

transporting packagings bearing or required to bear a POISON or POISON INHALATION HAZARD label to include packagings that are placarded or required to be placarded POISON or POISON INHALATION HAZARD. Section 172.514(c) permits placarding in lieu of labeling for certain bulk packagings.

Part 178

Section 178.45

We are proposing to revise paragraph (h) to authorize use of the ASTM E 114 test method for straight beam examinations on the tubular surface of cylinders and tubes as we stated earlier in this preamble in the discussion to § 171.7.

Part 179

New construction of specification DOT103 and 104 tank cars is no longer authorized; therefore, we propose to remove the specifications and all references to DOT 103 and 104 tanks cars from this part. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.1

Paragraph (a) implies that only tanks transporting hazardous materials are subject to the jurisdiction of DOT. We are proposing to revise paragraph (a) to clarify that DOT specification tanks, even when they are transporting non-regulated commodities, are subject to the jurisdiction of DOT, at least as to the tank itself.

Section 179.3

We are proposing to revise § 179.3 for clarity.

Section 179.5

We are proposing to revise this section by removing an obsolete requirement to furnish a Certificate of Construction to the Department.

Section 179.7

We are proposing to revise paragraph (f) by removing an outdated compliance date.

Section 179.100–13

In paragraphs (b) and (c), we are proposing to add, for purposes of clarification, a reference to § 173.314(j), which contains excess flow valve requirements for flammable gases.

Part 179 Subpart D

We are proposing to revise the heading for Subpart D by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200

We are proposing to revise the section heading by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200–14

We are proposing to revise paragraph (a) by removing the reference to DOT–103 and DOT–104 tank cars.

Section 179.200–23

We are proposing to revise the section heading by removing the words “safety relief” and adding “pressure relief” in their place.

Section 179.200–24

We are proposing to revise the table by removing the reference to a DOT–103–W tank car and adding a reference to DOT–111A tank car in its place.

Section 179.201–1

We are proposing to revise the table by removing the entries for spec DOT–103 and DOT–104 tank cars because new construction of specification DOT103 and 104 tank cars is no longer authorized. (Continued use of DOT 103 and 104 tank cars is authorized in §§ 173.31 and 180.507.)

Section 179.201–2

Section 179.201–2 addresses minimum plate thickness for DOT specification tank cars that may no longer be constructed. Therefore, we are proposing to remove and reserve § 179.201–2.

Section 179.201–3

We are proposing to revise paragraph (b) by removing the reference to DOT–103 tank cars.

Part 180

Section 180.507

We are proposing to add a new paragraph authorizing the continued use of DOT 103 and 104 tank cars, which may no longer be constructed.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, it was not reviewed by the Office of Management and Budget (OMB), and a regulatory assessment was not required for OMB. This proposed rule is not considered to be significant under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034) and therefore a Regulatory

Analysis under the DOT order is not required.

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update references to standards that are incorporated in the HMR. For example, the American Pyrotechnics Association petitioned us to incorporate the 2001 edition of APA Standard 87–1. (See § 171.7 preamble discussion.) These clarifications and updates of the HMR will enhance safety.

Because the proposed changes clarify the requirements and respond to requests from industry, we believe the impact of these proposed changes to be so minimal that the proposal does not warrant a regulatory evaluation. However, we invite public comments on any impacts of proposed changes and may revise this determination as a result of comments.

B. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). Federal law expressly preempts State, local, and Indian tribe requirements, applicable to the transportation of hazardous materials, that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These 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 related to hazardous materials and requirements related to the number, content, and placement of those documents;
- (iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” (see 49 CFR 107.202(d)) as the Federal requirements.