

amendment expedites the ability of the Coast Guard and the Maritime Administration to ensure that vessels meet new eligibility requirements for fishery endorsements, the Secretary finds good cause under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

#### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, amend part 1 of title 49, Code of Federal Regulations, to read as follows:

#### PART 1—[AMENDED]

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

**Authority:** 49 U.S.C. 322; Pub. L. 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Amend section 1.46, by adding new paragraph (sss), to read as follows:

##### § 1.46 Delegations to Commandant of the Coast Guard.

\* \* \* \* \*

(sss) Carry out the functions and exercise the authorities vested in the Secretary by sections 203(b), 203(d), and 213(g) of division c, title II, Public Law 105-277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring less than 100 feet; and by 203(f) of division c, title II, Public Law 105-277.

3. Amend section 1.66, by adding new paragraph (dd), to read as follows:

##### § 1.66 Delegations to Maritime Administrator.

\* \* \* \* \*

(dd) Carry out the functions and exercise the authorities vested in the Secretary by sections 202(b), 203(b), 203(g), and 213(g) of division c, title II, Public Law 105-277, which relate to ownership and control requirements for vessel fishery endorsements for vessels measuring 100 feet and greater.

Issued in Washington, DC this 28th day of June, 1999.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 99-17306 Filed 7-7-99; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 177 and 180

[Docket No. RSPA-97-2718 (HM-225A)]

RIN 2137-AD07

#### Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases (Chlorine)

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

**ACTION:** Final rule; response to petition for reconsideration; limited stay of implementation date; correction; request for comments.

**SUMMARY:** On May 24, 1999, RSPA published a final rule to revise regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions included new inspection, maintenance, and testing requirements for cargo tank discharge systems; revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia; and revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when away from the motor vehicle during delivery. This document responds to a petition for reconsideration, delays implementation of one provision of the final rule as it applies to chlorine unloading operations, and corrects an instruction in the final rule.

**DATES:** *Effective Dates:* This final rule is effective July 8, 1999. The effective date for the final rule published on May 24, 1999, remains July 1, 1999.

*Implementation Date:* The implementation date for § 177.840(t) as it applies to chlorine cargo tanks is delayed until January 1, 2000.

*Comment Date:* Submit comments on or before September 7, 1999.

**ADDRESSES:** Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-0001. Identify the docket number RSPA-97-2718 at the beginning of your comments and submit two copies. If you want to

receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System on the Internet at "http://dms.dot.gov" or by fax to (202) 366-3753.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, you can review comments by accessing the docket management system through the DOT home page (<http://dms.dot.gov>).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Karim or Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration, (202) 366-8553; or Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366-4400.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 24, 1999, the Research and Special Programs Administration (RSPA; "we") published a final rule under Docket No. RSPA-97-2718 (HM-225A) (64 FR 28030). The final rule revised regulations applicable to the transportation and unloading of liquefied compressed gases. The revisions include new inspection, maintenance, and testing requirements for cargo tank discharge systems, including delivery hose assemblies, and revised unloading attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia to take account of certain unique operating characteristics.

Further, the final rule revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provide for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when unloading duties require the person to be away from the motor vehicle during delivery.

The final rule allows two-years for development and testing of emergency discharge control technology. After two years, newly manufactured MC 331 cargo tank motor vehicles must be equipped with emergency discharge control equipment that conforms to the performance standards; MC 330, MC

331 and certain nonspecification cargo tank motor vehicles already in service must be retrofitted at their first scheduled pressure test after the two-year period. These revisions are intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with.

## II. Negotiated Rulemaking Process

The May 24, 1999 final rule was developed through a negotiated rulemaking. In a negotiated rulemaking, representatives of interests affected by a regulation meet as an advisory committee to discuss the safety issues and to identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a notice of proposed rulemaking to be made by the agency. This process is intended to give parties the opportunity to find creative solutions, improve the information data base for decisions, produce more acceptable rules, enhance compliance, and reduce the likelihood of court challenges.

For this rulemaking, in addition to the Department of Transportation (DOT), the negotiated rulemaking committee consisted of persons who represent the interests affected by this rulemaking, including businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies.

