

Part 180

Section 180.350. We are amending § 180.350 by revising the section heading from “Applicability” to “Applicability and definitions” and by adding definitions for “Remanufactured IBCs,” “Repaired IBCs” and “Routine Maintenance of IBCs.”

Section 180.352. Two paragraphs are revised and one new paragraph is added. Paragraph (d)(1)(i) is revised to specify that a repaired IBC must be retested and inspected in accordance with the applicable requirements in this section. Paragraph (f) is revised to require that a record of such tests performed on repaired IBCs must be kept by the IBC owner or lessee. Two commenters, DGAC and COSTHA, noted that with the proposed revision of paragraph (f), a portion of the existing text was omitted from the regulatory text. The unintentionally omitted text, which addresses record retention, is included in this final rule. In addition, as proposed, a new paragraph (d)(1)(iv) is added to specify a requirement for marking repaired IBCs. One commenter requested that we incorporate a provision from the UN Model Regulations to specify that tests performed in conjunction with repairs may be used to satisfy periodic testing requirements. Because the HMR currently does not prohibit tests in conjunction with repairs from being used to satisfy the periodic testing requirements, we do not believe this amendment is necessary. Several commenters asked that we include a marking requirement consistent with the UN Recommendations that applies to the routine maintenance of IBCs. Such a marking was not proposed in the NPRM and inclusion of such a requirement in the HMR is beyond the scope of this final rule.

Section 180.605. Paragraph (k) is revised to restore the inadvertently omitted inspection and test marking requirements for Specification DOT 51, 56, 57 and 60 portable tanks. The text, which was previously located in § 173.32, was omitted during the process of consolidating certain requirements and moving them to part 180 in the final rule, HM-215D. For the height of the marking when displayed on the portable tank, we are also revising the “0.5 inches” conversion for 12 mm to “0.47” inches consistent with § 178.3.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866. However, this final rule was informally reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistent domestic and international hazard communications requirements, and continued access to foreign markets by domestic shippers of hazardous materials. This rulemaking applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and radiopharmaceutical companies.

The majority of amendments in this final rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. For example, cost savings will be realized by shippers and carriers as a result of the following:

- Eliminating the differences between proper shipping names, UN number assignments and hazard classification, including subsidiary hazards, between the HMR and international regulations. As a result of these changes, shippers and carriers would not have to re-mark or repackage hazardous materials that are offered in both domestic and international transportation.
- Providing certain exceptions including a placarding exception for sulfur and molten sulfur when the UN number is displayed on bulk packagings, and providing a packaging exception for large, hard-cased robust lithium batteries.

We are authorizing a delayed effective date and a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments.

In addition, we recognize that there may be costs associated with two of the shipping paper amendments and we are providing extended compliance dates to minimize any costs associated with those amendments. We are authorizing an extended compliance date, until October 1, 2007, for the amendment requiring the types and numbers of packaging(s) (§ 172.202(a)(5)) to be entered on shipping papers. We are authorizing, until October 1, 2005, an extended transition period for the amendments requiring the subsidiary hazard class or division number to be entered on shipping papers

(§ 172.202(a)(2)). We are also providing an extended compliance date of October 1, 2007, for package, marking and shipping paper requirements requiring replacement of the word “inhibited” with the word “stabilized,” and until October 1, 2005 for the proper shipping names affected by the removal of the word “compressed.”

Many companies involved in domestic, as well as international operations, will realize economic benefits as a result of the adoption of amendments in this rulemaking. If the changes are not adopted, U.S. companies will be at an economic disadvantage by being forced to comply with a dual system of regulations. The total net increase in costs to businesses in implementing this rulemaking is considered to be minimal and a regulatory evaluation is available for review in the Docket.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rulemaking preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above