

delegation so that the Administrator can go forward with expedited supplemental transactions required by amendments to section 305 which were effected by section 1155 of the Northeast Rail Service Act of 1981 (Title XI, Pub. L. No. 97-35; August 13, 1981).

The existing delegation references section 610 of the Railroad Revitalization and Regulatory Reform Act of 1976, which added the original text of section 305 to the 3R Act. The delegation is silent on subsequent amendments to section 305, such as those contained in the recent legislation. This regulatory amendment will eliminate any ambiguity concerning the scope of relevant delegations. The existing reference to section 610 of the 1976 legislation is left in place, since section 610 also enacted certain other provisions for which a separate delegation should be retained.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary; and it may be made effective in fewer than thirty days after publication in the Federal Register.

In consideration of the foregoing, § 1.49 of Part 1, Title 49, Code of Federal Regulations, is amended by adding at the end thereof a new paragraph (w) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

* * * * *

(w) Carry out the functions vested in the Secretary by section 305 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 745).

(Section 9(e), Department of Transportation Act, 49 U.S.C. 1657(e).)

Issued in Washington, D.C. on August 19, 1981.

Andrew L. Lewis, Jr.,

Secretary of Transportation.

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Research and Special Programs Administration

49 CFR Part 172

Flammable Solid Placard and Flammable Solid W Placard

CFR Correction

In Title 49, (Parts 100 to 177) Code of Federal Regulations, revised as of Dec. 1, 1980, at page 291, the placards

appearing in § 172.546 and § 172.548 should be interchanged.

BILLING CODE 1505-01-M

49 CFR Part 179

[Docket No. HM-174; Amdt. No. 179-27A]

Specifications for Tank Cars

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule; response to petitions for reconsideration and resulting amendment.

SUMMARY: The Materials Transportation Bureau (MTB) received petitions for reconsideration from the Association of American Railroads (AAR), the Compressed Gas Association (CGA), the National LP-Gas Association and the Railway Progress Institute. All petitioners request that MTB rescind the specifications for safety valves for specification 105 tank cars used for the transportation of flammable gases and ethylene oxide. As an alternative to rescinding the safety valve requirements, the AAR proposed that the compliance date be postponed to April 1, 1982, to provide the AAR Tank Car Committee an opportunity to study the question of safety valve sizing for flammable gases.

MTB and the Federal Railroad Administration (FRA) have reviewed the safety valve requirement and still believe that the safety valve must be sized to provide protection in rail accident environments, including accidents involving overturned cars and fire. MTB and FRA believe that the safety valve discharge capacity requirement in the final rule provides an appropriate level of safety. Therefore, MTB denies petitioners' request to rescind the safety valve requirement. However, MTB and FRA have reconsidered the safety valve requirement for specification 105 tank cars which transport ethylene oxide and will extend the compliance date for the safety valve requirement for this hazardous material to September 1, 1982. The extension of the compliance date to September 1, 1982, will permit the full AAR Tank Car Committee and other interested parties adequate time to consider safety valve sizing for specification 105 tank cars that transport ethylene oxide.

EFFECTIVE DATE: August 20, 1981.

FOR FURTHER INFORMATION CONTACT: Leavitt A. Peterson (Office of Safety), Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-0897.

SUPPLEMENTARY INFORMATION: MTB received four petitions for reconsideration of the final rule issued in Docket HM-174 (46 FR 8005, January 26, 1981). While each petition contained its own views, the primary area of reconsideration concerned the safety valve sizing requirements. The petitioners did not submit any new information to support their views on the adequacy of the safety valve sizing methods presently used for specification 105 tank cars. MTB and FRA have reviewed the supporting material contained in Dockets HM-144 and HM-174 for flammable gases. Several petitioners recommended that MTB continue to use the CGA-AAR type valve sizing equations which had been used for 40 years prior to the adoption of the safety valve sizing requirement of HM-144. One petitioner pointed out that MTB used this "traditional" formula in Docket HM-167, Intermodal (IM) Portable Tank Specifications. IM portable tanks, which are generally transported as single units, are used to transport hazardous materials that are liquids at ambient temperatures and pressures. This is quite different from a flammable gas that is compressed to liquefy it for transportation and storage. Additionally, it is not uncommon to find several tank cars involved in a train derailment thereby increasing the opportunity for one damaged tank car to supply fuel for a fire that could cause other tank cars to rupture. Therefore, MTB and FRA believe that the safety valve sizing method used for 105 tank cars should not be the same as the method used for IM portable tanks.

One petitioner took exception to the requirements for head and thermal protection. The commenter contends that the application of top and bottom shelf couplers affords sufficient protection to jacketed/insulated 105A tank cars. The commenter provided no new information to support this view beyond the factors which were previously considered during the HM-174 rulemaking proceeding. Therefore, no change in the head and thermal protection requirements is being adopted.

One petitioner expressed concern over the inclusion of ethylene oxide in the same category as propane. Although ethylene oxide does not meet the DOT definition for a flammable gas, MTB included ethylene oxide in the final rule because of its similar properties. Ethylene oxide is so close to being a flammable gas that the UN Recommendations and the IMCO Dangerous Goods Code classify it as a flammable gas. The petitioner suggested

that the use of a larger safety valve may decrease the level of safety by reducing the effectiveness of the protective inert gas blanket and also expressed the view that, once auto-ignition occurs, the internal pressure of the tank car makes little difference.