From the beginning, our goal has been an open and inclusive process that would enable anyone with an interest in the rulemaking to provide information and to comment on proposals. The document announcing our intention to establish a negotiated rulemaking committee (63 FR 30572; June 4, 1998) listed those interests that we believed should be represented on the Committee and invited commenters to identify other interests that should also be represented. The document identified the Compressed Gas Association and National Tank Truck Carriers as organizations that should be included on the Committee to represent the interests of manufacturers and transporters of liquefied compressed gases other than liquefied petroleum gas and anhydrous ammonia. We received no comments suggesting that additional representation should be considered.

Once the Committee was established, interested parties who were not selected

for membership were invited to attend Committee meetings, which were open to the public, and to caucus with Committee members representing their interest on the Committee. Interested parties could also address the Committee, submit written comments on issues of concern, and participate in the informal work groups that were established by the Committee to address certain technical issues and draft regulatory text. Representatives of the Chlorine Institute participated in several meetings of the negotiated rulemaking committee. They were provided with draft rulemaking documents and encouraged to provide us with comments and suggestions to address any concerns. Their suggestion to incorporate the Chlorine Institute's Pamphlet 57 entitled "Emergency Shut-off Systems for Bulk Transfer of Chlorine" into the HMR was adopted, as were several suggestions for changes to the draft to reflect the unique nature of chlorine unloading operations. These suggestions were part of the notice of proposed rulemaking (NPRM) published on March 22, 1999 (64 FR 13856).

The Chlorine Institute submitted formal comments on the NPRM on April 21, 1999. On April 28, 1999, we met informally with representatives of the Chlorine Institute to clarify their comments and to discuss alternatives for addressing their concerns. All but one of the comments submitted by the Chlorine Institute were accommodated in the May 24 final rule.

## III. Petition for Reconsideration

On June 17, 1999, the Chlorine Institute filed a petition for reconsideration and motion for partial stay of the final rule. (The petition for reconsideration and motion for partial stay of the final rule is reprinted as Appendix A to this final rule. The attachments to the Chlorine Institute's petition can be reviewed by accessing the Docket Management System through the DOT home page (<http://dms.dot.gov>) or in person at the Dockets Management System at the address indicated above.) The Chlorine Institute seeks reconsideration of two provisions of the May 24, 1999 final rule as they apply to cargo tanks used to transport and deliver chlorine. Specifically, the Chlorine Institute requests reconsideration of the requirement in § 173.315(n)(2) for emergency discharge control equipment that operates without human intervention to be certified by a Design Certifying Engineer (DCE). In addition, the Chlorine Institute seeks reconsideration and a stay of the requirement in § 177.840(t) that, until a chlorine cargo tank is equipped with

emergency discharge control equipment that conforms to requirements in the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product.

## IV. Petition Partially Denied

In § 173.315(n), the May 24, 1999 final rule established emergency discharge control system requirements for cargo tanks in liquefied compressed gas service. Cargo tanks transporting materials that are poisonous by inhalation, including chlorine, are required to be equipped with a means to automatically stop product flow without human intervention within 20 seconds of an unintentional release caused by a complete delivery hose separation, also referred to as a passive shut-down capability. This section also makes clear that the design for a passive shut-down capability, including systems installed prior to July 1, 2001, must be certified by a DCE. The certification must consider any specifications of the original component manufacturer and must explain how the passive shut-down capability operates. It must also outline the parameters (e.g., temperature, pressure, types of product) within which the passive shut-down capability is designed to operate. All components of the discharge system that are integral to the design must be included in the certification.

The Chlorine Institute asserts that the May 24, 1999 final rule imposes a "new, unnecessary and wholly unjustified set of additional regulatory requirements" for cargo tanks used to transport and deliver chlorine. The Chlorine Institute states that, because chlorine is unloaded by pressure rather than by pump, the emergency discharge control system on chlorine cargo tanks, of which an excess flow valve is a key component, has operated successfully for 40 years. In light of its "flawless" unloading experience, the Chlorine Institute states that there is no possible benefit to requiring the emergency discharge control system on a chlorine cargo tank to be certified by a DCE. The Chlorine Institute also notes that the excess flow valve used on chlorine cargo tanks was extensively tested in the 1960s before it was put into widespread service. According to the Chlorine Institute, test results (included with the petition as an appendix) indicate that there will always be sufficient internal pressure in the cargo tank to assure that the excess flow valve will operate. The Chlorine Institute continues, "Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or

would be certified by a 'Design Certifying Engineer' who would have had no part in its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in the chlorine situation, and would add nothing to the safety of chlorine unloading."

