

**DEPARTMENT OF TRANSPORTATION****Research And Special Programs Administration****49 CFR Parts 173 and 180**

[Docket No. HM-183; Amdt No. 173-212 and 180-2]

RIN 2137-AC37

**Construction of Cargo Tank Motor Vehicles; Extension of Compliance Date**

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

ACTION: Final rule; extension of compliance date and announcement of a public meeting.

**SUMMARY:** RSPA is granting an extension for the continued construction of cargo tank motor vehicles to the MC 306, MC 307, MC 312, MC 331, and MC 338 specifications. The date is extended from April 21, 1994 to August 31, 1995. This extension is based on comments received from the Truck Trailer Manufacturers Association, the Heil Co., and members of the Compressed Gas Association. This final rule allows cargo tank manufacturers additional time to implement engineering procedures required for manufacture of cargo tank motor vehicles to the new DOT 406, DOT 407 and DOT 412 specifications and to implement design modifications as a result of changes to the structural integrity calculations in the MC 331 and MC 338 specifications.

**DATES: Effective:** This final rule will become effective on March 14, 1994, unless RSPA receives, by February 11, 1994, comments that illustrate that extension of the compliance date is not in the public interest. Upon receipt of such comments, RSPA will publish a document in the *Federal Register* withdrawing this final rule.

**Public meeting:** A public meeting will be held on February 7 and 8, 1994. It will begin at 9 a.m. on February 7, 1994.

**ADDRESSES: Written comments:** Comments may be mailed or hand-delivered to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001.

Telephone: (202) 366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

**Public meeting:** The public meeting will be held at the U.S. Department of Transportation (Meeting room 2230, Nassif Building), 400 Seventh Street SW., Washington, DC, 20590-0001.

**FOR FURTHER INFORMATION CONTACT:** Ronald Kirkpatrick, telephone (202) 366-4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****A. Background**

RSPA published final rules under Docket Nos. HM-183/HM-183A establishing three new cargo tank specifications designated as DOT 406, DOT 407 and DOT 412 (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872). The rules also made changes to the structural integrity calculations for the MC 331 and MC 338 cargo tanks.

To allow manufacturers sufficient time to implement changes in their manufacturing operations, RSPA provided for the continued manufacture of cargo tanks to the MC 306, MC 307 and MC 312 specifications until August 31, 1993. However, as manufacturers began implementing the new requirements, certain technical issues were brought to RSPA's attention. To allow time for resolving these issues, RSPA extended the date that cargo tanks may no longer be constructed to the MC 306, MC 307, MC 312, MC 331 and MC 338 specifications from August 31, 1993 to April 21, 1994 (March 8, 1993, 58 FR 12904).

On March 3, 1993, RSPA published a notice of proposed rulemaking (NPRM) proposing to amend certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles (March 3, 1993, 58 FR 12316). The NPRM was in response to petitions for rulemaking received after publication of the final rules. The NPRM addressed certain technical requirements for the construction of the DOT-400 series specifications and the structural integrity calculations in the MC 331 and MC 338 specifications. The comment period for the NPRM closed on June 15, 1993.

A public meeting to address issues raised in the NPRM was held in Chicago on March 24 and 25, 1993. At the

meeting, several significantly different views of design engineers and cargo tank manufacturers were identified. Additionally, preliminary results were presented at the public meeting of an advanced structural evaluation (using finite element analysis) of the MC 331 cargo tank which raised questions in regard to stress levels in areas of concentrated loadings.

In response to the NPRM and to issues raised at the public meeting, commenters requested that RSPA provide a one-year continuation for construction of cargo tanks to the MC 306, MC 307, MC 312, MC 331 and MC 338 specifications. The commenters stated that they need time to finalize their engineering designs, develop written specifications, order raw materials, and establish new training requirements. Because of the complexity and impact of issues that will be addressed in the final rule and new concerns raised by the commenters, RSPA is extending the compliance date to August 31, 1995. However, because industry did not request an extension of the provisions specified in § 178.337-6, pertaining to inspection opening or manhole requirements for certain smaller cargo tanks, RSPA is not extending the April 21, 1994 compliance date specified in that section.

RSPA is issuing this extension of the compliance date because we view this as a noncontroversial amendment and do not anticipate any adverse comments. This final rule will be effective March 14, 1994, unless by February 11, 1994, RSPA receives comments that illustrate that extension of the compliance date is not in the public interest. Upon receipt of such comments, RSPA will withdraw this final rule before the effective date by simultaneously publishing two subsequent documents. One document will withdraw this final rule and another will begin a new rulemaking by announcing a proposal to extend the compliance date and establishing a comment period. If no such comments are received, RSPA will publish a document in the *Federal Register* confirming that this final rule will be effective on March 14, 1994.

