DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 174

[Docket No. HM–197; Amdt. Nos. 171–130, and 174–79]

RIN 2137–AC26

Hazardous Materials in COFC and TOFC Service

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

ACTION: Final rule.

SUMMARY: This final rule establishes standards for transporting portable tanks containing certain hazardous materials in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service, without obtaining prior approval from the Federal Railroad Administration (FRA). Adoption of these standards as rules of general applicability will provide wider access to the benefits of transportation services that have been proven to be effective and safe. Persons holding approvals issued prior to this rulemaking who are unable to meet the standards established by this final rule will need to re-apply to the Associate Administrator for Safety, FRA, prior to the expiration date stated in their current approval.

The intended effects of this action are to reduce the need for obtaining written approval for certain COFC or TOFC services and to facilitate domestic and international commerce.

DATES: *Effective date.* February 13, 1995.

Compliance date. Compliance with the requirements as adopted herein is authorized immediately.

Incorporation by reference date. The incorporation by reference of a publication listed in this final rule is approved by the Director of the Office of the Federal Register as of February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard, Telephone (202) 366–0897, Chief Hazardous Materials Division, RRS–12, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone (202) 366–0897 or Thomas A. Phemister, Telephone (202) 366–0443, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, RCC–30, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1985, RSPA published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) titled "Shippers; Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in COFC and TOFC Service," under Docket No. HM–197, Notice No. 85–2 (50 FR 18278). In the ANPRM, RSPA solicited comments and information to assist in the identification and development of safety criteria for COFC and TOFC service of tanks transporting hazardous materials. Specific comments were requested on the adequacy of means used to secure a highway chassis (trailer) or a container to a flatcar, and the trailer's potential vulnerability in COFC/TOFC service. Comments were also requested on other safety issues involving the double stacking of containers, securement and cushioning of trailers and containers, liquid surge prevention, tank thermal protection, tank puncture resistance, and train placement. A public hearing was held on June 11, 1985, to discuss the proposals.

On May 7, 1993, RSPA published in the **Federal Register** a notice of proposed rulemaking (NPRM) under Docket No. HM–197, Notice No. 93–11 [58 FR 27257], based on comments received to the ANPRM. In the NPRM, RSPA proposed to allow the transportation of IM portable tanks and portable tanks containing certain hazardous materials in COFC and TOFC service under conditions prescribed in the Hazardous Materials Regulations (HMR). Currently, these COFC and TOFC movements are authorized under approvals issued by the Associate Administrator for Safety, FRA. RSPA explained in the preamble of the NPRM that, because of strong concerns raised by commenters on the transport of cargo tank motor vehicles in TOFC service and because of the limited availability of experience data, these services would remain under FRA approval. With regard to the transport of multi-unit tank car tanks (DOT 106 and 110), FRA believes that less than ten units are being transported and that they should continue under FRA approval.

RSPA received seven comments in response to the NPRM from rail carriers, rail car and portable tank manufacturers, and trade associations representing rail carriers and shippers. Six commenters supported the proposals but requested certain changes.

The remaining commenter stated that the transport of hazardous materials in COFC/TOFC systems should be subject to the same performance requirements in accidents as those currently required for tank cars transporting the same materials. The commenter also took exception to RSPA's statement in the preamble of the NPRM that the proposal was, in part, based on the transportation safety record of more than 50,000 portable tanks in COFC/TOFC service. The commenter stated that it had not seen the results of this sample or a comparison between performance of these containers and the performance of tank cars presently authorized to transport similar materials.

RSPA and FRA disagree with this commenter's position. The capacity of a portable tank (5000–6000 gallons) is considerably less than that of a rail tank car (18,500–34,500 gallons), and tank cars and portable tanks have significantly different operating environments. FRA has approved methods for portable tanks transporting hazardous materials in COFC and TOFC service for more than ten years. Based on the years of satisfactory transportation experience using safety standards established under the approval process, RSPA and FRA believe additional safeguards are unnecessary. Therefore, this final rule merely incorporates the approval safety standards into the HMR and eliminates the approval process.

On July 26, 1994, RSPA published a final rule establishing standards for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials [59 FR 38040]. IBCs are bulk packagings with a capacity ranging from 450 liters (119 gallons) to 3,785 liters (1,000 gallons) and are designed for mechanical handling. IBCs are generally transported in closed freight containers and transport vehicles when transported by rail. These packagings may continue to be transported in this manner in conformance with § 174.63(b).

The following is a summary of the changes made under this final rule and, where applicable, a discussion of comments received.