The Chlorine Institute asserts that excess flow valves have functioned successfully in chlorine cargo tanks since the 1960s and that tests conducted before they were placed in widespread service demonstrate that an excess flow valve will close at a pressure well below the pressure differential that would be experienced in a complete hose separation during unloading. However, the requirement in the May 24 final rule is for certification of the emergency discharge control system, of which the excess flow valve is only one component. System certification was a key issue in the HM-225A negotiated rulemaking. As individual component manufacturers noted, an excess flow valve is only required to close if its flow rating, as established by the manufacturer, is exceeded. Manufacturers of excess flow valves who participated in the negotiated rulemaking advised that, in addition to restrictions in downstream piping caused by pumps, other variables may restrict the circumstances under which an excess flow valve will operate. Such variables include other restrictions in the discharge system (e.g., branching, elbows, reductions in pipe diameter), low operating pressures, or a partially closed valve downstream from the excess flow valve, all of which restrict the rate of flow through the excess flow valve. For this reason, the final rule included the requirement that the entire emergency discharge control system rather than individual components of the system be certified to meet the new performance standard. All components of the discharge system that are integral to the design must be included in the certification. Further, the certification must specify the parameters (e.g., temperature, pressure, types of product) within which the system is designed to operate.

Because of the requirement that the entire emergency discharge control system rather than individual components of that system be certified, the May 24 final rule recognizes that component manufacturers may be reluctant to provide a performance certification for a system of which their component is only a part. Thus, the final rule requires that the certification be provided by a DCE, who may be employed by a cargo tank manufacturer, a component manufacturer, a cargo tank

owner or operator, or a third party. The DCE need not have had any part in the actual design of the emergency discharge control system being certified. Rather, the DCE is expected to review design specifications and test results and to conduct any additional tests deemed necessary to verify that the system operates as designed within the parameters specified for its operation. The design for each type of emergency discharge control system is certified once by a DCE; provided the system is installed according to the certification, the single DCE certification serves for all cargo tanks equipped with that type of system.

The Chlorine Institute proposes that we remove cargo tanks unloading chlorine by pressurization from the May 24 final rule requirements. This part of the petition for reconsideration is denied. We recognize that unintentional releases of liquefied compressed gases as a result of complete hose separations during unloading are infrequent occurrences. However, an unintentional release of a gas that is poisonous by inhalation, such as chlorine, which is a PIH Hazard Zone B material, may have very serious consequences if it is not controlled quickly. The requirement in the May 24 final rule for a passive shut-down capability on chlorine cargo tanks is designed to address potential risks to public safety associated with low-probability/high consequence events. The Chlorine Institute has not provided sufficient information to justify its request for an exception from this requirement.

As an alternative, the Chlorine Institute suggests that RSPA clarify that, "by virtue of [its] 40 years of flawless operation" and based on the results of tests conducted on railroad tank car systems in the 1960s, the chlorine excess flow valve is certified within the meaning of the May 24 final rule. This part of the petition for reconsideration is also denied.

We do not believe that DOT certification of components or systems installed on cargo tanks is either appropriate or necessary. The principle of cargo tank design certification by a DCE is well-established in the HMR, and this method for independent certification of compliance with the cargo tank regulations works well.

Further, certification of the excess flow valve would not meet the requirements for certification established in the May 24 final rule. First, the rule requires certification of emergency discharge control systems, not individual components of those systems. Second, the certification must include a description of each emergency

discharge control system and the parameters within which the system is designed to operate. Neither of these requirements is satisfied by the Chlorine Institute's proposal.