**B. Public Meeting**

The process of developing the DOT-400 series cargo tank motor vehicle specifications and of updating the MC 331 and MC 338 cargo tank motor vehicle specifications has extended over more than ten years. During this time, the process has been conducted in accordance with the Administrative Procedure Act, with the attendant

advantage of offering ample time for manufacturers and users to comment on proposed changes and to provide alternative means of achieving enhanced safety of cargo tank motor vehicles in hazardous materials service. Some major issues, however, remain unresolved. These issues pertain to structural integrity, accident damage protection, use of dual function pressure relief devices, and ASME certification of low pressure cargo tank motor vehicle manufacturers. Changes endorsed several years ago are now being questioned by some industry members. In addition, RSPA received several petitions for rulemaking raising certain issues not previously addressed.

RSPA will conduct a public meeting, in an effort to resolve these issues. The following issues will be discussed at the times noted:

*Date:* February 7, 1994 9 a.m. until 12 p.m.

#### *MC 331 and MC 338 Specifications*

*Structural integrity.* Several commenters have expressed concern over the application and combination of loadings used to determine the effective stress at any given point on a cargo tank motor vehicle. Based on industry's experience in design, operation, maintenance and repair of high pressure cargo tank motor vehicles, RSPA solicits information on loading combinations that may be encountered during the operation of these tanks.

*DATE:* February 7, 1994, 1 p.m. until 5 p.m. and February 8, 1994, 8 a.m. until 5 p.m.

#### *DOT 406, DOT 407 and DOT 412 Specifications*

1. *Structural integrity.* Several commenters have expressed concern over the application and combination of loadings used to determine the effective stress at any given point on a cargo tank motor vehicle. Based on industry's experience in design, operation, maintenance and repair of cargo tank motor vehicles, RSPA solicits information on loading combinations that may be encountered during the operation of these tanks.

2. *Accident damage protection.* Several commenters have stated that it is not possible to meet the prescribed accident damage protection requirements. RSPA solicits information on alternative means to provide cargo tank motor vehicles with adequate bottom, rollover, and rear-end protection.

3. *Dual function pressure relief devices.* Several commenters have stated that it is not possible to design dual function pressure relief devices.

However, advertisements in trade magazines indicate that such vents are available. RSPA solicits data on the development and availability of dual function pressure relief devices.

4. *ASME certification of low pressure cargo tank motor vehicle manufacturers.* The Cargo Tank Manufacturers Association (CTMA) submitted for RSPA's consideration a quality control program for manufacturers of low pressure DOT 406 cargo tank motor vehicles as an alternative to requiring each manufacturing facility to have ASME Certification. Copies of the CTMA proposal are available in RSPA's Docket Unit. RSPA solicits specific comments on the adequacy of the CTMA proposal; particularly in the areas of manufacturing quality control and independent inspection. Information received at the public meeting and in response to the NPRM will be used in the development of the final rule under Docket HM-183C. However, RSPA may make certain issues subject to a separate rulemaking action.

#### **C. Rulemaking Analyses and Notices**

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

This rulemaking is exempt from review by the Office of Management and Budget under Executive Order 12866. Although the June 12, 1989 final rule was significant under the regulatory procedures of the Department of Transportation (44 FR 11034), this document is not significant because it does not impose additional requirements and has the effect of extending a compliance date. This rule, in fact, provides regulatory and economic relief in some areas. The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule.

##### *Executive Order 12612*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (i) The designation, description, and classification of hazardous materials;
- (ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (iii) The preparation, execution, and use of shipping documents pertaining to

hazardous materials and requirements respecting the number, content, and placement of such documents;

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

(v) 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 materials.

This final rule concerns the manufacturing requirements for packagings represented as qualified for use in the transportation of hazardous materials.

This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That 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 has determined that the effective date of Federal preemption for these requirements will be 90 days after publication in the Federal Register.

Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

##### *Regulatory Flexibility Act*

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to manufacturers of DOT specification cargo tank motor vehicles.

##### *Paperwork Reduction Act*

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137-0014.

##### *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 173**

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

**49 CFR Part 180**

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

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below.

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

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

**Authority:** 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

**§ 173.33 [Amended]**

2. In § 173.33, the following changes are made:

a. In paragraph (c)(4), the date "April 21, 1994" is revised to read "August 31, 1995".

b. In paragraph (d)(1), the date "April 21, 1994" is revised to read "August 31, 1995".

**PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

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

**Authority:** 49 App. U.S.C. 1803; 49 CFR part 1.

**§ 180.405 [Amended]**

4. In § 180.405, the following changes are made:

a. In paragraph (b), the date "April 21, 1994" is revised to read "August 31, 1995".

b. In paragraph (c)(1) table, under column 2, the date "April 22, 1994" is revised to read "September 1, 1995."

**§ 180.413 [Amended]**

5. In § 180.413, in paragraphs (d)(1)(i), (ii) and (iii), the date "April 21, 1994" is revised to read "August 31, 1995".

**§ 180.417 [Amended]**

6. In § 180.417, in the heading of paragraph (a)(3), the date "April 22, 1994" is revised to read "September 1, 1995".

Issued in Washington, DC on January 6, 1994 under authority delegated in 49 CFR Part 1.

**Rose A. McMurray,**

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 94-636 Filed 1-11-94; 8:45 am]

**BILLING CODE 4910-60-P**