

disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 113 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(c) *Eligibility requirements.* (1) In addition to the other eligibility requirements set forth in this part, to qualify for a basic State grant under section 107(b) of the Act, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 107(b) of the Act and § 1340.14 of this part. In connection with the requirement of conformity with the requirements of section 107(b) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12 (b) and (c), each State must submit with its application for a basic State grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

8. An Explanatory Note is added at the beginning of the Appendix to Part 1340 to read as follows:

Appendix to Part 1340—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants

Explanatory Note: The interpretative guidelines which follow were based on the proposed rule (49 FR 48160, December 10, 1984) and were published with the final rule on April 15, 1985 (50 FR 14878). References to the "proposed rule" and "final rule" in these guidelines refer to these actions.

Since that time, the Child Abuse Prevention and Treatment Act was revised, reorganized,

and reauthorized by Public Law 100-294 (April 25, 1988) and renumbered by Pub. L. 101-128 (October 25, 1989). Accordingly, the definitions formerly in section 3 of the Act are now found in section 113; the State eligibility requirements formerly in section 4 of the Act are now found in section 107; and references to the "final rule" mean references to § 1340.15 of this part.

9. The Appendix is further amended by revising the 3rd paragraph, and the flush reference following the 3rd paragraph of item #6 to read as follows:

6. *The term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" in the context of a future life-threatening condition.*

Under the definition, if a disabled infant suffers more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment. H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 179

[Docket No. HM-166W; Amdt. Nos. 173-221, 179-43]

RIN 2137-AA44

Transportation of Hazardous Materials; Miscellaneous Amendments; Correction and Response to Petitions for Reconsideration

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

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

SUMMARY: In this final rule, RSPA is amending 49 CFR 173.31(a)(5) to extend the compliance date for having vertical restraints systems on certain DOT specification tank cars from November 15, 1990 to November 15, 1992. This amendment is based on the merits of petitions for reconsideration. The effect of this action is to minimize operational impacts on affected tank car shippers and owners by providing an extended

implementation period for equipping non-conforming tank cars with the required shelf couplers. RSPA is also amending 49 CFR 179.300-7(a), to restore regulatory text that was inadvertently deleted in a final rule issued under Docket HM-166W (54 FR 38790; September 20, 1989).

EFFECTIVE DATE: August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Marilyn E. Morris, Standards Division, DHM-12, Office of Hazardous Materials Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366-4488.

SUPPLEMENTARY INFORMATION: This document reinstates the use of carbon steel plate materials for fabrication of certain tank car tanks. These materials were deleted inadvertently in § 179.300-7(a) Table under a final rule published September 20, 1989 (54 FR 38790) under Docket HM-166W.

In addition, § 173.31(a)(5) is amended in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) based on the merits of three petitions for reconsideration received in response to the final rule. The three petitioners, the American Petroleum Institute (API), National Industrial Transportation League (NITL), and the Railway Progress Institute Commission on Tank Cars (RPI), requested reconsideration of § 173.31(a)(5), requiring vertical restraint systems (i.e., shelf couplers) on all DOT specification tank cars, including those used for "non-hazardous" materials (i.e., "non-regulated" materials under the HMR). This requirement was proposed in response to an Association of American Railroads petition for rulemaking docketed in HM Docket P-1005. The effective date for the requirement was November 15, 1989.

In particular, petitioners requested reconsideration of that portion of the final rule which would require shelf couplers on DOT specification tank cars currently used to transport materials that are not regulated as hazardous materials. The API petitioned for an extension of the compliance date for this provision from November 15, 1989, to November 15, 1994, on the grounds that there were a large number of DOT specification tank cars used for non-regulated materials that were not equipped with shelf couplers and that additional time would be needed to bring them into compliance.

The NITL alleged lack of authority to adopt the provision and inadequate notice and claimed that the new requirement " * * * will impose an unlawful and impossible burden of compliance on shippers that rely on tank cars to transport non-hazardous

materials." NITL petitioned for an extension of at least one year to ease the burden of compliance. This petition was granted in a correction to the final rule published on November 20, 1989 (54 FR 47986), wherein RSPA indicated that it had intended, but inadvertently failed, to provide a one-year period for conforming to the new requirement. RSPA revised § 173.31(a)(5) in the correction document to provide until November 15, 1990 for tank cars used in non-regulated service.