#### **V. Petition Partially Granted and Request for Comments**

Section 177.840(t) of the May 24, 1999 final rule requires that, until a cargo tank in chlorine service is equipped with emergency discharge control equipment in conformance with the final rule, the qualified person attending the unloading operation must remain within arm's reach of a means to stop the flow of product. The Chlorine Institute notes that chlorine is unloaded from a valve located on top of the cargo tank. To be within arm's reach of a means to shut down unloading, a person must "perch precariously atop than [sic] tank for the several hours necessary to complete the unloading process."

The May 24 final rule requires chlorine being unloaded from cargo tanks after July 1, 2001 to comply with procedures set forth in section 3 of the Chlorine Institute's Pamphlet 57. (This provision does not apply to unloading of cargo tanks that are equipped with emergency discharge control systems certified in accordance with § 173.315(n) of the May 24 final rule.) Facilities equipped for unloading in conformance with Pamphlet 57 have a remote location from which the unloading operation can be shut down in the event of an unintentional release or other emergency. For these facilities, the requirement to be within arm's reach of a means to shut down unloading is met when the person attending the unloading operation is within arm's reach of the remote shut-down location. However, not all facilities are equipped for unloading in conformance with Pamphlet 57.

We agree with the Chlorine Institute that additional time is necessary to consider alternatives to the requirement in § 177.840(t) that the person attending a chlorine cargo tank be within arm's reach of a means to shut down the unloading operation. Therefore, the petition for a stay of the implementation date of this provision of the May 24 final rule is granted. The implementation date for § 177.840(t), as it applies to chlorine unloading at facilities that do not conform to Pamphlet 57, is delayed to January 1, 2000. During that time, we will consider viable alternatives that may be proposed by interested parties for monitoring the unloading of chlorine from cargo tanks that are not equipped with an emergency discharge control system

certified in conformance with § 173.315(n) of the May 24 final rule.

In addition, we are requesting comments on issues raised in the Chlorine Institute's petition for reconsideration. Specifically, we wish to know:

(1) How many cargo tanks are affected by the transition provision in § 177.840(t) as it applies to chlorine unloading?

(2) How many facilities at which unloading of cargo tanks is performed by carrier personnel are not yet equipped for unloading in conformance with Pamphlet 57?

(3) How many unloading operations are conducted at such facilities each year?

(4) Are there other ways to conduct chlorine unloading operations that will achieve an equivalent level of safety as required by § 177.840(t)?

(5) Are all cargo tanks engaged in transporting chlorine fitted with the same piping configuration, or are there significant differences?

(6) What other issues should we consider in resolving this issue?

## VI. Correction

In the May 24, 1999 final rule, instruction 19 incorrectly redesignated several paragraphs in § 180.407. This redesignation is corrected in this final rule.

## VII. 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. This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this final rule addressing the delay in implementation of the transition provision affecting monitoring of chlorine unloading operations. However, a final regulatory evaluation was prepared in support of the final rule published on May 24, 1999. The final regulatory evaluation is available for review in the public docket.

### B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal hazardous materials 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:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(v) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, 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 subjects under item (ii) above and preempts state, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if RSPA issues a regulation concerning any of the covered subjects RSPA 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. Thus, RSPA lacks discretion in this area, and preparation of a Federalism assessment is not warranted. The effective date of Federal preemption for these requirements is October 6, 1999.

### C. Executive Order 13084

This final rule has not been analyzed in accordance with the principles and criteria in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because revised rules and regulations in this final rule are not expected to significantly or uniquely affect communities of Indian tribal governments, the funding and consultation requirements of this Executive Order 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 that a rule is not expected to have a significant impact on a substantial number of small entities.

RSPA conducted this assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment. Thus, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

### E. Paperwork Reduction Act

This final rule imposes no new information collection burdens. The requirements for information collection included in the May 24, 1999 final rule are approved by the Office of Management and Budget under OMB control number 2137–0595. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

### 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 containing 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 imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

### H. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This final rule does not mandate business process changes or require modifications to computer systems. Because this rule apparently does not affect organizations' ability to respond

to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements.