The final rule added ethylene oxide as an additional commodity to the list of commodities previously covered in HM-144. Although the notice of proposed rulemaking in HM-174 proposed to require the larger safety valve on all newly constructed 105 tank cars and, hence, on cars built to carry ethylene oxide, the special focus on ethylene oxide as a commodity subject to the requirement did not occur until the final rule stage. It appears to MTB that once the focus turned to ethylene oxide, genuine concerns, albeit speculative ones at this point, began to develop about the impact of the larger valve for ethylene oxide because of its unique characteristics. Ethylene oxide is a flammable liquid which is toxic and corrosive. Once ignited, ethylene oxide will burn inside a tank car without additional oxygen.

MTB and the FRA are not persuaded by the scant information in petitions that the larger safety valve for ethylene oxide is less safe. Neither is MTB nor FRA persuaded that the safety benefits attributable to a larger valve are irrelevant for cars carrying ethylene oxide. However, MTB is extending the compliance date for the safety valve sizing requirement on specification 105 tank cars used to transport ethylene oxide to September 1, 1982, to afford the full AAR tank car committee and other interested parties an opportunity to study the question of safety valve sizing for ethylene oxide and to submit the results of any studies for review and consideration. MTB requests that any new information relating to this matter be submitted no later than June 1, 1982.

Findings and Amendment

In consideration of the foregoing, MTB hereby denies the requested modifications contained in all petitions for reconsideration under Docket HM-174 except to the extent relief is provided by the delay of the compliance date for safety valve sizing for specification 105 tank cars used to transport ethylene oxide.

In consideration of the foregoing, 49 CFR 179.102-12(a)(9) is revised to read as follows:

§ 179.102-12 Ethylene oxide.

(a) * * *

(9) Each tank built after August 31, 1981, shall be constructed in accordance with class 105j, except that the safety

relief valve requirements of § 179.106-2(c)(4) shall not apply. Each tank built after August 31, 1982, shall be constructed in accordance with class 105j.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, Appendix A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 and does not require a Regulatory Impact Analysis, nor does it require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). I certify that this document will not have a significant economic impact of a substantial number of small entities. A regulatory evaluation and an environmental assessment for the actions taken in HM-174 are available for review in the docket.

Issued in Washington, D.C., on August 20, 1981.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 81-24731 Filed 8-21-81; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Deletion of the Permit Requirement To Import or Export Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends 50 CFR Part 21, which is promulgated under authority of the Migratory Bird Treaty Act, to delete the import and export permit requirement found at 50 CFR 21.21. Importers and exporters of lawfully possessed migratory birds, including parts and products, no longer are required to obtain a permit from the Service, but still have to comply with other applicable provisions of State and Federal law. The import and export permit requirement was established in 1961, before a number of statutes were enacted which collectively restrict or prohibit the importation or exportation of most migratory birds. Also, the possession of migratory birds remains highly regulated. The combined effect on migratory birds of the other import and export controls and the Service's own enforcement of the possession prohibitions enables the Service to maintain effective enforcement of the Migratory Bird Treaty Act without the import and export permit requirement.

EFFECTIVE DATE: September 23, 1981.

FOR FURTHER INFORMATION CONTACT:

John T. Webb, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background.

On May 29, 1981 (46 FR 28881), under authority of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703-712, the Service proposed to amend 50 CFR Part 21 wherever necessary to allow the importation or exportation of lawfully possessed migratory birds (as defined by 50 CFR 10.12) without an import or export permit issued by the Service under 50 CFR 21.21. For the reasons stated in the preamble to the proposal, the migratory bird import/export permit was specifically targeted for review by the Department in its effort to eliminate excessive, unnecessary, burdensome, or counterproductive rules.

Summary and Analysis of Comments and Actions Taken

The proposed rule invited comments for 30 days ending June 29, 1981. The Service received 3 comments from the following sources: American Association of Zoological Parks and Aquariums (Paul S. Chaffee, President), Fort Worth Zoological Park (Elvie Turner, Jr., Director), and North American Falconers Association (Roger Thacker, President). Each of the commenters, in brief responses, supported the proposal as a way to reduce paperwork, expenses, and delays without affecting the conservation of migratory birds.

After reviewing the comments, the Service has decided that the comments indicate there is no need for any substantive changes. However, the Service has made one change on its own initiative. Section 21.14(a) has been revised to allow captive-reared and properly marked migratory waterfowl to be lawfully acquired outside of the United States from persons other than holders of valid waterfowl sale and disposal permits. Once the waterfowl are imported, they are subject to the same conditions and restrictions as other migratory waterfowl covered by that section.

Effect of the Final Rule

Except for the deletion of the import/export permit requirement in 50 CFR Part 21, all other prohibitions, restrictions, or conditions which are applicable to the importation or exportation of certain species or types of migratory birds remain in effect. Sources of these remaining prohibitions,