

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 107, 171, 172, 173, 177, 178, and 180****[Docket No. RSPA-98-3554 (HM-213)]****RIN 2137-AC90****Hazardous Materials: Requirements for Cargo Tanks****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is adopting a number of revisions to the Hazardous Materials Regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. This final rule also addresses three National Transportation Safety Board (NTSB) recommendations and several petitions for rulemaking. These revisions will increase the safety of cargo tanks transporting hazardous materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles.

**DATES:** *Effective date:* This final rule is effective October 1, 2003.

*Voluntary compliance date:* Voluntary compliance is authorized 30 days following publication of this final rule.

*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 October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Johnsen, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366-6121; Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366-4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366-8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366-6121.

**SUPPLEMENTARY INFORMATION:****I. Background**

- II. Revisions Applicable to All Cargo Tanks
  - A. Definitions
  - B. Marking of Emergency Shutoff Devices
  - C. Recertification to Original Specification
  - D. Cargo Tank Qualification and Maintenance
- III. Revisions Applicable to DOT 400-Series Cargo Tanks

- A. Structural Integrity Requirements
- B. Manhole Marking
- C. Road Clearance
- D. MAWP Specification Plate Marking
- E. Leak Testing Using EPA Method 27
- F. Weld Joints on DOT 407 Cargo Tanks
- IV. Revisions Applicable to MC 331 and MC 338 Cargo Tanks
  - A. Consistency with DOT 400-series Specification
  - B. Remote Shutoffs
  - C. Inlet and Outlet Fittings on MC 331 Cargo Tanks
  - D. Internal Visual Inspections of Insulated Tanks
  - E. Leakage Tests for Cargo Tanks in Anhydrous Ammonia Service
- V. Section-by-Section Review
- VI. Rulemaking Analysis and Notices
  - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
  - B. Executive Order 13132
  - C. Executive Order 13175
  - D. Regulatory Flexibility Act
  - E. Paperwork Reduction Act
  - F. Regulation Identifier Number (RIN)
  - G. Unfunded Mandates Reform Act
  - H. Environmental Assessment

**I. Background**

On June 12, 1989, the Research and Special Programs Administration (RSPA; we) published a final rule in the **Federal Register** (Docket HM-183, 183A; 54 FR 24982) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) pertaining to cargo tank motor vehicles. We further revised the regulations each year from 1990 through 1995 under dockets HM-183, HM-183A, and HM-183C. Several of these dockets made significant changes to the cargo tank regulations to improve safety; other revisions corrected mistakes and made minor changes. Dockets HM-183 and 183A established the DOT 400 series cargo tank specifications, as well as certification requirements for cargo tank manufacturers. Docket HM-183C contained a number of miscellaneous items that clarified and relaxed certain requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles.

Under 49 CFR 1.73(d), the Federal Motor Carrier Safety Administration (FMCSA) is delegated authority to enforce the Hazardous Materials Requirements (HMR), with particular emphasis on highway transportation, including regulations for construction and maintenance of cargo tank motor vehicles (CTMVs). FMCSA and RSPA work closely with the regulated industry through educational assistance activities and FMCSA's compliance and enforcement program. As a result of these activities, we identified several areas in the current regulations that need updating or clarification. The Cargo Tank Technical Assistant Group,

comprised of state enforcement officials along with members of FMCSA and RSPA, also identified areas where cargo tank regulations could be improved for safety or clarified to facilitate compliance. In addition, we received requests for clarification of the regulations and petitions for rulemaking. The National Transportation Safety Board (NTSB) has also made several safety recommendations concerning cargo tanks.

On December 4, 2001, we published a Notice of Proposed Rulemaking (NPRM; 66 FR 63096), proposing revisions that would apply to all cargo tanks and revisions that would apply to certain specification cargo tanks or cargo tanks used to transport certain loadings. This final rule adopts changes proposed in the NPRM as explained in detail below.

**II. Revisions Applicable to All Cargo Tanks**

Under Docket HM-183, we adopted a number of definitions for DOT 400-series specification CTMVs. The definitions apply to all specification CTMVs used to transport hazardous materials. In the NPRM we proposed to combine the definitions currently in § 178.345-1(c) with the definitions in § 173.320 (a) and make them applicable to all specification CTMVs. We received comments on the following issues:

**A. Definitions**

**Cargo Tank.** In the NPRM, we proposed in § 171.8 to add Intermediate Bulk Containers (IBCs) to the list of specifications that are not considered cargo tanks. The North American Transportation Consultants, Inc. (NATC) submitted comments expressing concern that the proposed definition would encourage the use of IBCs as vehicle delivery systems for bulk shipments. NATC asserts that the proposed revisions would permit IBCs to be loaded and unloaded without first being removed from the transport vehicle. NATC asks us to delay adding IBCs to the list of specifications that are not considered cargo tanks until after a safety review of IBC unloading operations permitted under exemption.

NATC is not correct. Section 177.834(h) prohibits discharge of any contents of any container, other than a cargo tank or IM portable tank, prior to the removal from the motor vehicle. The proposed definition does not change this prohibition. Thus, unless authorized under exemption, IBCs may not be loaded or unloaded without first being removed from the transport vehicle. In this final rule, we are