#### *I. Environmental Assessment*

RSPA did not perform an environmental assessment of this final rule. RSPA did conduct an environmental assessment for the final rule published May 24, 1999. The delay in implementation for the transition provision on monitoring unloading operations from chlorine cargo tanks does not change the conclusions reached in that assessment.

#### **List of Subjects**

##### *49 CFR Part 177*

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

##### *49 CFR Part 180*

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

In consideration of the foregoing, we are amending 49 CFR parts 177 and 180 as follows:

#### **PART 177—CARRIAGE BY PUBLIC HIGHWAY**

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

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

2. In § 177.840, in paragraph (t) the last sentence is revised to read as follows:

##### **§ 177.840 Class 2 (gases) materials.**

\* \* \* \* \*

(t) \* \* \* For chlorine cargo tanks unloaded after December 31, 1999, the qualified person must remain within arm's reach of a means to stop the flow of product except for short periods when it is necessary to activate controls or monitor the receiving container.

\* \* \* \* \*

#### **PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

3. In rule document 99–12860, beginning on page 28030 in the issue of Monday, May 24, 1999, make the following correction:

##### **§ 180.407 [Corrected]**

On page 28051, column 2, in amendatory instruction 19., beginning in the second line, correct “existing paragraphs (h)(4) through (h)(8) are

redesignated as paragraphs (h)(5) through (h)(9), respectively” to read “existing paragraph (h)(4) is redesignated as paragraph (h)(5)”.

Issued in Washington, DC on June 29, 1999, under authority delegated in 49 CFR Part 1.

**Kelley S. Coyner,**

*Administrator.*

#### **Appendix A to the Preamble**

##### **Expedited Consideration Requested**

Before the United States Department of Transportation, Research and Special Programs Administration

Docket No. RSPA–97–2718 (HM–225A)

Hazardous Materials: Revision to Regulations Governing Transportation and Unloading of Liquefied Compressed Gases

Motion for Partial Stay of the Final Rule and Petition of the Chlorine Institute, Inc. for Reconsideration and Clarification of the Final Rule

##### *I. Introduction*

Pursuant to the provisions of 49 CFR § 106.35, the Chlorine Institute, Inc., hereby files this Motion for Partial Stay and Petition for Reconsideration and Clarification of the final rule issued in this docket.

The final rule issued on May 24, 1999, (64 F.R. 28030) creates a new, unnecessary, and wholly unjustified set of additional regulatory requirements for MC 330 and MC 331 cargo tank motor vehicles when unloading chlorine. These new regulatory requirements are unsupported by the record of this docket, and ignore 40 years of flawless chlorine unloading experience. The Chlorine Institute, Inc. submits that these requirements should either be withdrawn, or so modified as to remove their more onerous provisions.

##### *II. Background of the Rulemaking*

Section 178.337–11(a)(1)(i) of Title 40 CFR provides that with respect to cargo tank motor vehicles used to transport chlorine, as well as other compressed gases:

Each internal self-closing stop valve and excess flow valve must automatically close if any of its attached hoses are sheared off or if any attached hoses or piping are separated.

In its final rule in Docket HM–225 issued August 18, 1997, RSPA noted that “efforts undertaken by the affected industries (not including the chlorine industry) to achieve increased efficiency in the unloading of hazardous materials by the installation of pumps on specification MC 330 and MC 331 cargo tank motor vehicles prevent emergency discharge control systems from operating properly under all temperatures and pressures routinely encountered during normal conditions or transportation.” (62 F.R. 44039) In the same document, RSPA noted that the problems encountered by MC 330 and MC 331 cargo tank motor vehicles using pumps to unload did not exist when pressure, rather than pumps, were employed. Thus, RSPA held:

Unloading systems that employ pressure rather than a pump to unload such as a gas

compressor mounted on specification MC 330 and MC 331 cargo tank motor vehicles should not be affected by the problem identified with unloading of liquefied compressed gases by use of pumps, provided the operating pressure of the compressor, the flow rate of product through valves, piping, and hose, and the setting of the emergency feature conform to requirements in § 178.337–11(a)(1)(v). Vehicles unloaded by pressure and conforming to the requirements of § 178.337–11(a)(1) are not subject to the temporary regulations specified in § 171.5. (62 F.R. 44039)

Throughout the HM–225A rulemaking procedures that followed the HM–225 final rule, there was never any doubt but that chlorine is unloaded under pressure within the meaning of the HM–225 final rule. Further, there never has been any question but that the excess flow valves used on MC 330 and MC 331 cargo tank motor vehicles transporting chlorine (CI Drawings 101 and 104) comply fully with § 178.337–11(a)(1)(v). In addition, the Chlorine Institute is unaware of, and the record herein fails to disclose, a single incident in the 40 years these valves have been in use in chlorine service where such excess flow valve has failed to operate properly.

