§ 180.438 Lambda-cyhalothrin; tolerances for residues.

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(b) * * *

Commodity	Parts per million	Expiration/revocation date
Clover, forage	5.0	12/31/05
Clover, hay	6.0	12/31/05

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[FR Doc. 03–22315 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 03–2690]

Certifications Required Pursuant to the Children's Internet Protection Act; Approval of FCC Forms 486 and 479 by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules implementing the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). The Order in CC Docket No. 96–45 was published in the **Federal Register** on August 8, 2003.

DATES: The final rule amending 47 CFR Part 54, published on August 8, 2003 (68 FR 47253), became effective on August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released August 19, 2003. The Wireline Competition Bureau announces that the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). Accordingly, the effective date of the Order is August 14, 2003. See 68 FR 47253, August 8, 2003.

On August 14, 2003, OMB approved the information collections. See OMB No. 3060–0853.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirement, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22368 Filed 9–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

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

ACTION: Final rule; response to appeals.

SUMMARY: On April 18, 2003, the Research and Special Programs Administration published a final rule under Docket No. RSPA–98–3554 (HM–213) to update and clarify requirements in the Hazardous Materials Regulations applicable to construction and maintenance of cargo tank motor vehicles. In response to appeals submitted by persons affected by the April 18, 2003 final rule, this final rule amends certain requirements and makes minor editorial corrections.

DATES: *Effective Date:* This final rule is effective October 1, 2003.

Voluntary Compliance Date: Voluntary compliance is authorized as of September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366–8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2003, the Research and Special Programs Administration (RSPA; we) published a final rule (68 FR 19258) that revised requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) for cargo tank design, qualification, maintenance, and use. Specifically, the final rule:

- Revised the definitions of ''Design Certifying Engineer'' and ''Registered Inspector'' to allow experienced persons without degrees to qualify;
- Permitted cargo tank owners to re-certify cargo tanks to their original specifications;
- Revised minimum road clearance and bottom damage protection requirements for certain cargo tank motor vehicles;
- Clarified current requirements for using the EPA Method 27 leakage test as an alternative to the HMR leak test requirements;
- Revised certain requirements applicable to MC 331 and MC 338 cargo tanks for consistency with regulations applicable to the more recently adopted MC 400 series cargo tanks;
- Required MC 338 cargo tanks to be equipped with a means of thermal activation for automatically closing the internal self-closing stop valve in the event of a fire;
- Clarified cargo tank test and inspection requirements and relaxes the leakage test requirement for cargo tanks in anhydrous ammonia service; and
- Eliminated redundant or unnecessary regulations.

In addition, the April 18 final rule revised the HMR to address three recommendations from the National Transportation Safety Board (NTSB):

- Consistent with Recommendation H–90–91, the April 18 final rule

required controls for internal shut-off valves for the discharge system to be installed at remote locations on all newly constructed and currently authorized MC 330, MC 331, and MC 338 specification cargo tanks. Cargo tanks currently in hazardous materials service must be retrofitted with on-truck remote shut-off controls over a three-year period.

• Consistent with Recommendation H–93–94, the April 18 final rule required all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked ''Emergency Shutoff.''

• Consistent with Recommendation H–95–14, the April 18 final rule required thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection.

The April 18 final rule effective date is October 30, 2003; voluntary compliance is authorized as of May 18, 2003.

II. Appeals

Six organizations submitted appeals to the April 18 final rule in accordance with 49 CFR Part 106: the Compressed Gas Association, Inc. (CGA); the National Propane Gas Association (NPGA); Container Technology, Inc. (Container Technology); the National Tank Truck Carriers, Inc. (NTTC); Baltimore Cargo Tank Service, Inc. (Baltimore Tank); and Fisher Controls (Fisher). The appellants express concern about several revisions included in the final rule; two appellants ask for an extension to the effective date of the final rule. The issues raised by the appellants are discussed in detail below.

A. Appeals Granted

Section 178.320—Definitions. The April 18 final rule revised the definition of ''cargo tank.'' NTTC requests that we consider further modifying the definition to indicate that a cargo tank may be used for the transportation of solids and semi-solids, in addition to liquids or gases. NTTC explains that, in today's operating environment, cargo tanks are used routinely to transport materials that may be tendered as solids (such as powders) and slurries (semi-solids). Many such loads, especially environmentally sensitive materials, are subject to the HMR. We agree; in this final rule we are modifying the definition of ''cargo tank'' to include solids and semi-solids among the materials for which a cargo tank may be used for transportation.