The RPI requested an immediate stay of the provision, contending that RSPA adopted the provision without adequate notice and comment and without authority in violation of the Administrative Procedure Act, that RSPA arbitrarily and capriciously set an unreasonably short deadline for implementation of that portion of the rule, and that the rule was contrary to the public interest because of the potential disruption of the industry caused by the need to remove cars from service if not retrofitted by November 15, 1989. Following publication of the November 20, 1989, correction document, RSPA was again petitioned by RPI, this time for an extension of the compliance date for tank cars used for non-regulated materials to November 15, 1994.

DOT Authority Over Specification Packagings Used for Materials Not Subject to the HMR

Both NITL and RPI claim that RSPA does not have authority to regulate packagings which are used for materials not subject to the HMR. The following NITL statement sums up the contentions of both petitioners with regard to DOT's authority:

Clearly, the Department and RSPA have broad authority to establish regulatory requirements for tank cars transporting hazardous materials, but do not have any authority under the Hazardous Materials Transportation Act to establish requirements for tank cars or any other railroad freight cars used to transport commodities not classified as hazardous materials. To the extent the new regulations issued in this proceeding are susceptible of being interpreted so as to apply to tank cars used for the transportation of non-hazardous materials, they exceed statutory authority and should be modified accordingly.

RSPA is concerned about this serious misunderstanding of its authority because of the implications presented with regard to potential noncompliance with the regulations. Both the Hazardous Materials Transportation Act (HMTA; 49 U.S.C. 1801 *et seq.*) and the HMR explicitly regulate packagings which are represented or marked as

suitable for hazardous materials, regardless of whether the packagings are actually used for hazardous materials.

Section 105 of the HMTA, 49 U.S.C. App. 104, gives the Secretary of Transportation authority to regulate any safety aspect of the transportation of hazardous materials including " * * * the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or a container which is *represented, marked, certified, or sold* * * * for use in the transportation of certain hazardous materials." (emphasis added). This authority is reflected in § 171.2(c) which states, in part, that "no person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this subchapter * * * whether or not it is used or intended to be used for the transportation of a hazardous material, unless the packaging or container is manufactured, fabricated, marked, maintained, reconditioned, repaired, or retested, as appropriate, in accordance with this subchapter * * *". Display of a DOT specification marking on a package is explicitly deemed to be representation that the package is suitable for those hazardous materials for which the packaging is authorized. (See § 171.2(d)(1).)

RSPA has on several occasions addressed the need for DOT specification packagings to be in full compliance with regulatory provisions, regardless of the materials packaged therein. This was most clearly stated in a notice published April 7, 1983 (48 FR 15127) related to the continuing qualification of specification cargo tanks, as follows:

If for any reason a cargo tank does not meet the applicable specification under which it was constructed, its specification plate must be removed or rendered illegible thereby removing its certification as a specification cargo tank. The practical consequence of removal of the certification is the fact that the tank ceases to be identified and qualified as a packaging for those hazardous materials that are required to be transported in a specification cargo tank. It must be noted that required removal of the certification is not determined by whether a hazardous material is to be transported in the cargo tank; therefore, those persons in possession of a cargo tank, who are under the jurisdiction of the HMTA and the HMR, must remove the certification when the cargo tank ceases to be in compliance, regardless of the nature of the commodity carried therein.

The provisions of the HMTA and the HMR which are the basis for the foregoing statement are equally applicable to tank cars.

As part of the retrofit program implemented under Docket HM-174, in a final rule published on January 28, 1981 (46 FR 8005), RSPA specifically addressed specification tank cars used for non-regulated materials. In that final rule, provisions were adopted to require the equipping of all Specification 105 tank cars with shelf couplers, regardless of whether they were used for hazardous materials. The retrofit of all Specification 112 and 114 tank cars had been addressed in previous rulemaking. With regard to other specifications, RSPA provided a four-year period for retrofitting tank cars, but stated: "Cars previously built to ICC or DOT specifications that are not in placarded hazardous materials service are not subject to this retrofit requirement unless and until they are placed in such service (see 49 CFR 179.1)." This statement recognized that there was a category of tank car usage that was not being addressed at that time, that is, those specification tank cars not already equipped with shelf couplers, built before March 1, 1981, and used for non-regulated materials.

