

## 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]

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## 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

that would be reserved for the U.S. market.” They also state that the retrofitting requirement may create confusion for foreign markets not familiar with U.S. operations and maintenance. DGAC and the Council state that if the interim provisions allow an equivalent level of safety, it would be “far simpler” and “more efficient” to authorize the interim provisions on a permanent basis. Air Products adds that “safety can be achieved” by either the retrofitting requirement or by adopting the proposed interim conditions on a permanent basis.

As stated in the HM-218A NPRM and the June 21, 2001 final rule published under Docket HM-215D (66 FR 33316), we continue to believe that if a portable tank is to be unloaded in the same manner as a cargo tank, it should be equipped with the same emergency shutdown devices required for cargo tanks. To accommodate industry concerns about the amount of time required for retrofits, the NPRM proposed alternative unloading conditions for an interim period for IM portable tanks not currently equipped with a thermal means of remote activation of the internal self-closing stop-valve fitted on bottom discharge outlets. We never intended to make the alternative unloading procedures permanent because we do not believe that the alternative unloading procedures provide the same level of safety as a fusible link.

DGAC, the Council, and Air Products do not dispute the need for extra safety measures, but now assert that the interim provisions provide an *equivalent* level of safety to retrofitting and should be allowed as a permanent alternative to retrofitting. We disagree. In the February 22, 2002 NPRM, we stated that the conditions, as discussed later in this preamble, provide an *acceptable* level of safety during an interim period by reducing the possibility of fire and release of hazardous materials during the unloading of IM portable tanks. We do not believe that the conditions provide an *equivalent* level of safety on a long-term or permanent basis. A fusible link operates to shut down an unloading operation automatically, without the necessity for human intervention. The alternative procedures provided in the NPRM depend on human intervention to handle a fire during an unloading operation. While this is acceptable in the short term, we do not consider that the safety level provided is equivalent to that achieved by an automatic means to shut down unloading.

With respect to the comments that the requirement should be in alignment

with international standards, we agree that, generally, harmonization of domestic and international transportation requirements is a beneficial and worthy objective. However, as with all safety regulations, we review and consider each amendment to the international standards on its own merit. There are a number of instances where we impose more stringent requirements for the domestic transportation of hazardous materials than the international requirements. Our goal is to harmonize without sacrificing the current HMR level of safety.

In the HM-215D final rule, we estimated that the cost of installing a fusible link at the time an IM portable tank is manufactured is approximately \$40.00 to \$70.00 per portable tank; based on information provided by tank, tank valve, and component manufacturers. Installation at the time of manufacture avoids downstream retrofitting costs, costs associated with shipping delays, and logistical problems at a later date. In previous discussions, DGAC and the Tank Container Association stated that retrofitting portable tanks would cost approximately \$200.00 to \$250.00 per portable tank. We reiterate our earlier statements that, on the basis of these costs, it makes economic sense to install the devices at the time of manufacture.

DGAC and the Council ask whether we intend to compel foreign shippers to “retrofit part of their fleets that would be reserved for the U.S. market.” Just as U.S. exporters of hazardous materials are responsible for compliance with international and individual country requirements regarding hazardous materials transportation, foreign shippers are responsible for compliance with U.S. variations from international standards. If foreign shippers choose to operate in the U.S., they must comply with the HMR.

DGAC, the Council, and Air Products also oppose requiring shippers and carriers to share the responsibility for ensuring that unloading facilities are in compliance with OSHA and EPA regulations. They state that doing so will:

- Prompt differing interpretations of the requirements for the facility, especially when multiple shippers and carriers serve a particular facility.
- Pose problems with shippers and carriers who are unlikely to be aware of state or local requirements, other than OSHA’s.
- Pose conformance problems because foreign shippers would have no means to assure compliance, leaving the problem solely to the carrier.

The commenters believe that we should require the consignee to be the responsible party.

Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) requires the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5103(b). Those regulations apply to persons transporting hazardous materials in commerce, persons who cause hazardous materials to be transported in commerce, and persons who manufacture and maintain packagings represented as qualified for use in transporting hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A). Thus, the HMR generally do not prescribe regulations for facilities to which hazardous materials are consigned; rather, the HMR apply to persons who prepare hazardous materials for transportation or who transport hazardous materials in commerce. For this reason, we are requiring a shipper and/or a carrier, rather than a consignee, to assure compliance with the conditions established for unloading a portable tank without removing it from the transport vehicle. Persons interested in a more detailed discussion of the applicability of the Federal hazardous materials transportation law and the HMR to specific functions and activities should review the NPRM published under Docket HM-223 on June 14, 2001 (66 FR 32420).