The April 18 final rule adopted definitions for ''sacrificial device'' and ''shear section'' that were developed for the DOT 400 series cargo tanks and made the definitions generally applicable to all cargo tanks. NPGA objects to the new definitions, stating that because of ''substantial'' differences in design, construction, use and pressure conditions, the definitions for the DOT 400 series cargo tanks are not directly transferable to MC 331 cargo tanks. We agree that the issue requires further analysis and that, until such analysis is complete, the definitions for ''sacrificial device'' and ''shear section'' originally adopted for the DOT 400 series cargo tanks should not be applied to MC 331 cargo tanks. Therefore, in this final rule, we are deleting the definitions from § 178.320, which establishes requirements applicable to all DOT specification cargo tank motor vehicles, and placing them in § 178.345–1(c), which sets forth general requirements applicable to DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. We will consider addressing this issue in a subsequent rulemaking.

The April 18 final rule adopted a definition for ''shear section'' to mean a sacrificial device fabricated to reduce the wall thickness of the adjacent piping or valve material by at least 30 percent. Based on this definition, the April 18 final rule revised § 178.337–10(f)(2) to require a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall. NPGA suggests that this requirement would necessitate a complete and costly redesign of valves used as sacrificial devices. Therefore, in this final rule we are revising § 178.337–10(f)(2) to remove the requirement adopted in the April 18 final rule for a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall.

Section 178.320—Design certification. The April 18 final rule revised § 178.320(b)(1) to require accident damage protection devices to be certified by a Design Certifying Engineer (DCE). NPGA, Fisher, and Baltimore Tank note that, since the term ''accident damage protection devices'' is not defined, it could be misinterpreted to include component valves, particularly if the component valve includes a shear section. NPGA and Fisher request that we define ''accident damage protection devices.'' We agree. In this final rule, we are adding a sentence to § 178.320(b)(1) to clarify that the term ''accident damage protection devices,'' means rear-end protection, overturn protection, and piping protection devices.

Baltimore Tank suggests that, as drafted, § 178.320(b)(1) could be interpreted to require a DCE certification of an accident damage protection device design on its own—that is, independent of the cargo tank motor vehicle to which it is attached. This was not our intent. In this final rule, we are revising the section as suggested by Baltimore Tank.

Section 178.337–9—Use of stainless steel for internal cargo tank components. The April 18 final rule adopted a provision in § 178.337–9(b)(2) to prohibit the use of stainless steel for internal components of a cargo tank, such as shutoff discs and springs. NPGA and Container Technology appealed this provision, suggesting that it is overly restrictive and that stainless steel should be permitted for internal components where it is not incompatible with the lading. We agree and are making the appropriate revision in this final rule.

CGA also appealed the April 18 final rule provision in § 178.337–9(b)(2). CGA's concern is that the final rule requires malleable steel, stainless steel, or ductile iron to be used to construct primary valves and fittings used in liquid filling or vapor equalization. CGA points out that malleable metal, including brass, is safely used for fittings on cargo tanks used to transport carbon dioxide. We agree; this revision in § 178.337–9(b)(2) was inadvertent. In this final rule, we are revising this provision to require malleable metal, stainless steel, or ductile iron to be used to construct primary valves and fittings.

In addition, in this final rule we are revising § 178.337–9(b)(2) to make an editorial change suggested by NPGA. The phrase ''except for sacrificial devices'' should be part of the second sentence in this section, not the third sentence.

Section 178.337–10—Rear end protection. The April 18 final rule adopted rear end protection requirements originally developed for DOT 400 series cargo tanks as an option for MC 331 cargo tanks. In paragraph (c)(1) of § 178.337–10, the final rule requires rear end bumper dimensions to meet the requirements in 49 CFR 393.86 and extend vertically to a height that is adequate to protect all valves and fittings located at the read of the cargo tank. NPGA notes that certain MC 331 cargo tanks used to transport propane have a pressure gauge in a fitting located at the center of the rear cargo tank head

and suggests that, if read literally, the new requirement could require the rear bumper to extend past the center of the rear head. This was not our intent. In this final rule, we are revising the requirement as suggested by NPGA.

Section 178.337–17—Marking. The April 18 final rule requires a name plate on an MC 331 cargo tank to include information about the weld material used on the cargo tank. Container Technology and NPGA suggest that this is unnecessary and that MC 331 cargo tanks typically incorporate several different weld methods and materials. Both appellants suggest that this requirement be deleted. We agree that the requirement is unnecessary. In this final rule, it is deleted from the requirements for information to be included on an MC 331 cargo tank name plate.

The April 18 final rule requires a name plate to include an indication of the pressure to which the cargo tank was tested during its manufacture. NPGA recommends that this mark be deleted, stating that it is not clear how this information will assist operators and enforcement officials. We agree that the original test pressure number is of little value and could create confusion for operators when determining the pressure to which a cargo tank must be retested in accordance with § 180.407(g). In this final rule, therefore, the requirement to include a cargo tank's original test pressure on the name plate is removed.

The April 18 final rule also included a requirement for a specification plate on an MC 331 cargo tank to include the maximum loading and unloading rates. NPGA notes that this was not proposed in the HM–213 NPRM nor were the reasons for including the information on the specification plate discussed in the preamble to the final rule. NPGA suggests that the requirement should therefore be deleted. We agree; in this final rule, the requirement for including maximum loading and unloading rates on an MC 331 specification plate is deleted.

Section 180.405—Recertification of MC 306, MC 307 or MC 312 CTMVs. The April 18 final rule included a provision permitting a cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification, unless the cargo tank has been stretched, rebarrelled, or modified, to be recertified to its original certification provided certain conditions are met (see § 180.405(b)(2)). Baltimore Tank appealed this provision of the final rule, suggesting that rebarrelled, stretched, or modified MC 306, MC 307, or MC 312 cargo tanks should be treated in the same manner as unmodified cargo tanks and permitted to be recertified provided appropriate records are available to verify the original certifications.

Modifications to non-specification cargo tanks, which includes ''decertified'' cargo tanks that no longer meet a specification standard, need not be performed in accordance with the standards set forth in Part 180. Our concern in limiting the exception in § 180.405(b)(2) to cargo tanks that have not been stretched, rebarrelled, or modified was to prevent a ''decertified'' tank that was modified without reference to the Part 180 regulations from being recertified as a specification cargo tank. However, we agree with Baltimore Tank that if the operator can provide documentation to verify that a cargo tank originally built to an MC 306, MC 307, or MC 312 specification was stretched, rebarrelled, or modified in accordance with the procedures in Part 180 and the National Board Inspection Code, then the cargo tank may be recertified to its original specification under the same conditions as for unmodified MC 306, MC 307, or MC 312 cargo tanks. In this final rule, we are revising § 180.405(b) to permit modified MC 306, MC 307, and MC 312 cargo tanks to be recertified to their original specification under certain conditions.

Section 180.413—Leak testing. The April 18 final rule revised paragraph (c) in § 180.413 to clarify leak test requirements performed after maintenance or replacement of piping, hose, valves, or fittings that does not involve welding. The revised paragraph (c) requires a leak test to be performed at not less than 80 percent of the design pressure marked on the cargo tank. NPGA appealed this provision, noting that § 180.407(h)(1)(i) permits an MC 330 or MC 331 cargo tank in dedicated liquefied petroleum gas service to be leak tested at not less than 60 psig (414 kPa) and that the requirement adopted in the April 18 final rule greatly exceeds the 60 psig leak test exception for LPG tanks. NPGA states that the leak test requirement adopted in the final rule will place a significant burden on the propane industry and will be very disruptive to propane distribution operations. NPGA suggests that we revise § 180.413(c) to permit the leak test required after maintenance or replacement operations that do not require welding to be performed at 60 pisg (414 kPa). We agree; this final rule revises § 180.413(c)(1) to permit the leak test to be performed in accordance with § 180.407(h)(1).

B. Appeals Denied

Definition of ''manufacturer.'' Fisher and NPGA ask us to reconsider the definition in the HMR for ''manufacturer'' in § 178.320 of the HMR. The NPRM did not propose nor did the final rule adopt a revision of this definition. The Fisher and NPGA appeals are thus beyond the scope of this rulemaking and are denied. We will address the definition in a subsequent rulemaking and seek comment on any proposed changes to the definition.

