U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave., SE
Washington, DC 20590

MAY 19 2009

The Honorable Mark Rosenker
Chairman
National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594

Dear Chairman Rosenker:

This letter provides an update on Safety Recommendations H-02-23 and H-02-24, issued by the National Transportation Safety Board to the Pipeline and Hazardous Materials Safety Administration (PHMSA). The Safety Board issued these safety recommendations as a result of its investigation of a tube trailer incident in Ramona, Oklahoma on May 1, 2001. In the incident, horizontally mounted cylinders on a semi-trailer were damaged, causing the release of hydrogen gas. Two people were killed in the incident. The Safety Board recommended that PHMSA:

H-02-23

Modify 49 Code of Federal Regulations 173.301 to clearly require that valves, piping, and fittings for cylinders that are horizontally mounted and used to transport hazardous materials are protected from multidirectional forces that are likely to occur during accidents, including rollovers.

H-02-24

Require that cylinders that transport hazardous materials and are horizontally mounted on a semitrailer be protected from impact with the roadway or terrain to reduce the likelihood of their being fractured or ejected during a rollover accident.

On April 9, 2009, PHMSA issued a final rule under Docket Number HM-218E entitled "Hazardous Materials: Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking" (74 FR 16135; copy enclosed). This final rule amends the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to require cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers, to conform to the revised Compressed Gas Association technical bulletin, CGA TB-25 "Design Considerations for Tube Trailers," 2008 edition. The revised CGA consensus standard addresses protective structures for valves and pressure relief devices, and design considerations for the static, dynamic, and thermal loads affecting tube trailers. These design considerations are intended to reduce the likelihood of the tube separating from the trailer

and to minimize the unintentional release of hazardous materials in the event of a highway collision, including but not limited to, a rollover accident.

In the HM-218E final rule, we noted that CGA had formed a committee to address the issues identified by NTSB in its investigation of the Ramona accident. During its analysis of the causal factors of the Ramona accident, CGA observed that the threads on the mounting flange and the corresponding threads on the neck of the failed tube showed evidence of excessive wear. The task force concluded, therefore, that the excessive wear of the threads in the mounting flanges allowed the neck on the rear end of one of the cylinders to pull loose from the mounting flange during the initial rollover. The cantilevered movement of the now unrestrained rear end of the cylinder imparted substantial stress on the restrained front neck of the cylinder, causing the cylinder neck to fracture. CGA noted that its conclusion that contact of the cylinder with the roadway was not the cause of the cylinder failure is substantiated by evidence from previous rollover incidents where cylinders contacting the road surface exhibited only abrasion damage similar to that depicted on the remaining cylinders on the tube trailer shown in Figure 5 of the NTSB investigation report.

To address this securement issue, CGA established a task force to develop inspection criteria for the mounting threads on cylinders mounted on tube trailers. The CGA publication on mounting thread inspection is targeted for publication in 2009. In the interim, we have posted periodic thread inspection guidelines for cylinders mounted on tube trailers on the PHMSA website at http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Inspection_Procedure.pdf.

Based on the actions outlined above, we request that Safety Recommendations H-02-23 and H-02-24 be classified as "Closed – Acceptable Action." We appreciate your consideration of this request.

Sincerely,

Cynthia Douglass
Acting Deputy Administrator

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[FR Doc. E9–7825 Filed 4–8–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, 176, 178, and 180

[Docket No. PHMSA–2006–25910 (HM–218E)]

RIN 2137–AE23

Hazardous Materials: Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and MC specification cargo tank motor vehicles, DOT specification cylinders and UN pressure receptacles. The revisions are based on petitions for rulemaking submitted by the regulated community and are intended to enhance the safe transportation of hazardous materials in commerce, clarify regulatory requirements, and reduce operating burdens on cargo tank and cylinder manufacturers, requalifiers, carriers, shippers, and users. The most significant amendment adopted in this final rule addresses a safety issue identified by the National Transportation Safety Board concerning the transportation of compressed gases in cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers.

DATES: *Effective Date:* This final rule is effective May 11, 2009.

Voluntary Compliance Date: Voluntary compliance with all these amendments, including those with delayed mandatory compliance, is authorized as of April 9, 2009.

Incorporation by Reference Date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). PHMSA's rulemaking procedure regulations, at 49 CFR 106.95, provide for persons to ask PHMSA to add, amend or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action. In this final rule, PHMSA (also "we" or "us") is amending the HMR based on petitions for rulemaking submitted by cargo tank and cylinder manufacturers, requalifiers, shippers, and carriers. We are also incorporating revisions to address requests for clarification of the regulations. These revisions are intended to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

II. Notice of Proposed Rulemaking

We published a notice of proposed rulemaking (NPRM) under this docket on April 12, 2007 (72 FR 18446). The comment period for the NPRM closed on June 11, 2007. PHMSA received 21 comments from the following individuals, companies, and organizations:

(1) Matheson Tri Gas (Matheson; PHMSA–2006–25910–2 and 4);
(2) Clifford L. Bartley (Bartley; PHMSA–2006–25910–3);
(3) A&S Enterprises (A&S; PHMSA–2006–25910–4);
(4) Taylor-Wharton Huntsville (Taylor-Wharton; PHMSA–2006–25910–5);
(5) Catalina Cylinders (Catalina; PHMSA–2006–25910–7);
(6) Norco Welding-Safety Medical Gases & Supplies (Norco; PHMSA–2006–25910–8);
(7) Richard O. Harder (Harder; PHMSA–2006–25910–9);
(8) Scott Specialty Gases (Scott Specialty; PHMSA–2006–25910–10);
(9) Chemetall Foote Corp. (Chemetall; PHMSA–2006–25910–11);
(10) National Transportation Safety Board (NTSB; PHMSA–2006–25910–13);
(11) Certified Training Co. (CTC; PHMSA–2006–25910–14);
(12) Luxfer Gas Cylinders (Luxfer; PHMSA–2006–25910–15);
(13) Sherwood Harsco Corp. (Sherwood; PHMSA–2006–25910–16);
(14) Air Products and Chemicals Inc. (Air Products; PHMSA–2006–25910–17);
(15) National Propane Gas Assoc. (NPGA; PHMSA–2006–25910–18);
(16) FMC Lithium (FMC Lithium; PHMSA–2006–25910–19);
(17) Barlen & Assoc. Inc. (Barlen; PHMSA–2006–25910–20);
(18) The Linde Group (Linde; PHMSA–2006–25910–21);
(19) Roberts Oxygen Company, Inc. (Roberts; PHMSA–2006–25910–22);
(20) Steigerwalt (Steigerwalt; PHMSA–2006–25910–23); and
(21) Compressed Gas Association (CGA; PHMSA–2006–25910–24).

Commenters are generally supportive of the proposals in the NPRM. All of the proposals, with corresponding comments, are discussed in more detail below.

III. Proposals Not Adopted

We are not adopting two of the amendments proposed in the NPRM relating to the incorporation by reference of two CGA publications. In the NPRM, we proposed the incorporation of CGA V–9 titled "Standard for Compressed Gas Cylinder Valves, 2005 Fifth Edition" which was requested by CGA (P–1422). This amendment contained in proposed §§ 173.40(c) and 173.301(a)(11) would have required each valve on a cylinder to conform to CGA V–9 unless otherwise excepted. We received 15 comments from Air Products, Matheson, Taylor-Wharton, Catalina, Norco, Harder, Scott Specialty, Chemetall, Luxfer, Sherwood, NPGA, FMC Lithium, Barlen, Linde, and Roberts. With the exception of Luxfer, these commenters request that we delay the incorporation by reference of CGA V–9 to allow sufficient time for CGA to resolve certain concerns that would cause confusion to both industry and enforcement officials. Luxfer suggests that we adopt CGA V–9 and revise the HMR to establish in-process approvals, controls, and inspections for the manufacture of V–9 valves. Because CGA is in the process of revising the CGA V–9 publication, we agree with the commenters who suggest that the publication should not be incorporated into the HMR at this time.

We also proposed the incorporation of CGA C–1 titled "Methods for Hydrostatic Testing of Compressed Gas Cylinders," that was requested by CGA (P–1485). This amendment contained in proposed § 180.205(g) would have required the requalification of cylinders using a pressure test conducted in accordance with CGA C–1. Air Products supports referencing CGA C–1. Two

other commenters, A&S and CTC, disagree with referencing the publication. A&S states that referencing CGA C–1 for use would not best serve the interest of safety and would increase costs for cylinder requalifiers who use the hydrostatic test method. However, A&S provided no information to support its position. CTC expresses concerns about the adequacy of certain provisions in CGA C–1, including test equipment accuracy, calibrated cylinder design requirements, and certain omissions. Because CGA is in the process of revising the CGA C–1 publication, we are not incorporating the publication into the HMR at this time.

IV. Summary of Adopted Amendments

The following is a review-by-section summary of changes and, where applicable, a discussion of comments received.

A. Part 171

Incorporations by Reference (§ 171.7)

Section 171.7(a) lists the publications incorporated by reference (IBR) into the HMR. In addition, paragraph (b) in this section contains a list of informational materials not requiring incorporation by reference. In the NPRM, we proposed to amend this section by adding or revising certain IBR and informational materials. Commenters support adoption of these materials. Therefore, in response to CGA petition P–1489, under the entry "Compressed Gas Association, Inc.," we are updating CGA G–2.2, "Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia," from the 1985 Edition to reflect the 1985 Second Edition, Reaffirmed 1997. Section 173.315(l), prohibits the use of MC 330 and MC 331 cargo tanks constructed of quenched and tempered "QT" steel to transport anhydrous ammonia unless the ammonia has the specified minimum water content. The analysis of the water content in the ammonia is conducted as prescribed in CGA G–2.2. Currently, CGA G–2.2, 1985, Second Edition is incorporated by reference in § 171.7(a)(3). CGA reaffirmed this publication in 1997. There were no changes to the document other than the title reflecting that it was reaffirmed in 1997. The other adopted IBR materials are discussed later in this preamble with their applicable regulatory amendments.

