for certain requirements adopted in the final rule. They state a 60-day implementation period is unreasonable for certain requirements. They request that we delay implementation of the particular requirements until we have had an opportunity to further review and address their specific concerns. We agree that the October 1 effective date of certain provisions should be extended. Therefore, in this final rule, we are providing a May 30, 2003 compliance date for the following requirements:

- Sections 173.40(b) and 173.301a(d)(3)—Requiring the pressure at 55 °C (131 °F) in a cylinder not to exceed the service pressure of the cylinder. This provision affects Hazard Zone B gases, such as hydrogen sulfide.
- Sections 173.301(f)(2) and 177.840(a)(1)—Requiring the inlet port to the relief channel of the pressure relief device, when installed, must be in the cylinder's vapor space.
- Section 173.301(f)(3)—Requiring the set pressure of the pressure relief device to be at test pressure with a tolerance of -10% to +0 for DOT 3-series cylinders.
- Section 173.301(h)(2)—Allowing cylinders filled with a flammable, corrosive, or noxious gas to have the valves protected by loading the cylinders in an upright position and securely bracing in cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

*Editorial Corrections and Clarifications*

Appellants expressed concern about a requirement in the August 8, 2002 final rule that prohibits a welded cylinder from being used for Hazard Zone A materials (see §§ 173.226(a) and 173.228(b) of the August 8, 2002 final rule). Appellants ask us to provide time for transporting filled cylinders for reprocessing or disposal of the cylinder's contents. We agree. In this final rule, we are revising the prohibition to permit a welded cylinder that is filled with a Hazard Zone A

material prior to October 1, 2002, to be transported for reprocessing or disposal until April 1, 2003.

In addition, in this final rule, we are clarifying a requirement applicable to cylinders used to transport oxygen. In § 173.302, the August 8, 2002 final rule included provisions applicable to aluminum cylinders used to transport oxygen. One of the requirements states that each valve or portion of a valve that comes into contact with the oxygen being transported must be constructed of brass or stainless steel. Several appellants point out that some aluminum oxygen cylinders have valve components made of non-metallic materials that may come in contact with the oxygen. It was not our intention to require persons transporting oxygen in aluminum cylinders to replace non-metallic valves or valve components with brass or stainless steel. Therefore, in this final rule we are clarifying that metallic portions of valves that may come into contact with the oxygen in the cylinder must be constructed of brass or stainless steel.

Appellants also point out that we inadvertently excepted all acetylene cylinders from the valve protection requirements in § 173.301(h) of the August 8, 2002 final rule. Appellants are correct that this was not our intent. As we stated in the preamble to the final rule (67 FR 51631), our intention was to except only acetylene MC cylinders and other types of small-capacity cylinders from the valve protection requirements. Therefore, in this final rule, we are revising the exception for acetylene cylinders to except small capacity MC and B style cylinders from valve protection requirements.

*Partial Denial of Appeals*

CGA and several other appellants also contend that HM-220D was issued as a final rule with no opportunity for public comment. They state that HM-220D should be withdrawn and converted to an NPRM with sufficient time provided for persons to review and comment on the proposals. We do not agree. We proposed to make the changes adopted under HM-220D in a notice of proposed rulemaking published under Docket No. RSPA-98-3684 (HM-220) on October 30, 1998 (63 FR 58460). The comment period for HM-220 closed September 30, 1999. In addition, we held three public meetings to discuss the HM-220 proposals on December 8, 1998 (63 FR 58460; October 30, 1998), January 28, 1999 (63 FR 72224; December 31, 1998), and April 13-15, 1999 (64 FR 9114; February 24, 1999). On February 13, 2002, we separated the proposals applicable to current DOT specification

cylinders, from those applicable to the metric-marked cylinders, and placed them under Docket No. RSPA-01-10373 (HM-220D) (67 FR 6667). Therefore, RSPA finds the appellants' claim that we did not provide the public with an opportunity to comment on this rule is without merit and is denied.