Remote controls for internal self-closing shutoff valves. The April 18 final rule adopted a requirement for all newly constructed and currently authorized MC 338 cargo tank motor vehicles (CTMVs) to be equipped with a means of thermal activation for closing the internal self-closing stop valve, except for cargo tanks used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof; tanks currently in service must be retrofitted by October 2, 2006. CGA appealed this provision of the final rule with respect to MC 338 cargo tanks used to transport non-flammable ladings; CGA suggests that that this is a ''very expensive'' modification for MC 338 cargo tanks because installation of the remote controls requires modifications to piping in addition to installation of a valve. CGA asks that we reinstate the grandfather provision excepting MC 338 CTMVs constructed prior to 1995 and used to transport non-flammable ladings from the requirement for a means of thermal activation for closing the internal self-closing stop valve.

As discussed in the preamble to the NPRM, this provision reflects discussions conducted by a negotiated rulemaking committee established under Docket No. RSPA–97–2718 (HM–225A). The committee agreed that fusible elements, which provide a heat-activated means for closing a valve, convey a significant safety benefit, and we adopted a requirement for all MC 331 cargo tanks to be so equipped in the HM–225A final rule. The provision applicable to MC 338 cargo tanks adopted in the HM–213 final rule is consistent with the requirements for MC 331 tanks; moreover, we do not agree that installation of fusible elements on MC 338 cargo tanks will be prohibitively expensive. We estimate that the retrofit provision in the final rule will affect about 100 MC 338 CTMVs, at a cost per vehicle of about $200. For these reasons, the CGA appeal of the final rule provisions concerning installation of fusible links on MC 338 cargo tanks is denied.

Maximum lading density marking. The April 18 final rule requires the name plate on an MC 331 cargo tank to include an indication of the maximum density of lading in pounds per gallon (§ 178.337–17(b)(7)). Container Technology and NPGA appealed this provision of the final rule. NPGA states that the marking serves no purpose; Container Technology asserts that lading density is not necessary for compliance with structural integrity requirements and that the mark limits an operator's flexibility to use an MC 331 cargo tank to transport a variety of ladings with different densities.

We do not agree that the mark serves no purpose nor do we agree that it limits an operator's flexibility. A cargo tank is usually designed with a specific lading or ladings in mind. An indication of the maximum lading density that may safely be transported in a cargo tank helps an operator determine whether the cargo tank should be used to transport a specific cargo. The mark is meant to convey the density for the heaviest lading possible to be transported in the cargo tank based on the structural design calculations for the tank. An operator is free to transport lading for which the maximum density is less than the mark indicated on the name plate or to transport smaller amounts of a lading for which the maximum density is greater than the mark indicated on the name plate. For these reasons, the Container Technology and NPGA appeals of this provision in the April 18 final rule are denied.

Original Test Date Marking. The April 18 final rule requires the name plate to include the original test date for the cargo tank. NPGA suggests that the mark could cause confusion for enforcement personnel and recommends that it be deleted. We disagree that the mark should be deleted. The original test date is the date the cargo tank manufacturer performed the tests required under Part 178 to assure that the cargo tank meets applicable design specifications. Thus, the original test date is the date that the cargo tank is certified to meet the specification to which it was designed. Including the original test date on the name plate enables the owner and/or operator of the cargo tank and enforcement personnel easily to identify specific requirements applicable to the tank's design and manufacture, without having to go back to the certification documentation provided by the cargo tank manufacturer. The marking of the original test date is in keeping with the intent of the regulations to help clarify marking requirements for all cargo tanks and, taken in whole with the definitions adopted in the HM–213 final rule, should not be confusing. For these reasons, the NPGA appeal of this provision in the April 18 final rule is denied.

Pressure greater than MAWP. The April 18 final rule revised § 180.407(a)(2) to clarify that a cargo tank may not be subjected to a pressure greater than its design pressure or maximum allowable work pressure (MAWP) except during a pressure test; the revision removed an exception from this general requirement for loading and unloading operations. CGA appealed this provision of the final rule, stating that, as rewritten, it conflicts with other provisions of the HMR. CGA, citing § 173.318(b)(4)(i), states that, during pressure transfers, an operator may raise the pressure in an MC 338 cargo tank to exceed the tank's MAWP, but not to exceed the set-to-discharge setting of the tank's pressure relief device.