B. Part 173

Mobile Refrigeration Systems (§ 173.5b)

In the NPRM, in response to Western Growers Association (WGA) petition P–1352, we proposed to revise the HMR to provide for the transportation of large, mobile refrigeration systems used by the agricultural produce industry at field sites to help preserve freshly harvested fruit and vegetables. These refrigeration systems consist of ASME non-DOT specification pressure components with a maximum total volumetric capacity per vehicle of 2,500 gallons. Refrigerant systems placed in service prior to June 1, 1991, have a maximum allowable working pressure (MAWP) between 150 to 250 psig; those placed in service on or after June 1, 1991, have an MAWP of 250 psig. These refrigeration systems, commonly known as vacuum tubes, accumulators, refrigeration units, icemakers, pressure coolers or evaporators, primarily use Division 2.2 refrigerant gases or anhydrous ammonia in the cooling process. The refrigeration systems may or may not be mounted on a motor vehicle and currently are operated under a special permit (SP–10285) that requires each refrigeration system to be visually inspected annually and proof pressure tested at least once every two years. In the NPRM, we proposed design and safety control measures for these refrigeration systems consistent with those specified in the special permit and established conditions for their use. We did not receive any comments regarding this amendment; therefore, with minor editorial revisions, we are adopting it as proposed. In addition, in the IBR materials in § 171.7(b), we are adding an entry for the American Society for Testing and Materials' publication ASTM E 290–97a (2004) and revising the entries for the ASME Code, ASTM A 53/A 53M–06a and ASTM A 106/A 106M–06a to add a corresponding reference to § 173.5b.

Classification Criteria for Toxic Gas Mixtures (§ 173.115)

In § 173.115(c)(2), the definition for Division 2.3 material (gas poisonous by inhalation) provides that LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20, "Standard for Classification of Toxic Gas Mixtures." In the NPRM, we proposed to update CGA P–20 from the 1995 2nd edition to the 2003 3rd edition as requested by CGA (P–1488). We did not receive any comments opposing this update; therefore, we are adopting the amendment as proposed.

Tube Trailers (§ 173.301)

This section prescribes general requirements for the shipment of compressed gases in cylinders and spherical pressure vessels. Paragraph (i) of § 173.301 specifies guidelines for cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers. Seamless DOT specification cylinders longer than 2 meters (6.5 feet) may be transported only when horizontally mounted on a vehicle or in an ISO framework or other framework of equivalent structural integrity. In the NPRM, we proposed to revise § 173.301(i) to reference the technical bulletin, CGA TB–25, "Design Considerations for Tube Trailers," 2005 edition in response to a CGA petition (P–1484). CGA TB–25 addresses protective structures for valves and pressure relief devices, and design considerations for the static, dynamic, and thermal loads affecting tube trailers. These design considerations are intended to reduce the likelihood of the tube separating from the trailer and to minimize the unintentional release of hazardous materials in the event of a highway collision, including but not limited to, a rollover accident, thereby promoting the reliable operation of the trailers under normal conditions and minimizing the risk of a catastrophic accident. CGA developed TB–25 to address safety concerns identified following a May 1, 2001 hydrogen gas tube trailer incident in Ramona, Oklahoma, investigated by the National Transportation Safety Board (NTSB). In the incident, certain horizontally mounted cylinders on a semi-trailer, along with valves, piping and fittings, were damaged, causing the release of hydrogen gas.

In the NPRM, we stated the adoption of CGA TB–25 would respond to two NTSB safety recommendations (H–02–23 and H–02–24). Based on its investigation of the May 1, 2001 accident, NTSB recommended that PHMSA revise § 173.301 to clearly require valves, piping, and fittings on cylinders that are horizontally mounted and used to transport hazardous materials to be protected from multidirectional forces that are likely to occur during accidents, including rollovers (Recommendation H–02–23) and to require cylinders that are used to transport hazardous materials and are horizontally mounted on a semitrailer to be protected from impact with the roadway or terrain to reduce the likelihood of their being fractured and ejected during a rollover accident (Recommendation H–02–24).

In response to the NPRM, NTSB submitted comments stating that CGA TB–25 adequately addresses Safety Recommendation H–02–23, but expressing concern that CGA TB–25 does not adequately address Safety Recommendation H–02–24. NTSB notes that in the May 1, 2001 accident, 6 of the 10 cylinders on the semi-trailer extended beyond the envelope of the

mounting bulkheads on the semi-trailer. Consequently, during the rollover and sliding of the semi-trailer along the ground, the exposed cylinders, rather than the mounting bulkheads, sustained the initial impact with the roadway and ground. NTSB states CGA TB–25 does not specifically require the individual cylinders to be within the envelope of the mounting bulkheads or otherwise be protected from direct impact with the roadway or ground and the NPRM does not explain how the implementation of the multidirectional loading standards for the cylinders and mounting attachments reduces the exposure of cylinders to direct impacts in rollover accidents. NTSB also notes the cylinders on the tube trailer in the Ramona accident were *permanently* mounted on the trailer chassis, while CGA TB–25 defines a "tube module" as an assembly of one or more tubes horizontally mounted on a structural frame that is designed to be *temporarily* mounted on a motor vehicle, and does not specifically require that tube modules meet the comparable loadings and accident protection standards implemented for tube bundles that are permanently mounted on a trailer chassis.

