

## Ordering Clauses

14. Pursuant to sections 1, 4(i), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g), and 303(r), this *Memorandum Opinion and Order* is adopted.

15. The petitions for reconsideration of the *Report and Order* in the proceeding, filed by Globalstar, L.P. and Globalstar USA, LLC and by the Society of Broadcast Engineers, Inc., are *denied*, except to the extent that SBE's petition is granted with respect to the coordination distances.

16. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Memorandum Opinion and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03-13513 Filed 5-29-03; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 171, 173, 177 and 178

[Docket No. RSPA-01-10533 (HM-218A)]

RIN 2137-AD44

### Transportation of Hazardous Materials; Unloading of Intermodal (IM) and UN Portable Tanks on Transport Vehicles

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of IM and UN portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.

**DATES:** *Effective Date:* June 30, 2003.

*Voluntary Compliance Date:* RSPA is authorizing immediate voluntary compliance, however, RSPA may further revise this rule as a result of appeals that may be received.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, telephone, (202) 366-8553, or Philip Olson, Office of Hazardous Materials Technology, (202) 366-4504, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590-0001.

## SUPPLEMENTARY INFORMATION:

### I. Background

On February 22, 2002, the Research and Special Programs Administration ("RSPA" or "we") published a notice of proposed rulemaking (NPRM) (67 FR 8220) under Docket HM-218A. The NPRM proposed to permit, for an interim period and subject to certain conditions, the unloading of intermodal (IM) portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets.

The NPRM was based on the appeal of a denial of a petition for reconsideration and a petition for rulemaking regarding the provisions in § 177.834(o) of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), permitting an IM portable tank to be unloaded while it remains on a transport vehicle. The petitions were in response to a final rule under Docket RSPA-97-2905 (HM-166Y; 63 FR 37454; July 10, 1998) which incorporated miscellaneous changes into the HMR based on petitions for rulemaking and our own initiative. The effective date of the final rule was October 1, 1998. Among other provisions, the HM-166Y final rule allows an IM portable tank transporting a liquid hazardous material that is flammable, pyrophoric, oxidizing, or toxic, to be unloaded while remaining on a transport vehicle with the power unit attached, provided the outlet requirements in 49 CFR 178.345-11 and the attendance requirements in 49 CFR 177.834(i) are met. Section 178.345-11 includes requirements for loading/unloading outlets on cargo tanks to be equipped with self-closing systems with remote means of closure capable of thermal activation at temperatures not exceeding 250 °F. Section 177.834(i) includes requirements for ensuring that cargo tanks are attended by a qualified person during loading and unloading. The intent of the unloading provision in the HM-166Y final rule was to provide regulatory relief for operators of IM portable tanks equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted

on the bottom discharge outlets (known as "fusible links"). The outlet requirement provides an automatic means to shut down unloading in a fire situation when an operator is not able to manually activate the closure.

In response to industry concerns about the need for additional time to equip portable tanks with fusible links, an NPRM in this docket was published on February 22, 2002. The NPRM proposed to permit IM portable tanks not currently equipped with fusible links to be unloaded while remaining on a transport vehicle under certain conditions. Specifically, we proposed that the shipper and the carrier would share responsibility for verifying that the consignee's facility conforms to the Department of Labor's Occupational Safety and Health Administration's (OSHA) fire suppression and emergency shutdown requirements, OSHA's and the Environmental Protection Agency's (EPA) emergency response planning requirements, and an emergency discharge control procedure. Alternatively, conformance to equivalent non-federal requirements would be authorized. The NPRM proposed to permit such unloading operations until October 1, 2003, providing a total of five years from the October 1, 1998 effective date of the July 10, 1998 final rule to equip the portable tanks. Additionally, the shipper and the carrier would be responsible for compliance with the attendance requirements in § 177.834(o), ensuring that public access is denied during unloading, ensuring that persons performing unloading functions are trained in handling emergencies, and ensuring that the operator of the vehicle has determined that all of the above conditions have been met prior to unloading.

### II. Discussion of Comments

We received comments to the February 22, 2002 NPRM in this docket from the Dangerous Goods Advisory Council (DGAC), the American Chemistry Council (the Council), Air Products and Chemicals, Inc. (Air Products), and Merck & Co., Inc.

DGAC, the Council, and Air Products request that we authorize the proposed interim unloading conditions as a permanent option to retrofitting IM portable tanks. These commenters believe that we should be in alignment with international standards and that a domestic-only requirement would cause "difficult logistic problems for foreign shippers trying to serve the U.S. market." DGAC and the Council ask whether foreign shippers would "be compelled to retrofit part of their fleets