Section 173.318 sets forth requirements for pressure relief devices on cargo tanks used to transport cryogenic liquids. Paragraph (b)(4)(i) of this section establishes the set-to-discharge setting for pressure relief devices—each pressure relief valve in the primary relief system must be set at a pressure no higher than 110% of the cargo tank's design pressure. This setting provides a tolerance level for the pressure relief system to account for small temporary increases in pressure because of temperature or other variances. The set-to-discharge setting does not mean that the pressure in the cargo tank may safely be raised to a level just below the set-to-discharge setting of the pressure relief devices if that level exceeds the MAWP of the tank. Section 173.33(c) establishes maximum lading pressures for materials transported in CTMVs. Specifically with respect to cryogenic liquids, § 173.33(c) states that the MAWP of a cargo tank must be greater than or equal to the pressures prescribed in § 173.318. Thus, the MAWP of the cargo tank must be greater than or equal to the set-to-discharge pressure for a pressure relief device in § 173.318(b)(4)(i). At no time, except during pressure tests, may the pressure in a cargo tank exceed its MAWP. The revision to § 180.407(a)(2) was made to clarify this point. For these reasons, the CGA appeal of this provision of the April 18 final rule is denied.

Periodic inspection of insulated cargo tanks. In § 180.407(d)(1), the April 18 final rule clarified requirements for inspection and testing of insulated cargo tanks where insulation precludes external and/or internal visual inspections. The final rule did not change current requirements for inspection and testing of such tanks; it merely clarified the requirements to make them easier to understand. CGA appealed this provision of the final rule, suggesting that it reduced the interval for conducting internal inspections and pressure tests on MC 331 cargo tanks from 5 years to one year and that such a change is not warranted. This is incorrect; the NPRM did not propose nor did the final rule adopt a provision to change the pressure test interval for MC 331 cargo tanks. The final rule includes a provision to permit operators of insulated MC 330, MC 331, and MC 338 cargo tanks equipped with manholes or inspection openings to perform an internal visual inspection or a pressure test in conjunction with the required annual external visual inspection (see Note 4 to the table in § 180.407 (c)). The pressure test performed in conjunction with the annual external visual inspection requires only that the cargo tank be pressurized to the level indicated in the table in § 180.407(g)(1)(iv); the operator is not required to complete every element of the pressure test set forth in § 180.407(g). The interval for performing a complete pressure test of an MC 331 cargo tank in accordance with § 180.407(g) remains 5 years. The CGA appeal of the April 18 final rule provision in § 180.407(d) is therefore denied.

Use of ''weep holes'' in mounting pads. Baltimore Tank wants the HMR to require the use of ''weep holes'' for mounting pads. The NPRM did not propose nor did the final rule adopt any change to the current requirements for ''weep holes'' in mounting pads. Baltimore Tank's appeal on this issue is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Modification, stretching, or rebarrelling of a cargo tank. The April 18 final rule revised the provisions in § 180.413(d) concerning modification, stretching, or rebarrelling of cargo tanks. Among other requirements, the revision requires a modified, stretched, or rebarrelled CTMV to be certified by a DCE to meet the structural integrity and accident damage protection requirements of the applicable specification. Baltimore Tank appealed this provision of the final rule, suggesting that modifications to a cargo tank may or may not affect the design of the CTMV and recommending changes to the final rule to clarify when recertification of the modified cargo tank is required and when recertification of the CTMV is required.

For purposes of the HMR, a ''cargo tank motor vehicle'' or CTMV is a motor vehicle with one or more cargo tanks

permanently attached to or forming an integral part of the motor vehicle. A ''modification'' is any change to the original design and construction of a cargo tank or a CTMV that affects its structural integrity or lading retention capability (see § 180.403). ''Stretching'' is a change in the width, length, or diameter of a cargo tank or any change to a CTMV's undercarriage that may affect the cargo tank's structural integrity. Modifying, stretching, or rebarrelling a cargo tank affects the design of the CTMV because the cargo tank is part of the CTMV; thus, whenever a cargo tank is modified, stretched, or rebarrelled, the complete CTMV must be recertified by a DCE. For this reason, Baltimore Tank's appeal of this provision is denied.