Based on the concerns raised in the NTSB comments, CGA formed a committee to address the issues identified by NTSB and responded with detailed comments and a revised CGA TB–25 that are available in the public docket. CGA disagrees with NTSB on the causal factors of the Ramona accident and contends that modifying existing trailers or designing new trailers so that the envelope extends beyond the cylinders is unjustified based upon the circumstances of the Ramona accident. CGA notes that prior to the Ramona tube trailer rollover, there are no records of previous incidents that resulted in an actual failure of a cylinder. CGA further states that, in the early stages of the development of CGA TB–25, a CGA task force spent a significant amount of time reviewing the details of the NTSB report, as well as information gathered from individuals with first-hand knowledge of the investigation and the tube trailer involved, to gain a more thorough understanding of the cause of the cylinder failure. The CGA task force observed that the threads on the mounting flange and the corresponding threads on the neck of the failed tube showed evidence of excessive wear. The task force concluded, therefore, that the excessive wear of the threads in the mounting flanges allowed the neck on the rear end of one of the cylinders to pull loose from the mounting flange during the initial rollover. The cantilevered movement of the now unrestrained rear end of the cylinder imparted substantial stress on the restrained front neck of the cylinder, causing the cylinder neck to fracture. CGA notes that its conclusion that contact of the cylinder with the roadway was not the cause of the cylinder failure is substantiated by evidence from previous rollover incidents where cylinders contacting the road surface exhibited only abrasion damage similar to that depicted on the remaining cylinders on the tube trailer shown in Figure 5 of the NTSB investigation report. As a result, the task force concludes that one of the key design considerations for CGA TB–25 should be the securement of the tubes within the tube bundles.

To address this securement issue, CGA established another task force to develop inspection criteria for the mounting threads on cylinders mounted on tube trailers that could be performed during requalification. CGA's publication on mounting thread inspection is targeted for publication in early 2009. In the interim, we have posted periodic thread inspection guidelines for cylinders mounted on tube trailers on the PHMSA Web site (*http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/ Files/Inspection_Procedure.pdf*). To address NTSB's concern regarding the distinction between the requirements for a tube module and a tube bundle, CGA revised TB–25 to address its applicability to tube modules. In this final rule, we are incorporating the revised CGA TB–25, 2008 edition by reference into the HMR.

Requalification of DOT 3BN Cylinders (§ 173.338)

Section 173.338 authorizes the use of DOT 3BN cylinders for the shipment of tungsten hexafluoride. In response to a petition (P–1458) from Air Products, we proposed in the NPRM to permit DOT 3BN cylinders used exclusively for tungsten hexafluoride to be requalified by an external visual inspection in place of the volumetric expansion test. The proposal was based on the safety record of a similar chemical, hydrogen fluoride, which has a similar exception. This alternative requalification method is currently authorized under the terms of a special permit (DOT SP–14016). In response to the proposed amendment, Air Products requests that we revise the proposed language to allow a cylinder utilizing this exception to be given a complete internal inspection and a volumetric expansion test if used to transport other types of hazardous materials rather than require the cylinder to be removed from service and condemned, as required under the special permit. Air Products notes that cylinders used in tungsten hexafluoride service are authorized for the transportation of other types of compressed gases provided all applicable HMR requirements are met. Air Products further notes that the condemnation requirement in DOT SP–14016 was based on the fact that it was applied for and granted on an emergency basis. The commenter is not correct. We included the condemnation requirement in the special permit because of the similarity of the two chemicals. Air Product has not provided any technical and safety data to support waiving the requirement. Therefore, the amendment is adopted as proposed.

C. Part 176

Stowage Requirements for Class 2 Material on Vessels (§ 176.200)

Section 176.200 prescribes general stowage requirements for Class 2 (compressed gases) materials transported aboard vessels. In response to a petition (P–1471) from Horizon Lines, we proposed in the NPRM to prohibit the stowage on vessels of Division 2.1 (flammable) gases in powered refrigerated temperature controlled containers (reefer units) unless the equipment is capable of preventing ignition of flammable vapors by having non-sparking or explosion-proof electric fittings within the cooling compartment. This amendment is consistent with requirements contained in the International Maritime Dangerous Goods Code. We received one supportive comment (Bartley). We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

D. Part 178

DOT 4E Cylinders (§ 178.68)

Section 178.68 contains the manufacturing specification for DOT 4E welded aluminum cylinders. Paragraph (l)(2) specifies the guided bend test procedures and rejection criteria to be applied to welds. In response to a petition (P–1486) from Worthington Cylinders Corp (Worthington), we proposed in the NPRM to revise paragraph (l)(2) to authorize the use of an alternate bend test illustrated in paragraph 12 of The Aluminum Association's publication, "Welding Aluminum: Theory and Practice" for determining the soundness of circumferential seam welds on aluminum cylinders. We did not receive

any comments opposing this amendment; therefore, we are adopting it as proposed.

DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–3)

Section 178.345–3 prescribes structural integrity requirements for the design and construction of DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. In response to a petition (P–1408) from TTMA, we proposed in the NPRM to revise paragraph (a) to reference TTMA RP 96–01, "Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks," as suitable guidance for performing the structural integrity calculations. We did not receive any comments regarding this amendment; therefore, we are adopting it as proposed. In addition, we are revising paragraph (b) of § 171.7, List of informational materials not requiring incorporation by reference, to add a reference to TTMA RP No. 96–01 and a corresponding section reference for § 178.345–3.

Manhole Assemblies on DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–5)

Section 178.345–5 prescribes requirements for manhole assemblies used on DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. In response to a petition (P–1372) from TTMA, we proposed in the NPRM to revise paragraph (f) to remove a duplicative manhole marking requirement. We did not receive any comments regarding this amendment; therefore, we are adopting it as proposed except for certain minor editorial revisions.

E. Part 180

Cargo Tank Testing and Inspection (§ 180.407)

Section 180.407 prescribes requirements for the periodic testing and inspection of specification cargo tanks. Paragraph (d)(3) of § 180.407 requires each reclosing pressure relief valve that is required to be removed and tested to be able to open at the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure for the applicable cargo tank specification. In response to a petition for rulemaking from Keehn Service Corporation (Keehn Service) (P–1436), we proposed to revise paragraphs (d)(3) and (g)(1)(ii)(A) of § 180.407 to specify that reclosing and self-closing pressure relief valves must be set to discharge at a pressure no more than 110% of the required set pressure. Providing for a tolerance is consistent with the set-to-discharge tolerance allowed for certain other DOT specification pressure vessels. We received comments from Air Products and NPGA regarding this proposed amendment. Air Products is supportive of the amendment as proposed. NPGA recommends the usage of the term "start-to-discharge" in place of the term "set-to-discharge." NPGA also suggests we clarify that reseating to a leak tight position should occur at "no less than" 90 percent of the set-to-discharge pressure. We agree with both suggestions and believe that they would benefit the regulated community. Also, the tank car and portable tank requirements in the HMR use similar terminology.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

B. 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 (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

In this final rule, we are amending the HMR to enhance safety and to offer greater flexibility in complying with the regulatory requirements for cargo tanks and cylinders without sacrificing the current HMR level of safety. Most of these amendments are based on petitions for rulemaking submitted by the regulated community and, for the most part, should reduce overall compliance costs. For example, several of the amendments adopted in this final rule provide regulatory relief through alternative means of compliance with certain industry consensus standards. Adoption of industry standards reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus generally are accepted and followed by the industry; thus, their incorporation by reference in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal. In addition, several amendments adopted in this final rule provide regulatory relief through compliance with certain nationally and internationally recognized standards such as the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and standards published by the American Society for Testing and Materials (ASTM) and the International Organization for Standardization (ISO). Requiring regulatory compliance with standards such as the ASME Code, ASTM and ISO takes advantage of established and well-defined and proven practices.

Additionally, we are addressing a safety problem involving the transportation of hazardous materials in tube trailers through adoption of CGA consensus standard TB–25, "Design Considerations for Tube Trailers." The updated CGA standard addresses safety concerns identified by NTSB in its investigation of an accident involving tube trailers that resulted in the release of hydrogen gas. We anticipate transportation of hydrogen gas in tube trailers will increase significantly in the coming years to support its use as an alternative fuel for automobiles and other vehicles. Ensuring that hydrogen gas will be transported safely to suppliers and distribution centers will be essential to support its use as an alternative fuel. The CGA standard addresses protective structures for valves and pressure relief devices and design considerations for static, dynamic, and thermal loads affecting tube trailers. The standard is intended to reduce the likelihood of the tubes separating from the trailer and to prevent the unintentional release of hazardous materials in the event of a highway collision or rollover accident. Because we are adopting an industry consensus standard that revises a standard already in widespread use, we expect compliance costs associated with this proposal will be minimal.

Overall this final rule will enhance transportation safety and reduce the overall compliance burden on the regulated industry.

C. Executive Order 13132

This final rule was 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:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

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

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

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

This final rule addresses covered subject items (v) 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. PHMSA has determined the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. This final rule incorporates several petitions for rulemaking submitted by the regulated community. As specified above, there may be minimal increased costs associated with the adoption of CGA TB–25. However, the revisions as a whole in this rule should decrease overall compliance costs for the regulated community while enhancing the safe transportation of hazardous materials in commerce. Therefore, I certify this rule should not have a significant economic impact on a substantial number of small entities.

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 potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137 0014, "Cargo Tank Specification Requirements," with an expiration date of February 28, 2011. This final rule contains no new information collection and recordkeeping requirements. The annual visual inspection certification and record retention requirement prescribed for portable and mobile refrigeration systems in § 173.5b(d) of the final rule are required currently under the terms of the special permit (DOT–SP 10285) and are included in the burden hours reported under OMB Control Number 2137–0014.

Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

Requests for a copy of these information collections should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., (Second Floor, East Building), Washington, DC 20590–0001, Telephone (202) 366–8553.

G. 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.

H. Unfunded Mandates Reform Act

This final rule imposes no unfunded mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

I. Environmental Assessment

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is making miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; resolve outstanding petitions for rulemaking; and make these requirements easier to understand.

2. Alternatives

In developing the proposed rule, we considered two alternatives:

(1) Do nothing.

(2) Propose revisions to the HMR based on petitions for rulemaking and PHMSA initiatives.

Alternative 1:

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2:

Many of the industry standards currently incorporated by reference have been revised and updated to incorporate new technology and methodology. Most of the amendments would relax requirements in certain instances or allow for alternative means of compliance while still ensuring safety, clarify regulatory requirements, and make the regulatory provisions more consistent—all in furtherance of the safe transportation of hazardous materials in commerce.

3. Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous-materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Making the regulatory provisions in the HMR clearer and more consistent with industry standards will promote compliance and thereby enhance the safe transportation of hazardous materials and the protection of the environment. Updating the references to industry standards enhances safety and environmental protection by recognizing the use of new technologies. This final rule to relax certain regulatory requirements is based on PHMSA's experience, review, and determination that the changes are consistent with safety. Neither the "do nothing" alternative nor the action alternative would result in any significant impacts on the environment.

4. Consultations and Public Comment

Various modal agencies, including FMCSA, FRA, and the USCG were consulted and participated in the notice and comment process. A listing of the commenters is specified in the **SUPPLEMENTARY INFORMATION** section under "Background." No commenters addressed the potential environmental impacts of the proposals in the NPRM.

5. Decision About the Degree of Environmental Impact

PHMSA finds that the selected alternative will not have a significant impact on the human environment.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

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

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

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

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Public Law 101–410 section 4 (28 U.S.C. 2461 note); Public Law 104–134 section 31001.

■ 2. In § 171.7, the following amendments are made:

■ a. Paragraph (a)(2)(i) is revised;

■ b. In the table in paragraph (a)(3), under The Aluminum Association, the organization address is revised and a new entry titled "Welding Aluminum: Theory and Practice," 2002 Fourth Edition is added in alphabetical order;

■ c. In the table in paragraph (a)(3), under American Society of Mechanical Engineers, the organization address and the entry titled "ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code," are revised;

■ d. In the table in paragraph (a)(3), under American Society for Testing and Materials, the organization address is revised and entries for ASTM A53/A53M–06a and ASTM A106/A106M–06a) are added in alphanumeric order;

■ e. In the table in paragraph (a)(3), under Compressed Gas Association, Inc., the organization address and the entries for CGA Pamphlet G–2.2 1985 edition and CGA Pamphlet P–20 1995 edition are revised;

■ f. In the table in paragraph (a)(3), under Compressed Gas Association Inc., a new entry for CGA TB–25 2008 edition is added in alphanumeric order;

■ g. In the table in paragraph (a)(3), under International Organization for Standardization, the organization address and the entry ISO 9809–1:1999 (E) are revised; and

■ h. In paragraph (b), a new entry "Truck Trailer Manufacturers Association," 1020 Princess Street, Alexandria, Virginia 22314, "TTMA RP No. 96–01," January 1, 2001 Edition is added in alphabetical order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(2) * * *

(i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH–10, 1200

New Jersey Avenue, SE., Washington, DC 20590–0001. For information on the availability of this material at PHH–10, call 1–800–467–4922, or go to: *http://www.phmsa.dot.gov*; and

* * * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * *	* * *
The Aluminum Association, 420 Lexington Avenue, New York, NY 10017, telephone 301–645–0756, *http://www.aluminum.org*:	
* * * *	* * *
Welding Aluminum: Theory and Practice, 2002 Fourth Edition	178.68
* * * *	* * *
American Society of Mechanical Engineers, ASME International, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900, telephone 1–800–843–2763 or 1–973–882–1170, *http://www.asme.org*:	
'ASME Code'; ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code.	172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.
* * * *	* * *
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832–9585, *http://www.astm.org*:	
* * * *	* * *
ASTM A 53, ASTM A 53/A 53M–06a Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	173.5b.
ASTM A 106, ASTM A 106/A 106M–06a Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service.	173.5b.
* * * *	* * *
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151, telephone (703) 788–2700, *http://www.cganet.com*:	
* * * *	* * *
CGA G-2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985, Second Edition, Reaffirmed 1997.	173.315.
* * * *	* * *
CGA P-20, Standard for the Classification of Toxic Gas Mixtures, 2003, Third Edition	173.115.
* * * *	* * *
CGA TB–25, Design Considerations for Tube Trailers, 2008 Edition	173.301.
* * * *	* * *
International Organization for Standardization, Case Postale 56, CH–1211, Geneve 20, Switzerland, *http://www.iso.org*:	
* * * *	* * *
ISO 9809–1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1 100 MPa., First edition, June 1999, (E).	178.37; 178.71; 178.75.
* * * *	* * *

(b) *List of informational materials not requiring incorporation by reference.*

* * *

Source and name of material	49 CFR reference
* * * * * * *	
Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314, telephone (703) 549–3010, *http://www.ttmanet.org*:	
TTMA RP No. 96–01, TTMA RP No. 96–01, Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, January 2001 Edition	178.345–3

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. A new § 173.5b is added to read as follows:

§ 173.5b Portable and mobile refrigeration systems.

