

"rattle test" method for checking B and MC cylinders. In additional comments submitted to the docket, CGA contends that the filler inspection test in 4.7.2 is not an acceptance criterion but a performance screening test to reject cylinders with gross defects. CGA also contends that the rattle test in 4.7.3, used to determine if there is excess shrinkage of the porous filler in B and MC cylinders, has proven from years of experience to be a reliable test. Even though RSPA has received no data to suggest that these test procedures may be inadequate, RSPA continues to solicit data from commenters on the sufficiency of these procedures.

Sections 178.59-18(a)(2) and 178.60-20(a)(2) require that the filling material for DOT 8 and 8AL cylinders be uniform in quality and free of voids, except for the well drilled in the filler beneath the valve for the core pack. The NTSB expressed concern with the presence of voids in porous fillers. The NTSB stated that, based on information received from major manufacturers, it is impossible to eliminate all voids and that voids of certain sizes pose no hazard. The NTSB stated that procedures should be developed for identifying and checking unacceptable voids during the manufacturing and requalification processes for acetylene cylinders.

RSPA agrees with the NTSB comment that the manufacturing and requalification procedures need further review, and RSPA plans to address these issues in a separate rulemaking action in the future. Although some of the procedures in CGA Pamphlet C-13 appear subjective, RSPA believes these guidelines will be beneficial in establishing basic procedures for use in the requalification of acetylene cylinders. In addition, a significant segment of the industry to be regulated by this final rule has requested the implementation of these safety initiatives to ensure the safe transportation of acetylene cylinders. Accordingly, RSPA believes sufficient cause does not exist for delaying the incorporation of CGA Pamphlet C-13 into the HMR.

Adjusting the Requalification Schedule

RSPA proposed a time frame for requalifying acetylene cylinders based on a voluntary schedule contained in CGA Pamphlet C-13. According to this schedule for existing cylinders, requalification of the shell must be completed before January 1, 1996, and the porous filler before January 1, 2006. These dates were intended to

respectively, from the 1985 publication date of CGA Pamphlet C-13.

The CGA and several other commenters requested that RSPA revise these inspection dates to correspond to 10 to 20 years from the effective date of the final rule. The commenters stated that many companies have delayed implementing a formal inspection program pending the adoption of inspection requirements under this final rule. RSPA agrees that additional time should be provided and has revised the cylinder requalification schedule to require that, for cylinders manufactured before January 1, 1991, requalification of the shell must be completed before January 1, 2001, and for the porous filler before January 1, 2011. Although these time periods do not correspond with the requested time frames, RSPA believes they are adequate.

The proposal provided that the first inspection of the cylinder filler must be conducted no sooner than 3 years from the date of manufacture. A commenter recommended that the first cylinder filler inspection be conducted no sooner than 2 years from the date of initial cylinder manufacture. The commenter provided no data to support this change. As stated in the NPRM, this 3-year delay period is intended to allow sufficient time for settling of the porous filler inside the cylinder before the inspection is performed. Therefore, the commenter's recommendation has not been adopted.

Tare Weight and Cylinder Valve Replacement

The tare weight includes the weight of the cylinder shell, porous filling, valve, safety relief devices and solvent, but without removable cap. Proposed § 173.34(e)(17)(iii) would have required that the tare weight of an acetylene cylinder be checked when a cylinder valve is replaced and, if there is a change in weight, the new tare weight must be marked on the cylinder. Several commenters, including the CGA, objected to the proposal on the basis that this procedure would increase the chance of incorrectly determining the new tare weight. The commenters suggested that when a valve is replaced, a valve of the same weight should be used, or the tare weight of the cylinder should be adjusted to compensate for the weight differential between the old valve and the new valve. RSPA agrees with the commenters and has revised § 173.34(e)(17)(iii) accordingly.

Effective Date

The notice provided retesters a 6-month transition period from the effective date of the final rule to begin

the requalification of acetylene cylinders in accordance with CGA Pamphlet C-13 and § 173.34(e). Several commenters stated that they needed more time to establish a system for retesting acetylene cylinders and requested a 12-month transition period as a more reasonable length of time. RSPA agrees with the commenters and has revised § 173.34(e)(17)(ii) to provide for a transition period of 12 months after the effective date of this final rule.

Prefill Requirements

In § 173.303(e), acetylene cylinders must be visually inspected before each filling in accordance with CGA Pamphlet C-13. A commenter requested that RSPA not adopt this requirement because this prefill inspection requirement was intended only as a guide for acetylene filling plants. Another commenter, expressing an opposite viewpoint, stated that the prefill inspection, along with the periodic requalification, is an appropriate measure for ensuring the removal of unserviceable cylinders and, thereby, reducing the overall costs from accidents or litigation. RSPA agrees with the latter commenter and believes the prefill inspection requirement is vital to ensure increased safety because more acetylene cylinder deficiencies will be detected, allowing these cylinders to be removed from service. Therefore, RSPA has adopted the requirement for a prefill inspection in the final rule.

II. Section by Section Review

Section 171.7

Several commenters requested that CGA Pamphlet C-13 not be identified by a specific edition number or date. Commenters stated the absence of dated material would allow persons to use the most current edition of incorporated standards without delay and would eliminate the need for RSPA to publish periodic updates of incorporated matter in the Federal Register. RSPA disagrees because open-ended incorporations by reference are inconsistent with the Administrative Procedure Act and regulations implementing that Act. The Director, Office of the Federal Register (OFR) is responsible for approving materials incorporated by reference. The OFR regulations require an agency that seeks approval for a change to a publication that is incorporated by reference to publish notice of the proposed change in the Federal Register. The language incorporating a publication by reference must state the title, date, edition, author, publisher, and identification number of the publication.