

## Research and Special Programs Administration

### 49 CFR Parts 172, 173, 174 and 179

[Docket No. HM-216; Amdt Nos. 172-148, 173-252, 174-83, 179-52]

RIN 2137-AC66

### Transportation of Hazardous Materials by Rail; Miscellaneous Amendments; Response to Petitions for Reconsideration

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

**ACTION:** Final rule; editorial revisions and response to petitions for reconsideration.

**SUMMARY:** On June 5, 1996, RSPA published a final rule which amended the Hazardous Materials Regulations to incorporate a number of changes to rail requirements based on rulemaking petitions from industry and RSPA initiatives. The intended effect of the June 5, 1996 rule is to improve safety and reduce costs to offerors and transporters of hazardous materials. This final rule corrects errors in that final rule and responds to petitions for reconsideration.

**DATES:** *Effective date.* This final rule is effective October 1, 1996. The effective date for the final rule published under Docket HM-216 on June 5, 1996 (61 FR 28666) remains October 1, 1996.

*Compliance date.* However, compliance with the regulations is authorized from June 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Beth Romo, telephone (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Washington DC, 20590-0001, or James H. Rader, telephone (202) 632-3339, Office of Safety Assurance and Compliance, Federal Railroad Administration, Washington DC, 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 5, 1996, RSPA issued a final rule under Docket HM-216 [61 FR 28666]. The final rule made changes to the HMR, applicable to rail carriers, shippers, and tank car owners and lessors, based on petitions for rulemaking submitted in accordance with 49 CFR 106.31 or agency initiative. RSPA received several petitions for reconsideration to the final rule concerning the voluntary compliance date of June 30, 1996, which allowed rail shippers and carriers to discontinue use of the RESIDUE placard. In a June 28, 1996 letter, RSPA denied these

petitions for reconsideration. This letter of denial was published in the Federal Register on July 25, 1996 [61 FR 38643] and included a statement of enforcement policy by the Federal Railroad Administration (FRA).

In addition, RSPA received several other petitions for reconsideration, as well as other correspondence identifying errors or requesting clarification. This document incorporates editorial and technical revisions RSPA has determined are necessary to correct or clarify the final rule.

Because the amendments adopted herein clarify and relax certain provisions of the June 5, 1996 final rule, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective on the same effective date of the June 5, 1996 final rule, without the usual 30-day delay following publication.

##### II. Summary of Regulatory Changes Made by Section

Listed below is a section-by-section summary of the changes.

##### Part 172

*Section 172.102.* Special Provision B65 is revised by correcting two typographical errors. The "Class DOT 105J" reference should read "Class DOT 105A" and the wording "safety relief device" should read "pressure relief device".

*Section 172.330.* On July 3, 1996, The Chemical Manufacturers Association's Vinyl Chloride Panel Transportation Committee (CMA-VCC) filed a petition for reconsideration concerning the marking of tank cars containing vinyl chloride. CMA-VCC claimed that revised marking requirements adopted under Docket HM-216 are unduly burdensome because they require addition of the word "stabilized" or "inhibited" as part of the proper shipping name marked on the tank without a corresponding increase in safety. Further, CMA-VCC states that the remarking process is costly, primarily because the cars must be removed from service. In some cases, entire fleets will have to be removed from service over the next three months in order to achieve compliance. To reduce the burden on the industry, CMA-VCC requests a five-year period to comply with the rule. This five-year period coincides with the regular service schedule for these cars.

In a final rule issued December 29, 1994 under Docket HM-215A [59 FR 67390], the proper shipping name for

"Vinyl chloride" was amended to add the word "stabilized." A delayed compliance period provided under Docket HM-215A authorizes use of either proper shipping name ("Vinyl chloride" or "Vinyl chloride, stabilized") until October 1, 1996. On or after that date, the word "stabilized" must appear as part of the proper shipping name. Based on pre-Docket HM-216 marking requirements in § 173.314, after October 1, 1996, the word "stabilized" would have been required to appear as part of the proper shipping name marking (provided such cars were marked after October 1, 1991; see § 172.302(f)).

The Docket HM-216 notice of proposed rulemaking proposed a reduction in the number of proper shipping names required to be marked on tank cars and also proposed that only the "key words" of the proper shipping name must be marked. Based on numerous comments, including those from the emergency response community, opposing these proposed changes in marking requirements, RSPA did not reduce the number of proper shipping names required to be marked on tank cars, but consolidated existing marking requirements into § 172.330. Limited relief was provided by adopting the proposal to require only key words of the proper shipping name to be marked; however, the final rule indicated that qualifying words, such as "compressed," "liquefied," "stabilized" and "inhibited" were considered to be "key words."

After further consideration, RSPA believes that certain qualifying words do not sufficiently enhance the effectiveness of this marking, and the parenthetical example in paragraph (a)(1)(ii) creates confusion as to which qualifying words in a proper shipping name must be considered "key words." Consequently, RSPA is amending paragraph (a)(1)(ii) by removing the parenthetical wording "(including words such as 'stabilized', 'inhibited', 'compressed', or 'liquefied')". This change does not limit or prohibit the marking of additional words on a tank car. A tank car may be marked with words such as "liquefied" or "stabilized".

*Section 172.514.* In the section heading and paragraphs (a) and (b), the phrase "other than a tank car" is removed. Based on the removal of the "RESIDUE" placard in the June 5, 1996 final rule, this phrase is no longer necessary because placarding requirements for tank cars are the same as for other bulk packagings.

*Part 173*

*Section 173.314.* In the paragraph (c) table, in Column (3), the wording "120A" is corrected to read "120" for each commodity authorized in this tank car class.

*Part 174*

*Section 174.24.* In § 174.24, the first two sentences are revised to clarify that no person may accept or transport a hazardous material unless that person receives a shipping paper that contains the information required by part 172 (i.e., the proper shipping description, emergency response telephone number, and the shipper's certification). The paragraph is further clarified to state that only the initial carrier within the United States must receive and retain a copy of the offeror's certified shipping paper.

*Section 174.85.* In paragraph (c), a separation requirement is revised to clarify that a placarded tank car may not be used to separate a tank car containing a residue of a hazardous material from a locomotive or occupied caboose. This change makes consistent the requirements of paragraph (c) with those contained in paragraph (d). (Also see the preamble discussion in the final rule [61 FR 28666, 28670].)

*Part 179*

*Section 179.15.* In § 179.15, several editorial changes are made, and in paragraph (f)(1) a sentence is added to clarify that until October 1, 1998, a tank car must have a nonreclosing pressure relief device incorporating a rupture disc designed to burst at a pressure corresponding to the new requirements in this final rule or to the old requirements in effect on September 30, 1996.

A manufacturer of safety valves and safety vents for tank cars opposed the pressure relief device amendment that would allow for an increase in the start-to-discharge pressure from 30 percent to 33 percent of the tank burst pressure. This petitioner claimed that the change would reduce the level of safety by 10 percent, and that the change did not correspond to the ASME code as purported by RSPA. The petitioner further stated that the ASME code primarily deals with stationary pressure vessels where "plants have maintenance departments that give their stationary valves tender loving care," and that "[t]ank cars, on the other hand, are frequently looked upon as someone else's problem and their valves and fittings are given minimum attention."

RSPA and FRA disagree. Prior to adoption of the HM-216 amendment,

the HMR and several exemptions authorized an increase in the start-to-discharge pressure setting on the pressure relief device for several commodities, such as liquefied petroleum gas and anhydrous ammonia. This change simply expands the requirement to all commodities, including those that pose less risk in transportation. Further, the start-to-discharge pressure setting on the pressure relief device in the ASME code is partly based on the physical properties of the lading at a reference temperature, static head, and gas padding pressure in the tank. Because of the ASME code's wide use in stationary storage tanks, cargo tanks, and IM portable tanks, RSPA proposed and adopted the principal code for tank cars in Docket HM-216. Accordingly, the start-to-discharge pressure of a pressure relief device on a tank car is now based on the physical properties of the lading and not solely on the tank specification. Since the lading, and not the tank specification, "drives" the start-to-discharge pressure setting of the pressure relief device, this provision is now in harmony with the ASME code. Furthermore, the design of a tank car must account for the dynamic train-action loads that are transmitted into the tank shell (axial compression and bending moments). As such, tank wall thickness is more of a function of the train-action loads as opposed to simply lading retention. Therefore, a direct comparison between tank cars and the ASME code is not totally possible, especially when comparing levels of safety.

This petitioner also disagreed with RSPA and FRA's position that it was better to remove the disc from the vent in order to examine the disc for corrosion and damage. The petitioner explained that the construction of the disc does not allow an inspector to determine the condition of the disc and that removal of the disc can allow water and vapor to enter the tank or for pollutants to escape from the tank. Further, in order to disassemble the nonreclosing pressure relief device an offeror would have to step outside of the loading platform area, thus "workers will be disinclined to take the discs out of the vents to look at the vacuum support side, so no inspection of the disc will take place."