In addition, DGAC asks whether shippers and carriers would be held partly responsible should a problem occur during unloading, and fire or shutdown capabilities prove less than adequate. Any person, domestic or foreign, engaged in an activity regulated by federal, state or local requirements must understand and comply with all applicable regulations. Shippers and carriers engaged in the transportation of hazardous materials in commerce must be trained in the applicable requirements of the HMR and, additionally, are responsible for all applicable federal, state or local requirements. If an incident occurs when “fire or shutdown capabilities prove less than adequate,” upon investigation, it may be determined that either or both parties are responsible. We do not consider it burdensome for shippers and carriers to contact facilities to determine whether the applicable OSHA and EPA requirements have been met. The requirements in the HM-166Y final rule granted relief from the longstanding prohibitions in the HMR against unloading portable tanks while

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.

(5) Persons performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

We are also changing the outlet section reference for portable tanks from § 178.345-11 to § 178.275(d)(3). In the HM-215D final rule, we added § 178.275(d)(3) to address the requirements for equipping UN portable tanks with a thermal means of remote activation of the internal self-closing stop-valves fitted on the bottom discharge outlets. Although the two sections contain the same requirements, the addition of § 178.275(d)(3) into the HMR now makes it a more appropriate reference because it is specific to portable tank requirements.

Finally, we are revising § 177.834(o) to clarify that the requirement for a thermal means of remote activation of bottom discharge outlets applies to IM and UN portable tanks containing liquid hazardous 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 Class 6.1 (poisonous/toxic), PG I and II, when the appropriate proper shipping name entry in the § 172.101 table is assigned a T Code in Column (7) authorizing a bottom outlet and a packaging authorization section (§ 173.242 or § 173.243) in Column (8C) requiring internal valves in conformance with § 178.275(d)(3). In this way, we are limiting the applicability to materials posing a risk of fire or acute health and environmental risks. This revision is consistent with the current requirements located in §§ 178.345-11 and 178.275.

#### Part 178

*Section 178.275.* We are revising paragraph (d)(3) to clarify when IM and UN portable tanks are subject to the retrofitting requirements.

### 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 and, therefore, was not reviewed by the Office of Management and Budget. The 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 alternative interim provisions in this final rule include providing the industry additional time to come into compliance with existing regulatory requirements

for those portable tanks intended to be unloaded in the same manner as cargo tanks. There is no requirement in the current regulations, and we are not incorporating one in this final rule, for an IM or UN portable tank to conform to the outlet requirements if it is not intended to be unloaded while it remains on a transport vehicle with the power unit attached. Because this final rule eases the regulatory compliance burden for operators of portable tanks by providing an alternative interim provision, a regulatory analysis or a regulatory evaluation is not warranted. Any adverse safety impacts that may occur from the regulatory relief provided by this amendment would be minimized by conformance with the interim provisions adopted herein.

#### B. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local and Indian tribe requirements but does not incorporate 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.

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting 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; and
- (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 (2) and (5), above, and would preempt state, local, and Indian

tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption will be November 26, 2003.

#### C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. This final rule applies to manufacturers, operators, lessors and users of IM and UN portable tanks, some of whom are small entities. This final rule benefits such persons by further relaxing an existing regulatory requirement for an interim period. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

#### E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. This final rule does not impose any new information collection burdens. The information collection associated with information specified in § 177.834(o) of this final rule is currently required by other Federal regulations. In § 177.834(o)(2)(i) and (o)(2)(iii), the information collection requirements pertaining to fire suppression and emergency shutdown are currently required by the Department of Labor's OSHA. Finally, in § 177.834(o)(2)(iv), the emergency response planning requirements are currently required by the Environmental Protection Agency. Based on the above

discussion, this final rule does not require any additional incremental burden hours.

#### F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of this revision on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude there are no significant environmental impacts associated with this rule. Allowing the unloading of IM and UN portable tanks for an interim period, provided the unloading conditions in this rulemaking are met, permits operators to minimize the potential for environmental damage or contamination and allows manufacturers, lessors and users the needed time to properly equip the IM and UN portable tanks. For interested parties, an environmental assessment is available in the public docket.

#### List of Subjects

##### 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

##### 49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

##### 49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

### PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.12, a new paragraph (b)(21) is added to read as follows:

#### § 171.12 Import and export shipments.

\* \* \* \* \*

(b) \* \* \*

(21) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

\* \* \* \* \*

■ 3. In § 171.12a, a new paragraph (b)(20) is added to read as follows:

#### § 171.12a Canadian shipments and packagings.

\* \* \* \* \*

(b) \* \* \*

(20) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter.

### PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 4. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 5. In § 173.32, paragraph (g)(1) is revised and a new paragraph (h)(3) is added to read as follows:

#### § 173.32 Requirements for the use of portable tanks.

\* \* \* \* \*

(g) \* \* \*

(1) A portable tank containing a hazardous material may not be loaded onto a highway or rail transport vehicle unless loaded entirely within the horizontal outline of the vehicle, without overhang or projection of any part of the tank assembly.