##### *III. The Final Rule*

While the HM–225 and HM–225A rulemaking procedures focused almost entirely on the failures of pump unloading systems involving liquefied petroleum gas and anhydrous ammonia, the final rule places regulatory requirements on pressure unloading chlorine cargo tank motor vehicles as well. It is not surprising therefore that the final rule is ill-considered and erroneous as it applies to chlorine unloading.

The final rule impacts chlorine motor vehicle unloading in two fundamental respects. First, the new section 173.351(n)(2) requires that a “Design Certifying Engineer” certify that the excess flow valve so long and so successfully used on MC 330 and MC 331 cargo tank motor vehicles is, in fact properly designed and will operate within the necessary parameters to satisfy the rule.

Secondly, section 177.840(t) requires that until the chlorine cargo tank transfer system is certified, a qualified person must be within arms length of the chlorine cargo tank's valve located on the top of the cargo tank. Thus, the qualified person must perch atop the tank to meet the requirement. It must be noted, of course, this requirement does not apply when the tank is being unloaded after the tank has been separated from the motive power unit and that unit has left the facility.

With respect to the design certification requirement for chlorine cargo tanks, the final rule is wholly unwarranted. With respect to the arms length requirement, it is not only unwarranted, it creates an unsafe condition while only partially attaining its ill-considered objective.

##### *IV. Reasons for Reconsidering the Final Rule*

As noted above, the problems that gave rise to the HM–225 rules, and ultimately to this docket, have nothing to do with the unloading of chlorine. Chlorine, unloaded by pressure rather than by pump, has not been

released during the unloading process. The excess flow valves have operated successfully for 40 years, and there is no allegation that chlorine cargo tank vehicles equipped with those valves do not comply fully with § 178.336-11(a)(1)(i).

What possible benefit, therefore, follows from a certification by a "Design Certifying Engineer" that the valve will properly operate when it has properly operated for 40 years? The answer, of course, is none.

In addition to its flawless operation, the excess flow valve used on chlorine cargo tank motor vehicles was extensively tested in the 1960's before it was put into widespread service. As the materials attached hereto as Appendix A demonstrate, the excess flow valve, per CI Drawings 101 and 104 will close at a pressure of 9 psig, a value well below the pressure differential that would be experienced in a complete hose separation during unloading. Since, as previously noted, chlorine is unloaded by pressurizing the tank, there will always be sufficient internal pressure to ensure that the excess flow valve will operate as required.

Given the fact that the excess flow valve was designed many years ago, there is considerable doubt that the valve itself could or would be certified by a "Design Engineer" who would have had no part of its design. While the design certification requirement may make sense in some circumstances, it plainly makes no sense in this chlorine situation, and would add nothing to the safety of chlorine unloading.

The arms length requirement discussed above suffers from two major flaws. First, the majority of chlorine MC 330 and MC 331 tanks are unloaded after the motive power has been detached and has left the receiving facility. Thus, under sections 171.8, 177.834, and 178.337-11, the detached tank is no longer a cargo tank within the meaning of the Hazardous Materials Regulations, and is no longer subject to the provisions of the final rule.

Of greater importance is the fact that, unlike propane and ammonia tanks, the chlorine tank is unloaded from a valve located atop the tank. Accordingly, for a person to be within arms length of the valve during unloading he or she must perch precariously atop the tank for the several hours necessary to complete the unloading process. This requirement reflects the fact that the chlorine tank was never really considered during the rulemaking process, and appears in the final rule unexpectedly and inappropriately. Further, since the arms length provisions of the final rule become effective on July 1, 1999, a serious safety issue is present.