Since March 1, 1981, all new DOT specification tank cars have been required to have shelf couplers, regardless of the commodities carried. RSPA's actions in the September 20, 1989 final rule under this docket were addressed solely to those previously built tank cars, many of which RSPA and the Federal Railroad Administration (FRA) believe have voluntarily been equipped with shelf couplers as couplers have been changed due to damage in the service environment.

In conclusion, RSPA has clear authority to regulate DOT specification packagings even when not being used for hazardous materials shipments.

Extension of Compliance Date

Both API and RPI requested an extension of the compliance date from November 15, 1990 to November 15, 1994, for specification tank cars used for non-hazardous materials. RPI stated that its member companies had over 19,000 specification tank cars transporting non-regulated products which were not equipped with shelf couplers. RSPA and FRA have no information that contradicts this estimate.

Based on the large number of tank cars involved, RSPA believes that an extension of the compliance date is justified to ease the burden of compliance on the regulated industry. However, RSPA and FRA do not believe that a five-year implementation period (i.e., from the November 15, 1989 effective date of the rule to November

15, 1994) is warranted. When previous amendments were promulgated under Docket HM-174, it was estimated that over 16,000 Specification 112 and 114 tank cars were equipped with shelf couplers in a six month period (see 46 FR 8005; January 26, 1981). In that retrofit program, tank car owners made arrangements with railroad and other private repair shops along major routes, to help minimize retrofitting delays. In some instances, the shelf couplers were installed at shippers' facilities or railroad sidings, rather than in repair shops. Similar arrangements could be made in the present instance. Alternatively, as indicated in the discussion concerning specification packagings in the cargo tank rulemaking quoted above, specification markings may be removed or obliterated and the tank car tanks would no longer be subject to the requirement for retrofitting.

RSPA concludes that extending the compliance date to November 15, 1992, thus providing a three year implementation period from the November 15, 1989 effective date of the final rule, provides ample time for conforming to the new provisions while addressing safety concerns in a timely fashion. In this final rule, RSPA is amending § 173.31(a)(5) accordingly.

Of course, if, as the compliance date of November 15, 1992 approaches, there are unforeseen difficulties in completing the retrofit despite a good faith effort by the industry, RSPA will consider the need for further extensions of the compliance date.

Notice and Comment

Both NITL and RPI base their petitions in part on an alleged failure of RSPA to adequately notify them of the proposed change to require retrofit of all DOT specification tank cars regardless of commodity. Yet, as NITL noted in its petition, the requirement actually adopted was the same as that proposed. This meets the requirements of the Administrative Procedure Act.

The real concern of NITL and RPI is an alleged misunderstanding on their part about the position taken by the Department with respect to whether the Department would require DOT specification tank cars to continue to conform to the specification requirements regardless of their date of manufacture. This is partly based on alleged DOT staff representations and the practice of phasing in retrofit requirements for tank cars. As already noted, RSPA has phased in extension of the shelf coupler retrofit to the existing tank car fleet. Staggered compliance allows for more orderly retrofit without

unreasonable disruption of rail service. The industry has no vested right to continue to represent tank cars as meeting the stringent safety requirements for hauling hazardous materials when the cars do not in fact meet those requirements. In any event, the agency position has been clearly and publicly stated, e.g., the cargo tank notice.

Administrative Notices

RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental entities; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is not considered necessary because the anticipated impact of extending the compliance date is minimal.

Based on information concerning the size and nature of entities likely to be affected by this final rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications as defined in Executive Order 12612 and, therefore, no Federalism Assessment has been prepared.

A regulatory information 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 Regulatory Agenda.

List of Subjects

49 CFR Part 173

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

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements, Tank cars.

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

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

§ 173.31 [Amended]

2. In § 173.31, in paragraph (a)(5), the date "November 15, 1990" is removed and replaced with the date "November 15, 1992".

PART 179—SPECIFICATIONS FOR TANK CARS

3. The authority citation for part 179 continues to read as follows:

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

4. In § 179.300-7, paragraph (a) is revised to read as follows:

§ 179.300-7 Materials.

(a) Steel plate material used to fabricate tanks having heads fusion welded to the tank shell must conform with the following specifications with the indicated minimum tensile strength and elongation in the welded condition. However, the maximum allowable carbon content for carbon steel must not exceed 0.31 percent, although the individual ASTM specification may allow for a greater amount of carbon. The plates may be clad with other approved materials:

Specifications	Tensile strength (psi) welded condition ¹ (minimum)	Elongation in 2 inches welded condition ¹ (longitudinal) (minimum)
ASTM A 240 type 304 ...	75,000	25
ASTM A 240 type 304L.....	70,000	25
ASTM A 240 type 316 ...	75,000	25
ASTM A 240 type 316L.....	70,000	25
ASTM A 240 type 321...	75,000	25
ASTM A 285-69 Gr. A...	45,000	29
ASTM A 285-69 Gr. B...	50,000	20
ASTM A 285-69 Gr. C...	55,000	20
ASTM A 515-69 Gr. 65.....	65,000	20

Specifications	Tensile strength (psi) welded condition ¹ (minimum)	Elongation in 2 inches (percent) welded condition ¹ (longitudinal) (minimum)
ASTM A 515-69 Gr. 70.....	70,000	20

¹ Maximum stresses to be used in calculations.

Issued in Washington, DC on June 28, 1990, under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 90-15501 Filed 6-29-90; 2:59 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing and request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is establishing a directed fishing allowance for "Other Rockfish" in the Eastern Regulatory Area of the Gulf of Alaska and, because that allowance has been taken is prohibiting further directed fishing for "Other Rockfish" by vessels fishing in that area from 12 noon, Alaska Daylight Time (ADT), on June 30, 1990, through December 31, 1990.

DATES: This notice is effective from 12 noon, ADT, on June 30, 1990, until midnight, Alaska Standard Time, December 31, 1990. Comments will be accepted through July 16, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are

at 50 CFR part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Under § 672.20(c)(2), when the Regional Director determines that the amount of the TAC of any target species or of the "other species" category that has not been caught during the fishing year is necessary for bycatch in fisheries for other species during the remainder of the fishing year, he may establish a directed fishing allowance for that species or species group, and prohibit directed fishing for that species or species group in the specified regulatory area or district.

The 1990 TAC specified for "Other Rockfish" in the Eastern Regulatory Area is 5,700 mt (55 FR 3223, January 31, 1990). The Regional Director has determined that 505 mt of "Other Rockfish" will be required to provide bycatch for other groundfish species expected to be taken in the Eastern Regulatory Area during the remainder of the fishing year. He establishes a directed fishing allowance of 5,700 mt minus 505 mt, or 5,195 mt. The Regional Director reports that U.S. vessels have caught 5,195 mt of "Other Rockfish" through June 9 in the Eastern Regulatory Area. The directed fishing allowance has been taken.

Therefore, pursuant to §672.20(c)(2), the Secretary is prohibiting further directed fishing for "Other Rockfish" in the Eastern Regulatory Area of the Gulf of Alaska effective 12 noon, ADT, June 30, 1990. After the closure and according to § 672.20(g)(3), amounts of "Other Rockfish" retained on board vessels in the Eastern Regulatory Area at any time during a trip must be less than 20 percent of the total amount of all other fish and fish products retained on board the vessel at the same time during the same trip, as calculated from round weight equivalents.

The entire TAC for "Other Rockfish" in the Eastern Regulatory Area will be reached unless this notice takes effect promptly. If that happened, all "Other Rockfish" taken in the area by other fisheries would be required to be discarded, resulting in considerable wastage. NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited through July 16,

1990. Public comments on this notice of closure may be submitted to the Regional Director at the above address.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and Recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 28, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-15500 Filed 6-29-90; 11:36 am]

BILLING CODE 3510-22-W

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the "domestic annual processing (DAP) other fisheries" have attained their secondary prohibited species catch (PSC) allowance of Pacific halibut (3,966 metric tons (mt)) in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in the entire BSAI area. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fisheries for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

DATES: This notice is effective from 1200 Alaska Daylight Time, June 30, 1990, through 2400 December 31, 1990. Comments will be accepted through July 16, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Resource