\* \* \* \* \*

(h) \* \* \*

(3) No person may offer a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, in an IM or UN portable tank that is equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, for unloading to a facility while it remains on a transport vehicle with the power unit attached unless—

(i) The tank outlets conform to § 178.275(d)(3) of this subchapter; or

(ii) The facility at which the IM or UN portable tank is to be unloaded conforms to the requirements in § 177.834(o) of this subchapter.

\* \* \* \* \*

■ 6. In § 173.242, a new paragraph (c)(4) is added to read as follows:

#### § 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

\* \* \* \* \*

(c) \* \* \*

(4) Unless provided by § 173.32(h)(3), an IM 101, 102 or UN portable tank with a bottom outlet and used to transport a liquid hazardous material that is a Class 3, PG I or II, or PG III with a flash point of less than 38 °C (100 °F); Division 5.1 PG I or II; or Division 6.1, PG I or II, must have internal valves conforming to § 178.275(d)(3) of this subchapter.

■ 7. In § 173.243, in paragraph (c), a second sentence is added to read as follows:

#### § 173.243 Bulk packaging for certain high hazard liquids and dual hazard materials which pose a moderate hazard.

\* \* \* \* \*

(c) \* \* \*

Unless provided by § 173.32(h)(3), an IM 101, 102 or UN portable tank, with a bottom outlet, used to transport a liquid hazardous material that is a Class 3, PG I or II, or PG III with a flash point of less than 38 °C (100 °F); Division 5.1, PG I or II; or Division 6.1, PG I or II, must have internal valves conforming to § 178.275(d)(3) of this subchapter.

\* \* \* \* \*

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 8. The authority citation for part 177 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. In § 177.834, paragraph (o) is revised to read as follows:

### § 177.834 General requirements.

\* \* \* \* \*

(o) *Unloading of IM and UN portable tanks.* No person may unload an IM or UN portable tank while it remains on a transport vehicle with the motive power unit attached except under the following conditions:

(1) The unloading operation must be attended by a qualified person in accordance with the requirements in paragraph (i) of this section. The person performing unloading functions must be trained in handling emergencies that may occur during the unloading operation.

(2) Prior to unloading, the operator of the vehicle on which the portable tank is transported must ascertain that the conditions of this paragraph (o) are met.

(3) An IM or UN portable tank equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, and that contains a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, must conform to the outlet requirements in § 178.275(d)(3) of this subchapter; or, until October 1, 2004, be unloaded only at a facility conforming to the following—

(i) The applicable fire suppression requirements in 29 CFR 1910.106(e), (f), (g), (h), and (i);

(ii) The emergency shutdown requirements in 29 CFR 1910.119(f), 1910.120(q) and 1910.38(a);

(iii) The emergency response planning requirements in 29 CFR part 1910 and 40 CFR part 68;

(iv) An emergency discharge control procedure applicable to unloading operations, including instructions on handling emergencies that may occur during the unloading operation; and

(v) Public access to the unloading area must be controlled in a manner ensuring no public access during unloading.

(4) Alternatively, conformance to equivalent or more stringent non-federal requirements is authorized in place of paragraphs (o)(3)(i) through (o)(3)(iv) of this section.

## PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 10. The authority citation for part 178 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 11. In § 178.275, paragraph (d)(3)(iv) is revised to read as follows:

### § 178.275 Specification for UN Portable Tanks intended for the transportation of liquid and solid hazardous materials.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iv) For UN portable tanks, with bottom outlets, used for the transportation of liquid hazardous materials that are Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, the remote means of closure must be capable of thermal activation. The thermal means of activation must activate at a temperature of not more than 250 °F (121 °C).

\* \* \* \* \*

Issued in Washington, DC on May 22, 2003, under authority delegated in 49 CFR part 1.

**Samuel G. Bonasso,**

*Acting Administrator.*

[FR Doc. 03–13492 Filed 5–29–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 001113318–3128–03; I.D. 110200D]

RIN 0648–A075

#### Atlantic Highly Migratory Species; Incidental Catch Requirements of Bluefin Tuna

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS amends regulations under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery as they affect landing of BFT in the Atlantic pelagic longline fishery. The intent of this action is to minimize dead discards of BFT and

improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

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

**ADDRESSES:** Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the HMS FMP may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division Web site at [www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html).

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** The U.S. Atlantic highly migratory species (HMS) fisheries are managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). Implementing regulations at 50 CFR part 635 are issued under the dual authority of the Magnuson-Stevens Act (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

#### Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 78404, December 24, 2002), and is not repeated here. By this final rule, NMFS modifies the target catch requirements for pelagic longline vessels to land incidentally caught BFT, adjusts the Longline category North/South division line and adjusts the Longline category subquotas for each area, and provides NMFS inseason authority to modify the BFT retention limits for pelagic longline vessels.

#### Changes From the Proposed Rule

This final rule changes three of the proposed revisions to the regulatory text. In the proposed rule, two tiers of target catch requirements were proposed at 2,000 lbs. (907 kg) and 6,000 lbs. (2,727 kg) to allow the landing of one and two incidentally caught BFT, respectively. The final rule adds a third