Damage to a cargo tank requiring pressure testing. The April 18 final rule restated the current requirement in § 180.407(b)(2) that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be inspected and tested in accordance with § 180.407, including the pressure test requirements in paragraph (g), prior to its return to service. The final rule did not change current requirements for testing damaged tanks; paragraph (b)(2) makes explicit the previous requirement that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be pressure tested in accordance with paragraph (g). Baltimore Tank appealed this provision of the final rule, suggesting that the full pressure test procedure as set forth in paragraph (g) is not necessary to ascertain if a damaged tank may be returned to service. This provision of the April 18 final rule made no changes to the long-standing requirements for inspection and testing of damaged cargo tanks. Baltimore Tank's appeal is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Test/Inspection reports. The April 18 final rule amended paragraph (b) of § 180.417 to revise the information that must be included on test and inspection reports. Baltimore Tank appealed this provision on several grounds. First, Baltimore Tank suggests that operators of MC 306 and MC 307 tanks will have difficulty providing the required information concerning the minimum thickness of the cargo tank shell and heads (see § 180.417(b)(1)(v)) because such information does not typically appear on the tanks' specification plates or manufacturing documents; Baltimore Tank further states that minimum thickness measurements are rarely needed for MC 306 and MC 307 cargo tanks. We disagree. Corroded or abraded areas of a cargo tank discovered during an external visual inspection, internal visual inspection, or lining inspection must be thickness tested; thus, a cargo tank almost certainly will be subjected to thickness testing at some point during its operating life. There is no point in conducting a thickness test of a corroded or abraded area if there is no number to which the thickness of the corroded or abraded area can be compared. The operator of an MC 306 or MC 307 cargo tank, working with a Registered Inspector, should be able to determine the minimum thickness of the cargo tank and enter this information on the inspection report. In this final rule, however, we are clarifying that an inspection report need only include an indication of the minimum thickness of the cargo tank shell and heads on test and inspection reports documenting that a thickness test has been performed for any reason on any area of the tank shell or heads.

Baltimore Tank also appealed the provision in § 180.417(b)(2)(iii), which requires the test or inspection report to list all items tested or inspected, suggesting that an item count for a multi-compartment MC 306 or DOT 406 CTMV in petroleum service would total in the hundreds and, further, that the items checked would not be the same from tank to tank. Baltimore Tank recommends that we reduce the amount of information required by this section. We disagree that this is an onerous or burdensome requirement. The requirement for a test/inspection report to list all items tested or inspected is not new; current § 180.417(b)(i) includes the same requirement. The August 18 final rule added to this section a list of examples of information that must be included on the test/inspection report, such as information about pressure relief devices, upper coupler assemblies, and leakage and pressure testing. An operator may use a checklist. In addition, an operator may group items—for example, rather than list every item inspected individually, an operator may choose to list items by category. Further, the list of information required on a test or inspection report will vary depending on the inspection or test conducted; all the information listed will not appear on every test or inspection report. For these reasons, Baltimore Tank's appeal of the test and inspection report provisions of the HM–213 final rule is denied.

Final rule effective date. The April 18 final rule is effective October 1, 2003. NPGA and Container Technology request reconsideration of the effective date; they state that some of the provisions of the April 18 final rule will necessitate extensive and complex redesign of certain components of CTMVs. We disagree. The provisions at issue in the NPGA request for reconsideration of the effective date are modified in this final rule (see ''Appeals Granted'' section above); the clarifications requested by Container Technology are addressed in this preamble (see ''Clarifications'' section below). The April 18 final rule included extended compliance dates for certain provisions, including the retrofit and certain marking requirements, of from one to three years. For these reasons, the NPGA and Container Technologies appeals of the effective date are denied.

C. Corrections

In addition to the revisions described above, this final rule also makes the following corrections to the final rule published April 18:

1. Corrects several typographical errors in the Hazardous Materials Table in § 172.101 and minor typographical errors in §§ 178.337–3, 178.337–17, 178.338–10, 180.407, 180.415, and 180.417.

2. Inserts the definition for ''manufacturer'' that was inadvertently omitted from § 178.320(a).

3. Corrects an inadvertent omission in § 178.347–1. In the preamble to the HM–213 final rule, we agreed with a commenter to add paragraph UW–12 to the list of exceptions in paragraph (d)(8), but did not do so in the regulatory text.