This section authorizes the highway transportation of residual amounts of Division 2.2 refrigerant gases or anhydrous ammonia contained in non-specification pressure vessels that are components of refrigeration systems, which may or may not be permanently mounted to a transport vehicle, used for agricultural operations. These refrigeration systems are used at field sites to cool (pre-cool) produce before the produce is loaded into trucks or railcars for market or used to supplement stationary refrigeration systems during peak harvest times. The components of these refrigeration systems are commonly known as vacuum tubes, accumulators, refrigeration units, ice makers, pressure coolers, or evaporators.

(a) *General packaging requirements.* Each non-specification pressure vessel must conform to the following:

(1) Each pressure vessel must be designed, manufactured, and maintained in accordance with applicable requirements of the ASME Code (IBR, see § 171.7 of this subchapter).

(2) Except as authorized in this section, each pressure vessel and associated piping must be rated at a maximum allowable work pressure (MAWP) of 250 psig. The pressure in these components may not exceed MAWP.

(3) Any part of the piping or pressure vessel separated from another component of the refrigeration system by means of a valve, blank flange, or other device must be equipped with a pressure relief valve set at MAWP. All lines that must be disconnected for transportation purposes must be closed by means of a cap, plug or blank flange, and valves at the end of disconnected lines must be tightly closed.

(4) The aggregate total volumetric capacity of components within the refrigeration system authorized for highway transportation in accordance with this section may not exceed 2,500 gallons per vehicle.

(5) Each pressure vessel and associated piping containing anhydrous ammonia must conform to the following:

(i) Piping with a diameter of 2 inches or more must conform to ASTM A 53 Schedule 40 or ASTM A106 Schedule 40 (IBR, see § 171.7 of this subchapter).

(ii) Piping with a diameter of less than 2 inches must conform to ASTM A 53 Schedule 80 or ASTM A 106 Schedule 80 (IBR, see § 171.7 of this subchapter).

(iii) The words "Inhalation Hazard" must be marked as required in special provision 13 in § 172.102 of this subchapter and, when practicable, within 24 inches of the placard.

(b) *Refrigeration systems placed into service prior to June 1, 1991.* (1) For refrigeration systems placed into service prior to June 1, 1991, each pressure vessel and associated piping for the condensing line ("high side") must be rated at an MAWP of not less than 250 psig. Each pressure vessel and associated piping for the evaporating line ("low side") must be rated at an MAWP of not less than 150 psig, except that each pressure vessel or associated piping that will contain refrigerant gas during transportation must be rated at an MAWP of not less than 250 psig. During transportation, pressure in the components that are part of the evaporating line may not exceed 150 psig.

(2) Each pressure vessel and associated piping that is part of the evaporating line must be marked "LOW SIDE" in a permanent and clearly visible manner. The evaporating line must have a pressure gauge with corresponding temperature markings mounted so as to be easily readable when standing on the ground. The gauge must be permanently marked or tagged "SATURATION GAUGE".

(3) Each pressure vessel and associated piping with an MAWP of 250 psig or greater containing liquid anhydrous ammonia must be isolated using appropriate means from piping and components marked "LOW SIDE".

(4) Liquid lading is only authorized in system components with a rated MAWP of not less than 250 psig.

(5) Prior to transportation, each pressure vessel and associated piping with a rated MAWP of less than 250 psig must be relieved of enough gaseous lading to ensure that the MAWP is not exceeded at transport temperatures up to 54 °C (130 °F).

(6) Refrigeration systems placed into service prior to June 1, 1991, may continue in service until October 1, 2017.

(c) Prior to transportation over public highways, each pressure vessel and associated piping must be drained of refrigerant gas or liquid anhydrous ammonia to the extent practicable. Drained contents must be recovered in conformance with all applicable environmental regulations. Residual liquid anhydrous ammonia in each component may not exceed one percent of the component's total volumetric capacity or 10 gallons, whichever is less.

(d) *System inspection and testing.* (1) Each refrigeration system authorized under this section must be visually inspected every year. The visual inspection must include items listed in § 180.407(d)(2) of this subchapter applicable to refrigeration systems. A certificate of the annual visual inspection must be dated and signed by the person performing the inspection and must contain that person's company affiliation. The certificate must remain at the equipment owner's office.

(2) Each refrigeration system authorized under this section must be proof pressure tested every two years beginning with the initial pressure test performed after manufacture. Additional pressure tests must be performed after any modification, repair or damage to a part of the system pressurized with refrigerant gas. System test pressures may not be less than one-and-one-half (1.50) times the rated MAWP of the system component or piping.

(3) Pressure relief valves must be successfully tested every two years at the MAWP for the components or piping to which they are attached.

Pressure relief valves may be replaced and marked every 5 years with valves certified at the appropriate MAWP, in which case the valves need not be tested every two years. Valves that do not pass the test must be repaired or replaced.

(e) *Test markings and reports.* (1) Evidence of testing specified in paragraph (d) of this section must be marked on the right forward side of the refrigeration system with 2 inch high letters indicating type of last test (V = visual; P = pressure: hydrostatic or pneumatic) and the month/year in which it was performed. Reports and all of the requirements for records of inspections including markings must be completed as specified in part 180.

(2) Pressure relief valves must be durably marked with either the date of last test, set-pressure and testing company or the date of last replacement, set-pressure, and certifying company, as applicable.

■ 5. In § 173.115, paragraph (c)(2) is revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(c) * * *

(2) In the absence of adequate data on human toxicity, is presumed to be toxic to humans because when tested on laboratory animals it has an LC_{50} value of not more than 5000 mL/m^3 (see § 173.116(a) of this subpart for assignment of Hazard Zones A, B, C or D). LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 6. In § 173.301, paragraph (i) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(i) *Cylinders mounted in motor vehicles or in frames.* (1) MEGCs must conform to the requirements in § 173.312. DOT specification cylinders mounted on motor vehicles or in frames must conform to the requirements specified in this paragraph (i).

(2) Seamless DOT specification cylinders longer than 2 m (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity in accordance with CGA TB–25 (IBR, see § 171.7 of this subchapter). The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

(3) Cylinders may not be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration.

* * * * *

■ 7. Section 173.338 is revised to read as follows:

§ 173.338 Tungsten hexafluoride.

(a) Tungsten hexafluoride must be packaged in specification 3A, 3AA, 3BN, or 3E (§§ 178.36, 178.37, 178.39, 178.42 of this subchapter) cylinders. Cylinders must be equipped with a valve protection cap or be packed in a strong outside container meeting the provisions of § 173.40. Outlets of any valves must be capped or plugged. As an alternative, the cylinder opening may be closed by the use of a metal plug. Specification 3E cylinders must be shipped in an overpack that meets the provisions of § 173.40.

(b) In place of the volumetric expansion test, DOT 3BN cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such periodic requalification becomes due. Cylinders that undergo a complete external visual inspection, in place of the volumetric expansion test, must be condemned if removed from tungsten hexafluoride service.

PART 176—CARRIAGE BY VESSEL

■ 8. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 9. In § 176.200, paragraph (f) is revised to read as follows:

§ 176.200 General stowage requirements.

* * * * *

(f) Class 2 (compressed gas) material must be kept as cool as practicable and be stowed away from all sources of heat and ignition. Any package containing a Division 2.1 (flammable gas) material is restricted from transport in powered refrigerated temperature controlled containers, unless the equipment is capable of preventing ignition of flammable vapors by having non-sparking or explosion-proof electric fittings within the cooling compartment.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 10. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 11. In § 178.68, paragraph (l)(2) is revised to read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(l) * * *

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical test specified in paragraph (j) of this section. Specimen must be taken across the seam, must be a minimum of 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen shall be tested as follows:

(i) The specimen must be bent to refusal in the guided bend test jig as illustrated in paragraph 6.10 of CGA C–3 (IBR, see § 171.7 of this subchapter). The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. The specimen must not show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(ii) Alternatively, the specimen may be tested in a guided bend test jig as illustrated in Figure 12.1 of The Aluminum Association's 2002 publication, "Welding Aluminum: Theory and Practice." The root of the weld (inside surface of the cylinder) must be located away from the mandrel of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

* * * * *

■ 12. In § 178.345–3, at the end of paragraph (a)(3), a sentence is added to read as follows:

§ 178.345–3 Structural integrity.

(a) * * *

(3) * * * TTMA RP 96–01, Structural Integrity of DOT 406, DOT 407, and

DOT 412 Cylindrical Cargo Tanks, may be used as guidance in performing the calculations.

* * * * *

■ 13. In § 178.345–5, paragraph (f) is revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(f) All components mounted on a manhole cover that form part of the lading retention structure of the cargo tank wall must withstand the same static internal fluid pressure as that required for the manhole cover. The component manufacturer shall verify compliance using the same test procedure and frequency of testing as specified in § 178.345–5(b).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 14. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 15. In § 180.407, paragraphs (d)(3) and (g)(1)(ii)(A) are revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * *

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseat to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseat to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

Issued in Washington, DC, on April 3, 2009 under authority delegated in 49 CFR part 1.

Cynthia Douglass,

Acting Deputy Administrator.

[FR Doc. E9–8021 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XO12

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2009 A season total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 6, 2009, through 1200 hrs, A.l.t., April 15, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 20, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XO12, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov.*
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on January 20, 2009 (74 FR 5625, January 30, 2009).

NMFS has determined that approximately 476 mt of the 2009 A season Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2009 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for the 2009 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery effective 1200 hrs, A.l.t., April 15, 2009.