RSPA and FRA disagree. The preamble discussion in Docket HM-216 simply makes clear an offeror's responsibility—that each person who offers a hazardous material for transportation in a tank car must ensure that the "tank car is in proper condition and safe for transportation." The

provision also requires a "careful inspection of the frangible [rupture] disc in non-reclosing pressure relief devices." A rupture disc failure in transportation poses a potential threat to human health and the environment. This threat is best mitigated by the careful inspection of the disc to ensure its integrity prior to transportation. A careful inspection does not simply mean a cursory look at the top of the disc; defects can and do arise in any material and on any surface, including the bottom side of the disc. Since non-reclosing pressure relief devices account for a large number of non-accident releases and railroad worker injuries, it simply cannot be argued that a partial inspection of the disc will qualify the whole disc for further use and help prevent such releases. Offerors must acknowledge that the cost of using a non-reclosing pressure relief device includes not just the purchase price, but also the cost of inspection, maintenance, and repair prior to each shipment. In cases where there is a concern about air and water vapors entering the tank or pollutants discharged from the tank, it is RSPA and FRA's opinion that the offeror should use a reclosing pressure relief device, as opposed to a nonreclosing pressure relief device that allows for the movement of unwanted vapors and pollutants into or out of the tank after disc rupture.

*Section 179.100-7.* In § 179.100-7, the minimum elongation requirements for AAR TC 128, Gr. B and ASTM A 302, Gr. B are corrected to read "19" and "20" respectively.

*Section 179.201-4.* A manufacturer of safety valves and safety vents for tank cars asked RSPA to amend § 179.201-4 to authorize the finishing of as cast internal surfaces of stainless castings prior to testing. Section 179.201-4 requires the use of a standard practice, ASTM-262, for detecting the susceptibility to intergranular attack in austenitic stainless steels. ASTM-262 requires the surface of a test specimen to conform to the actual surface of the casting used in service. The standard further authorizes the finishing of the test specimen surface to remove foreign material and to obtain a standard, uniform finish, by polishing. As to the removal of surface carburization, caused by carbonaceous binders in the sand, the ASTM-262 standard prohibits grinding and machining to remove the carburized surface, except in tests undertaken to demonstrate such effects.

In 1988, this petitioner and the Association of American Railroads (AAR) reviewed the ASTM-262 standard as it applies to carburized surfaces. The review resulted in a 1988

amendment to Appendix M of the AAR Tank Car Manual that now allows for the finishing, by grinding and machining, on all surfaces prior to testing. Based on the recognized industry standard practice for detecting the susceptibility to intergranular attack in austenitic stainless steel and these comments, RSPA is amending § 179.201-4 to authorize finishing, by machining or grinding, prior to testing.

**Section 179.300-7.** RSPA received one petition for reconsideration relating to the use of steels for the construction of multi-unit tank car tanks. The petitioner stated that the removal of steel specifications A285 and A515 will cause an enormous disruption to users of multi-unit tank car tanks and in particular to the chlorine industry, which uses A285 for forge welding Class DOT 106A multi-unit tank car tanks. The petitioner also asked RSPA to consider adding ASTM A516 Gr 70 to the table, since this material is often used in the construction of multi-unit tank car tanks under exemption (DOT-E 9157 and DOT-E 3216). RSPA agrees that the steel specifications in § 179.300-7 were inadvertently removed in the final rule. RSPA also is adding ASTM A516 Gr. 70 to the table based on comments received.

### III. Rulemaking Analyses and Notices

#### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

The economic impact of this rule is expected to result in only minimal costs to certain persons subject to the HMR and may result in modest cost savings to a small number of persons subject to the HMR and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

#### *B. Executive Order 12612*

The June 5, 1996 final rule, as amended herein, was analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as Federal

requirements. 49 U.S.C. 5125(b)(1).

These subjects are:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents pertaining to hazardous material, and requirements respecting the number, content, and placement of such documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule preempts State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Federal law (49 U.S.C. 5125(b)(2)) provides 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. RSPA determined that the effective date of Federal preemption for these requirements in the June 5, 1996 final rule would be October 1, 1996. The effective date of Federal preemption for the changes made in this final rule will be December 24, 1996.

#### *C. Regulatory Flexibility Act*

This final rule responds to petitions for reconsideration and agency review. It is intended to make editorial and technical corrections, provide clarification of the regulations and relax certain requirements. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *D. Paperwork Reduction Act*

There are no new information collection requirements in this final rule.

#### *E. 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.

#### List of Subjects

##### *49 CFR Part 172*

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

##### *49 CFR Part 173*

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

##### *49 CFR Part 174*

Hazardous materials transportation, Radioactive materials, Railroad safety.

##### *49 CFR Part 179*

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 173, 174 and 179 are amended as follows:

#### **PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

1. The authority citation for Part 172 continues to read as follows:

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

##### **§ 172.102 [Amended]**

2. In § 172.102, in paragraph (c)(3), for Special Provision B65, as amended at 61 FR 28675, effective October 1, 1996, the wording "Class 105J" is revised to read "Class 105A" and the wording "safety relief device" is revised to read "pressure relief device".

##### **§ 172.330 [Amended]**

3. In § 172.330, in paragraph (a)(1)(ii), as revised at 61 FR 28676, effective October 1, 1996, the wording "(including words such as 'stabilized', 'inhibited', 'compressed', or 'liquefied')" is removed.