D. Clarifications

Container Technologies requested a clarification as to whether, for purposes of pad design, accident damage protection devices should be considered as structures or appurtenances. Accident damage prevention devices are structures. A rear-end damage protection device, such as a bumper, typically is attached to the CTMV chassis or suspension component, not directly to the cargo tank wall. Overturn damage protection devices typically are welded directly to the cargo tank wall.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under DOT's Regulatory Policies and Procedures. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions

contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (5) above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from the date of publication of this final rule.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. Based on the assessment in the regulatory evaluation, I certify that, while this final rule applies to a substantial number of small entities, the economic impact on those small entities is not significant.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The environmental assessment prepared for the April 18, 2003 final rule can be found in the public docket for this rulemaking. The revisions adopted in this final rule are relatively minor and, thus, do not alter the conclusions contained in the environmental assessment. There are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

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

49 CFR Part 180

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

■ In consideration of the foregoing, we are making the following revisions and corrections to rule FR Doc. 03–9070, published on April 18, 2003 (68 FR 19258):

■ 1. In the table on page 19275, correct the following entries to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-Bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				*	* *	*	*	*	*				
	Fuel, aviation, turbine engine.	3	UN1863	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E.	
				II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
				III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
				*	* *	*	*	*	*				
	Gas oil	3	UN1202	III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
				*	* *	*	*	*	*				
	Gasoline	3	UN1203	II	3	139, B33, B101, T8.	150	202	242	5 L	60 L	E.	
				*	* *	*	*	*	*				
	Petroleum crude oil	3	UN1267	I	3	144, T11, TP1, TP8.	None	201	243	1 L	30 L	E.	
				II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
				II	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
				*	* *	*	*	*	*				

■ 2. Beginning on page 19277, in the third column, and continuing on page 19278, in paragraph (a) of § 178.320, delete the definitions for ''sacrificial device'' and ''shear section'', revise the definition for ''cargo tank'', and add a definition for ''manufacturer'' in alphabetical order, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

(a) * * *

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids, gases, solids, or semi-solids and includes appurtenances, reinforcements, fittings, and closures (for *tank,* see §§ 178.337–1, 178.338–1, or 178.345–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Manufacturer means any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A manufacturer must register with the Department in accordance with subpart F of part 107 in subpart A of this chapter.

* * * * *

■ 3. On page 19279, in the first column, revise paragraph (b)(1) of § 178.320, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

* * * * *

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type, including its required accident damage protection device, must be certified to conform to the specification requirements by a Design Certifying Engineer who is registered in accordance with subpart F of part 107 of this title. An accident damage protection device is a rear-end protection, overturn protection, or piping protection device.

* * * * *

■ 4. On page 19279, in the first column, revise paragraph (b)(1) of § 178.337–3 to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

* * * * *

■ 5. On page 19279, in the third column, revise paragraph (b)(2) of § 178.337–9, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier, except for sacrificial devices. Malleable metal, stainless steel, or ductile iron must be used in the construction of primary valve body parts and fittings used in liquid filling or vapor equalization. Stainless steel may be used for internal components such as shutoff discs and springs except where incompatible with the lading to be transported. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538° C (1,000° F). The method of joining tubing may not reduce the strength of the tubing.

* * * * *

■ 6. On page 19280, in the first column and continuing to the second column, revise paragraphs (c) and (f) of § 178.337–10, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and all valves, piping and fittings located at the rear of the cargo tank from damage that could result in loss of lading in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank motor vehicle and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear bumper dimensions must also meet the requirements of § 393.86 of this title; or

(2) Conform to the requirements of § 178.345–8(d).

* * * * *

(f) *Shear section.* A shear section or sacrificial device is required for the valves specified in the following locations:

(1) A section that will break under strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Each internal self-closing stop valve, excess flow valve, and check valve must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The failure of the sacrificial device must leave the protected lading protection device and its attachment to the cargo tank wall intact and capable of retaining product.

■ 7. On page 19280, in the middle column, and continuing to page 19281, revise paragraphs (b) and (c) of § 178.337–17, to read as follows:

§ 178.337–17 Marking.

* * * * *

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 331 (DOT MC 331).

(2) Original test date (Orig. Test Date).

(3) MAWP in psig.

(4) Cargo tank design temperature (Design Temp. Range) ___°F to ___°F.

(5) Nominal capacity (Water Cap.), in pounds.

(6) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(7) Material specification number—shell (Shell matl, yyy***), where ''yyy'' is replaced by the alloy designation and ''***'' is replaced by the alloy type.

(8) Material specification number—heads (Head matl. yyy***), where ''yyy''

is replaced by the alloy designation and ''***'' by the alloy type.

(9) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top__, side__, bottom__, in inches).