In view of the safety concerns raised with respect to chlorine unloading, the final rule should be stayed insofar as it would require persons to stand atop chlorine MC 330 or MC 331 cargo tank motor vehicles during chlorine unloading.

#### V. Proposed Solution

The Chlorine Institute participated in this rulemaking in only a minor way for the reasons described above. The Institute has no desire to complicate this matter to any degree greater than is necessary to overcome the

obvious and serious problems discussed herein. Thus, the Institute proposed to resolve the problems created by the final rule in the simplest and least disruptive way possible.

The genesis of the problems raised by the final rule is the requirement that the chlorine excess flow valve be certified by a "Design Certifying Engineer." A clarification of the final rule by RSPA that acknowledges that the chlorine excess flow valve, by virtue of the materials attached in Appendix A, and by virtue of the 40 years of flawless operation, has been certified within the meaning of the rule would eliminate all problems associated with implementation of the rule.<sup>1</sup>

To be sure, such a clarification would not deal with the obvious problem that the rules should never have addressed pressurized unloading in the first place. But, at least it would eliminate the serious practical problems facing the industry as a result of the ill-advised inclusion of the chlorine in the rulemaking process, and would remove the requirement for a qualified person to perch atop a cargo tank for the minimum period of three necessary to unload a chlorine cargo tank.

#### VI. Conclusion

In view of the foregoing, the Institute submits that the final rule be modified so as to remove cargo tanks and cargo tank motor vehicles unloading chlorine by pressurization from the requirements of the rule. In the alternative, the Institute requests that RSPA clarify the final rule so as to determine that chlorine excess flow valves in use on MC 330 and MC 331 chlorine cargo tank motor vehicles have been certified within the meaning of the rule.

In addition, inasmuch as the arms length requirements of the rule become effective on July 1, 1999, and enforcement of those provisions could cause serious risks to persons unloading chlorine, the Institute moves that those requirements be stayed while this petition is reviewed by RSPA.

Respectfully submitted,

Paul M. Donovan,

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Dated at Washington, DC, June 17, 1999.

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<sup>1</sup> It must be noted, of course, that the excess flow valve discussed herein is designed to, and does operate in the event of a complete separation of the unloading hose. In this regard it fully satisfies the provisions of 49 CFR § 178.337-11(a)(1)(i). Chlorine Institute Pamphlet 57 referenced by RSPA in this rule, contains a system for dealing with incidents that do not involve a complete separation and therefore do not trigger the requirements of § 178.337-11(a)(1)(i).

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 574

[Docket No. 99-5928]

RIN 2127-AH10

### Tire Identification and Recordkeeping; Tire Identification Symbols

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** NHTSA's tire identification and recordkeeping regulation requires new tire manufacturers and tire retreaders to mark a tire identification number on one sidewall of each tire they produce. The number is composed of the manufacturer's or retreader's identification code, a tire size symbol, an optional descriptive code, and the date of manufacture, which includes the date of retreading. The date is reflected in the last 3 digits of the number.

In response to petitions for rulemaking, the agency is amending the regulation to require the date to be expressed in 4 digits instead of the currently required 3, and to reduce the minimum size of the digits from the currently required minimum of 6 millimeters (mm) ( $\frac{1}{4}$  inch) to 4 mm ( $\frac{5}{32}$  inch). The 4-digit date code will permit better traceability of tires during recalls and allow easier identification of older tires. Reducing the size of the date code from 6 mm to 4 mm will relieve manufacturers and retreaders of the burden they might otherwise incur by having to redesign their tire molds to accommodate the additional digit, without significantly affecting the readability of the date code digits. Finally, these amendments will enhance harmonization by bringing the U.S. tire date code requirements into harmony with the new United Nations' Economic Commission for Europe regulation and the International Organization for Standardization recommended practice.

**DATES:** *Effective date:* The amendments in this final rule become effective July 2, 2000. Optional early compliance is permitted, commencing on the date of publication of this final rule in the **Federal Register**.

Petitions for reconsideration of this final rule must be received by this agency not later than September 7, 1999.

**ADDRESSES:** Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400