RSPA's procedural regulations for handling appeals of final rules require us to take action on appeals within 90 days after the date of publication of the final rule (see 49 CFR 106.130). If we anticipate that our decision on an appeal may be delayed beyond the 90-day time frame, we must provide notice of the delay in the **Federal Register**. For the August 8, 2002 final rule, the 90-day deadline is November 6, 2002. We intend to consider the issues raised by appellants concerning the above listed sections of the August 8, 2002 final rule as expeditiously as possible; however, it is unlikely that we will be able to resolve all the issues by November 6, 2002. We plan to address all issues raised by appellants by May 30, 2003.

**List of Subjects**

*49 CFR Part 173*

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

*49 CFR Part 177*

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, Chapter I of the Code of Federal Regulations, is amended as follow:

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

1. The authority citation for Part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127, 44701; 49 CFR 1.45, 1.53.

2. In § 173.40, as revised at 67 FR 51642, effective October 1, 2002, revise paragraph (b) to read as follows:

**§ 173.40 General packaging requirements for toxic materials packaged in cylinders.**

(b) *Outage and pressure requirements.* For Hazard Zone A and, after May 30, 2003, Hazard Zone B materials, the pressure of the hazardous material at 55° C (131° F) may not exceed the service pressure of the cylinder. Sufficient outage must be provided so

that the cylinder will not be liquid full at 55° C (131° F).

3. In § 173.226, as amended at 67 FR 51643, effective October 1, 2002, revise paragraph (a) to read as follows:

**§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.**

(a) In seamless specification cylinders conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until April 1, 2003.

4. In § 173.228, as revised at 67 FR 51643, effective October 1, 2002, revise paragraph (b) to read as follows:

**§ 173.228 Bromine pentafluoride or bromine trifluoride**

(b) A material in Hazard Zone A must be transported in a seamless specification cylinder conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until April 1, 2003. No cylinder may be equipped with a pressure relief device.

5. In § 173.301, as revised at 67 FR 51643, effective October 1, 2002, the following amendments are made:

- a. Paragraphs (f)(2), (f)(3), (h)(1)(vii) are revised.
  - b. The word "or" at the end of paragraph (h)(2)(ii) is removed.
  - c. The period at the end of paragraph (h)(2)(iii) is removed and "; or" is added in its place.
  - d. Paragraph (h)(2)(iv) is added.
- The amendments read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.**

- (f) \* \* \*
- (2) After May 30, 2003, when a pressure relief device is installed, the inlet port to the relief channel must be in the vapor space of the cylinder.
- (3) For a DOT 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B or 3BN cylinder, from the first requalification due after May 30, 2003, the set pressure of the pressure relief device must be at test pressure with a tolerance of -10% to +0.

- (h) \* \* \*
- (1) \* \* \*
- (vii) A "B" style cylinder with a capacity of 40 ft<sup>3</sup> (1.13 m<sup>3</sup>) or an "MC"

style cylinder with a capacity of 10 ft<sup>3</sup> (0.28m<sup>3</sup>) containing acetylene.

(2) \* \* \*

(iv) Notwithstanding the provisions of paragraph (h)(2) introductory text of this section, until May 30, 2003, by loading the cylinders in an upright position and securely bracing the cylinders in cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

6. In § 173.301a, as added at 67 FR 51645, effective October 1, 2002, revise paragraph (d)(3) to read as follows:

**§ 173.301a Additional general requirements for shipment of specification cylinders.**

(d) \* \* \*

(3) After May 30, 2003, for toxic materials the pressure in the cylinder at 55° C (131° F) may not exceed the service pressure of the cylinder.

7. In § 173.302, as revised at 67 FR 51646, effective October 1, 2002, revise paragraph (b)(1) to read as follows:

**§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.**

(b) \* \* \*

(1) Metallic portions of a valve that may come into contact with the oxygen in the cylinder must be constructed of brass or stainless steel.

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

8. The authority citation for Part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR 1.53.

**§ 177.840 [Amended]**

9. In § 177.840, as amended at 67 FR 51652, effective October 1, 2002, the last sentence in paragraph (a)(1) is amended by removing the wording "A cylinder containing" and adding in its place "After May 30, 2003, a cylinder containing".

Issued in Washington DC on September 24, 2002, under authority delegated in 49 CFR Part 1.

**Elaine E. Joost,**  
*Acting Administrator, Research and Special Programs Administration.*