(10) Minimum thickness—heads (Min. heads thick.), in inches.

(11) Manufactured thickness—shell (Mfd. Shell thick.), top__, side__, bottom__, in inches. (Required when additional thickness is provided for corrosion allowance.)

(12) Manufactured thickness—heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(13) Exposed surface area, in square feet.

Note to paragraph (b): When the shell and head materials are the same thickness, they may be combined, (Shell&head matl, yyy***).

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds

(6) Lining materials (Lining), if applicable.

(7) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(8) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

(9) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

Note 1 to paragraph (c): See § 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

* * * * *

■ 8. On page 19282, in the first column, revise paragraph (c)(2) of § 178.338–10, to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) * * *

(2) Conform to the requirements of § 178.345–8(b).

* * * * *

■ 9. On page 19283, in the third column, in § 178.345–1, revise paragraph (c) introductory text and the definitions for ''sacrificial device'' and ''shear section'', to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347, and 178.348. In addition, the following definitions apply to §§ 178.345, 178.346, 178.347, and 178.348:

* * * * *

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the *sacrificial device.* Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

* * * * *

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

* * * * *

■ 10. On page 19284, in the third column, correct paragraphs (c)(4) and (c)(7) of § 178.345–14, to read as follows:

§ 178.345–14 Marking.

* * * * *

(c) * * *

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

* * * * *

(7) Maximum unloading rate in gallons per minute (Max. Unload rate).

* * * * *

■ 11. On page 19285, in the middle column, add paragraph (d)(8) to § 178.347–1, to read as follows:

§ 178.347–1 General requirements.

* * * * *

(d) * * *

(8) The following paragraphs in parts UG and UW of the ASME Code, Section VIII, Division I do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–12, UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1.

* * * * *

■ 12. On page 19286, beginning in the first column and continuing to the middle column, revise paragraph (b)(2) in § 180.405 to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) * * *

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification may be recertified to the original specification provided:

(i) Records are available verifying the cargo tank was originally manufactured to the specification;

(ii) If the cargo tank was stretched, rebarrelled, or modified, records are available verifying that the stretching, rebarrelling, or modification was performed in accordance with the National Board Inspection Code and this part;

(iii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation that verifies the tank conforms to the original structural design requirements in effect at the time the tank was originally constructed;

(iv) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(v) The cargo tank is recertified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification and the date it was recertified. The specification plate on the cargo tank or the cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

■ 13. On page 19286, in the third column, correct amendatory instruction number 52(c) to read as follows:

52. * * *

(c) Paragraphs (a)(2), (b)(1), (b)(2), (c), (d)(1), (g)(1)(ii), (g)(1)(iv) introductory text, (g)(4), (h)(1) introductory text, (h)(2), (i)(5) introductory text, titles and column headings to Tables I and II in (i)(5) and (i)(6) are revised.

* * * * *

§ 180.407 [Amended]

■ 14. On page 19288, make the following corrections to the tables in paragraph (i)(5) of § 180.407:

a. Correct the title to Table I to read ''TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS''.

b. Correct the title to Table II to read ''TABLE II.—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS''.

■ 15. On page 19289, in the middle column, revise paragraph (c)(1) of § 180.413 to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

* * * * *

(c) * * *

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose, or fitting must be tested for leaks. This requirement is met when the piping, valve, hose, or fitting is tested after installation in accordance with § 180.407(h)(1). A hose may be tested before or after installation on the cargo tank.

* * * * *

■ 16. On page 19290, in the middle column, correct the paragraph ''Examples to paragraph (b)'' in § 180.415 to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) * * *

Examples to paragraph (b). The markings ''10–99 P, V, L'' represent that in October 1999 a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings ''2–00 K–EPA27'' represent that in February 2000 a cargo tank passed the leakage test under § 180.407(h)(2). The markings ''2–00 K, K–EPA27'' represent that in February 2000 a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 in § 180.407(h)(2).

* * * * *

■ 17. On page 19290, in the second column and continuing to the third column, revise paragraphs (b)(2)(v) and (b)(2)(viii) of § 180.417 to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(2) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

(viii) Continued qualification statement, such as ''cargo tank meets the requirements of the DOT specification identified on this report'' or ''cargo tank fails to meet the requirements of the DOT specification identified on this report'';

* * * * *

Issued in Washington, DC, on August 6, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

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