##### **§ 172.514 [Amended]**

4. In § 172.514, the following changes are made:

- a. In the section heading, the wording "other than tank cars" is removed.

b. In paragraph (a) and paragraph (b) introductory text, the wording “, other than a tank car,” is removed each place it appears.

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

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

Authority: 49 U.S.C. 5102–5127; 49 CFR 1.53.

##### **§ 173.314 [Amended]**

6. In § 173.314, in the paragraph (c) table, as amended at 61 FR 28677, effective October 1, 1996, in Column 3, the wording “120A” is revised to read “120” each place it appears.

#### **PART 174—CARRIAGE BY RAIL**

7. The authority citation for Part 174 continues to read as follows:

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

8. In § 174.24, as revised at 61 FR 28677, effective October 1, 1996, the first two sentences are revised to read as follows:

##### **§ 174.24 Shipping papers.**

A person may not accept or transport a hazardous material by rail unless that person receives a shipping paper that properly conveys the information required by part 172 of this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter. \* \* \*

##### **§ 174.85 [Amended]**

9. In § 174.85, in paragraph (c), as revised at 61 FR 28678, effective October 1, 1996, the wording “non-placarded rail car” is revised to read “rail car other than a placarded tank car”.

#### **PART 179—SPECIFICATIONS FOR TANK CARS**

10. The authority citation for Part 179 continues to read as follows:

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

11. In § 179.15, as added at 61 FR 28678, effective October 1, 1996, paragraph (f)(1) is revised to read as follows:

##### **§ 179.15 Pressure relief devices.**

\* \* \* \* \*

(f) \* \* \*

(1) Until October 1, 1998, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at a pressure no less than 100% of

the tank test pressure but no more than 33% of the tank burst pressure. After that date, a nonreclosing pressure relief device must incorporate a rupture disc designed to burst at 33% of the tank burst pressure.

\* \* \* \* \*

##### **§ 179.15 [Amended]**

12. In addition, in § 179.15, the following changes are made:

a. In the introductory text, the wording “pressure relief system” is revised to read “pressure relief device, made of material compatible with the lading”.

b. In the paragraph (b) heading, the word “valves” is revised to read “devices”.

c. In paragraph (b)(2)(i), the wording “start-to-discharge pressure” is revised to read “start-to-discharge pressure of a pressure relief device”.

d. In the paragraph (c) heading, the word “systems” is revised to read “devices”.

e. In paragraph (e) introductory text, at the end of the first sentence, the wording “nonreclosing pressure relief valve” is revised to read “reclosing pressure relief valve”.

##### **§ 179.100–7 [Amended]**

13. In § 179.100–7, in the paragraph (a) table, as revised at 61 FR 28679, effective October 1, 1996, the following changes are made:

a. In the first entry, “AAR TC128, Gr. B”, in the third column, the entry “20” is revised to read “19”.

b. In the second entry, “ASTM A 302, Gr. B”, in the third column, the entry “19” is revised to read “20”.

##### **§ 179.201–4 [Amended]**

14. In § 179.201–4, as amended at 61 FR 28681, effective October 1, 1996, at the end of the paragraph, the wording “ASTM Specification A 262” is revised to read “ASTM Specification A 262, except that when preparing the specimen for testing the carburized surface may be finished by grinding or machining”.

15. In § 179.300–7, as amended at 61 FR 28682, effective October 1, 1996, in the paragraph (a) table, the following entries are added in numerical order to read as follows:

##### **§ 179.300–7 Materials.**

(a) \* \* \*

Specifications	Tensile strength (psi) welded condition <sup>1</sup> (minimum)	Elongation in 2 inches (percent) welded condition <sup>1</sup> (longitudinal) (minimum)
* * * * *		
ASTM A285 Gr. A .....	45,000	29
ASTM A285 Gr. B .....	50,000	20
ASTM A285 Gr. C .....	55,000	20
ASTM A515 Gr. 65 .....	65,000	20
ASTM A515 Gr. 70 .....	70,000	20
ASTM A516 Gr. 70 .....	70,000	20

<sup>1</sup> Maximum stresses to be used in calculations.

\* \* \* \* \*

Issued in Washington, DC on September 16, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

*Deputy Administrator, Research and Special Programs Administration.*

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 660**

[Docket No. 960126016–6121–04; I.D. 091796A]

##### **Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closure from the Oregon-California Border to Humboldt South Jetty, CA**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from the Oregon-California border (42°00'00" N. lat.) to Humboldt South Jetty, CA (40°45'53" N. lat.) was closed at 2400 hours local time (l.t.), September 14, 1996. The Regional Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 6,000 chinook salmon has been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of chinook salmon.

**DATES:** Effective at 2400 hours l.t., September 14, 1996, through 2400 hours