

permanently attached to or forming an integral part of the motor vehicle. A “modification” is any change to the original design and construction of a cargo tank or a CTMV that affects its structural integrity or lading retention capability (see § 180.403). “Stretching” is a change in the width, length, or diameter of a cargo tank or any change to a CTMV’s undercarriage that may affect the cargo tank’s structural integrity. Modifying, stretching, or rebarrelling a cargo tank affects the design of the CTMV because the cargo tank is part of the CTMV; thus, whenever a cargo tank is modified, stretched, or rebarrelled, the complete CTMV must be recertified by a DCE. For this reason, Baltimore Tank’s appeal of this provision is denied.

Damage to a cargo tank requiring pressure testing. The April 18 final rule restated the current requirement in § 180.407(b)(2) that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be inspected and tested in accordance with § 180.407, including the pressure test requirements in paragraph (g), prior to its return to service. The final rule did not change current requirements for testing damaged tanks; paragraph (b)(2) makes explicit the previous requirement that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be pressure tested in accordance with paragraph (g). Baltimore Tank appealed this provision of the final rule, suggesting that the full pressure test procedure as set forth in paragraph (g) is not necessary to ascertain if a damaged tank may be returned to service. This provision of the April 18 final rule made no changes to the long-standing requirements for inspection and testing of damaged cargo tanks. Baltimore Tank’s appeal is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Test/Inspection reports. The April 18 final rule amended paragraph (b) of § 180.417 to revise the information that must be included on test and inspection reports. Baltimore Tank appealed this provision on several grounds. First, Baltimore Tank suggests that operators of MC 306 and MC 307 tanks will have difficulty providing the required information concerning the minimum thickness of the cargo tank shell and heads (see § 180.417(b)(1)(v)) because such information does not typically appear on the tanks’ specification plates or manufacturing documents; Baltimore Tank further states that minimum thickness measurements are rarely needed for MC 306 and MC 307 cargo

tanks. We disagree. Corroded or abraded areas of a cargo tank discovered during an external visual inspection, internal visual inspection, or lining inspection must be thickness tested; thus, a cargo tank almost certainly will be subjected to thickness testing at some point during its operating life. There is no point in conducting a thickness test of a corroded or abraded area if there is no number to which the thickness of the corroded or abraded area can be compared. The operator of an MC 306 or MC 307 cargo tank, working with a Registered Inspector, should be able to determine the minimum thickness of the cargo tank and enter this information on the inspection report. In this final rule, however, we are clarifying that an inspection report need only include an indication of the minimum thickness of the cargo tank shell and heads on test and inspection reports documenting that a thickness test has been performed for any reason on any area of the tank shell or heads.

Baltimore Tank also appealed the provision in § 180.417(b)(2)(iii), which requires the test or inspection report to list all items tested or inspected, suggesting that an item count for a multi-compartment MC 306 or DOT 406 CTMV in petroleum service would total in the hundreds and, further, that the items checked would not be the same from tank to tank. Baltimore Tank recommends that we reduce the amount of information required by this section. We disagree that this is an onerous or burdensome requirement. The requirement for a test/inspection report to list all items tested or inspected is not new; current § 180.417(b)(i) includes the same requirement. The August 18 final rule added to this section a list of examples of information that must be included on the test/inspection report, such as information about pressure relief devices, upper coupler assemblies, and leakage and pressure testing. An operator may use a checklist. In addition, an operator may group items—for example, rather than list every item inspected individually, an operator may choose to list items by category. Further, the list of information required on a test or inspection report will vary depending on the inspection or test conducted; all the information listed will not appear on every test or inspection report. For these reasons, Baltimore Tank’s appeal of the test and inspection report provisions of the HM–213 final rule is denied.

Final rule effective date. The April 18 final rule is effective October 1, 2003. NPGA and Container Technology request reconsideration of the effective date; they state that some of the

provisions of the April 18 final rule will necessitate extensive and complex redesign of certain components of CTMVs. We disagree. The provisions at issue in the NPGA request for reconsideration of the effective date are modified in this final rule (see “Appeals Granted” section above); the clarifications requested by Container Technology are addressed in this preamble (see “Clarifications” section below). The April 18 final rule included extended compliance dates for certain provisions, including the retrofit and certain marking requirements, of from one to three years. For these reasons, the NPGA and Container Technologies appeals of the effective date are denied.

C. Corrections

In addition to the revisions described above, this final rule also makes the following corrections to the final rule published April 18:

1. Corrects several typographical errors in the Hazardous Materials Table in § 172.101 and minor typographical errors in §§ 178.337–3, 178.337–17, 178.338–10, 180.407, 180.415, and 180.417.

2. Inserts the definition for “manufacturer” that was inadvertently omitted from § 178.320(a).

3. Corrects an inadvertent omission in § 178.347–1. In the preamble to the HM–213 final rule, we agreed with a commenter to add paragraph UW–12 to the list of exceptions in paragraph (d)(8), but did not do so in the regulatory text.

D. Clarifications

Container Technologies requested a clarification as to whether, for purposes of pad design, accident damage protection devices should be considered as structures or appurtenances. Accident damage prevention devices are structures. A rear-end damage protection device, such as a bumper, typically is attached to the CTMV chassis or suspension component, not directly to the cargo tank wall. Overturn damage protection devices typically are welded directly to the cargo tank wall.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under DOT’s Regulatory Policies and Procedures. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions