

on transport vehicles with the power units attached. The relief was intended for operators of portable tanks equipped with fusible links carrying flammable, pyrophoric, oxidizing, or toxic liquid hazardous materials. This final rule grants further relief by permitting such unloading for an interim period when portable tanks with bottom outlets are not equipped with fusible links. Nevertheless, operators retain the option to equip their portable tanks with the fusible links.

The Council also suggests the requirement for a portable tank to be contained entirely within the horizontal outline of the vehicle, without overhang or projection of any part of the tank assembly, when it is loaded onto a highway or rail transport vehicle is more appropriately addressed as a vehicle size requirement under the Federal Highway Administration (FHWA) regulations applicable to vehicle size and weight (23 CFR, Section 658). We do not agree. The portable tank is not part of the transport vehicle and, therefore, is not covered by FHWA requirements concerning vehicle size. The manner in which a portable tank is loaded onto a transport vehicle prior to its transportation in commerce will have a direct impact on the safety of hazardous materials during transportation and, thus, should be regulated under the HMR. Further, this was not a proposed requirement. This has been a requirement since we adopted the IM portable tank standards. The requirement is currently in § 173.32(g)(1) and, prior to the HM-215D final rule, was located in § 173.32c(m).

A fourth commenter, Merck & Co., supports the limited time extension; however, Merck requests regulatory text clarifications. Merck and Co. asks us to clarify that the retrofitting requirement applies to subsidiary, as well as primary, hazards of flammable, pyrophoric, oxidizing and toxic hazardous materials. In this final rule, we are clarifying that the retrofitting requirement applies to primary and subsidiary hazards for liquid materials of Class 3 (flammable), PG I and II, and PG III with a flash point less than 100 °F (38 °C); Division 5.1 (oxidizer), PG I and II; and Division 6.1 (poisonous/toxic), PG I and II. Application of the retrofitting requirement is identified in the appropriate proper shipping name entry in the § 172.101 Table by assignment of a T Code in Column (7) authorizing a bottom outlet when a packaging authorization section (§ 173.242 or § 173.243) in Column (8C) contains a requirement specifying that the tank's bottom discharge outlet must

be equipped with an internal shut-off device in conformance with § 178.275(d)(3). Consistent with cargo tank exceptions, certain low hazard liquids assigned to the packaging authorization section, § 173.241, are excepted from the retrofitting requirement. In addition, we removed pyrophoric hazardous materials from the retrofitting requirement because bottom openings are prohibited on portable tanks transporting these materials. We are making the clarifications in §§ 173.32(h)(3), 177.834(o)(3) and 178.275(d)(3)(iv), as well as the packaging authorization sections §§ 173.242(c)(4) and 173.243(c).

We are also revising certain paragraphs, as noted in the *Section-by-Section Review* portion of this preamble, to clarify that UN, as well as IM, portable tanks are subject to the retrofitting requirement. In the HM-215D final rule published June 21, 2001, we applied the requirement to UN portable tanks.

Finally, due to the delay in issuing this final rule, we are extending the proposed October 1, 2003 interim date to October 1, 2004.

Based on the above discussion, we are authorizing the unloading without removal from a transport vehicle of IM and UN portable tanks transporting certain liquid hazardous materials and not equipped with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets until September 30, 2004, provided certain conditions are met. This date provides manufacturers, lessors, and users of the affected portable tanks a total of six years from the October 1, 1998 effective date of the July 10, 1998 final rule to equip the tanks with a thermal means for remotely activating bottom discharge outlets. Because these tanks undergo periodic inspection every five years, the date also provides the opportunity for the retrofitting to be done at the time of the periodic inspection, thereby minimizing cost impacts. Many of these tanks should already be equipped with thermal links. On and after October 1, 2004, an affected IM and UN portable tank, with a bottom outlet, may not be unloaded while remaining on a transport vehicle with the power unit attached unless it fully conforms to the outlet requirements in § 178.275(d)(3).

III. Section-by-Section Review

Part 171

Section 171.12 and 171.12a. We are adding a new paragraph § 171.12(b)(21) and § 171.12a(b)(20) to clarify that UN and IM portable tanks unloaded while

remaining on a transport vehicle with the motive power unit attached must meet the requirements in § 177.834(o).

Part 173

Section 173.32. In § 173.32, we are revising paragraph (g)(1) by removing the reference to § 177.834(i)(2). The referenced section, which addresses attendance and unloading requirements, is no longer necessary with the adoption of § 173.32(h)(3). Section 173.32(h)(3) references a more appropriate section for portable tanks; § 177.834(o). New paragraph (h)(3) alerts shippers of their shared responsibility for ensuring that portable tanks not conforming to the requirements in § 178.275(d)(3) are unloaded only at facilities conforming to the applicable OSHA and EPA requirements. The paragraph also clarifies which hazardous materials are subject to these requirements.

Sections 173.242 and 173.243. We are adding a new § 173.242(c)(4) and adding a sentence to § 173.243(c) to clarify when the retrofitting requirement applies to IM and UN portable tanks.

Part 177

Section 177.834. We are revising § 177.834(o) to permit, until October 1, 2004, the unloading of IM and UN portable tanks not meeting the outlet requirements in § 178.275(d)(3), provided certain unloading conditions are met. The shipper and the carrier share responsibility for verifying that the consignee's facility meets certain conditions and that the following requirements are met:

(1) The facility at which the portable tank is to be unloaded must have systems in place that conform to: Applicable OSHA fire suppression requirements in 29 CFR 1910.106(e); the emergency shutdown requirements in 29 CFR 1910.119(f); and OSHA's and EPA's emergency response planning requirements in 29 CFR 1910.119(f) and 40 CFR part 68. In addition, the facility must have an emergency discharge control procedure in place applicable to unloading operations, including instructions for handling emergencies that may occur during the unloading operation. Alternatively, equivalent or more stringent non-federal requirements are authorized.

(2) There must be no public access to the unloading area during the unloading process.

(3) The attendance requirements in § 177.834(o) must be met.

(4) Prior to unloading, the operator of the vehicle on which the portable tank is transported must ascertain the conditions in § 177.834(o) are met.