II. Summary of Regulatory Changes

Section 171.7

In the table in paragraph (a)(3), the proposal would have removed the entry for the Association of American Railroads's (AAR) publication "AAR Specification for Tank Cars" and updated the entry for "AAR Specification for Tank Cars, Specification M–1002, Section C" from the 1988 edition to the 1990 edition. The AAR and another commenter requested adoption of the 1992 edition of the publication. The 1992 publication contains discussions on the controlled interchange movement of portable tanks on double-stack cars without end-of-car cushioning. Agreeing with commenters that the 1992 edition should be adopted.

RSPA removed the "AAR Specification for Tank Car" entry and incorporated by reference the 1992 edition of the AAR publication under another rulemaking action (Docket No. HM-166Z [59 FR 28487]). As proposed in the NPRM, an entry is added for "AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment." The edition referenced is corrected to read "1988," which is the latest edition.

Section 174.61

RSPA proposed to revise this section to include requirements applicable to transport vehicles and freight containers containing packages of hazardous materials only. This proposal was supported by commenters and is adopted in this final rule.

Section 174.63

This section contains requirements for portable tanks, IM portable tanks, cargo tanks, and multi-unit tank car tanks transported by rail. Proposed paragraph (a) contained requirements applicable to DOT 51, 52, 53, 56, and 57 and IM 101 and 102 portable tanks that are transported inside a transport vehicle or container body. A commenter stated that the term "container body" was ambiguous and requested that the term "container body" be replaced with the term "freight container." RSPA agrees and has made the revision. In addition, the proposed provisions contained in this section are rearranged for clarity. A general provision on the transport of tanks by rail, in proposed paragraph (c), is moved to paragraph (a). Proposed paragraphs (a) and (b), a remaining provision in paragraph (c), and paragraph (d) are rearranged as paragraphs (b), (c), (d) and (e) respectively.

Several commenters requested clarification on the prohibition in proposed paragraph (b)(3) against movement of portable tanks in a double-stack configuration. They asked whether it was RSPA and FRA's intent to disallow the transport of portable tanks in double-stack cars or to disallow placement of a portable tank as the top container in a double-stack configuration. RSPA and FRA's intent was to disallow portable tanks from being placed under or on top of another portable tank or freight container, creating a double-stack configuration. Several commenters requested revisions to allow the transport of portable tanks in double-stack well cars (i.e., a flatcar with a depression in the center that allows the container to extend below the normal floor plane). One commenter recommended placement of the portable tanks in the bottom well, with the outlet valve facing outboard away from the middle of the car and towards the end of the car. The commenter also recommended that the well car be equipped with a device to fill voids between the sides and corners of the well and the frame. RSPA and FRA agree that well cars should be allowed, subject to the conditions that the portable tanks are located in the bottom well in a single-stack configuration and are fitted to prevent movement in the well car. RSPA and FRA also agree that the outlet valves should face towards the ends of the car to allow ready access to these valves and to facilitate emergency response in case of their leakage. This provision is revised accordingly and appears in paragraph (c)(6) in this final rule.

A commenter pointed out that proposed paragraph (b)(4), containing requirements for TOFC service, incorrectly refers to AAR Specification M-952 which addresses only COFC service. RSPA agrees the reference to AAR Specification M-952 is incorrect and has removed the reference from the provision appearing in paragraph (c)(4) in this final rule.

Finally, a commenter requested that rail carriers be allowed to move cargo tanks on flatcars in work trains when necessary for responding to hazardous materials releases. Because work trains are generally associated with railroad maintenance assignments, RSPA agrees only emergency response situations deserve special consideration and has added an exception for cargo tank movements in paragraph (e).

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Polices and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). A regulatory evaluation is available for review in the 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 law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

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

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

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

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

(E) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the handling of hazardous materials. Therefore, this final rule preempts State, local, or Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects, after November 16, 1990, 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. RSPA has determined that the effective date of Federal preemption for these requirements will be April 1, 1995.

Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule relaxes certain provisions applying to persons who offer for transportation and transport hazardous materials by rail, some of whom are small entities. This rule should result in minor cost savings to affected entities.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule. This rule, in fact, reduces information collection burdens and should result in minor cost savings to affected entities.

E. Regulations 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.

List of Subjects

49 CFR Part 171

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

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

In consideration of the foregoing, 49 CFR parts 171 and 174 are amended as set forth below:

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 § 171.7, in paragraph (a)(3) table, under the Association of American Railroads, the existing entry for "AAR Manual of Standards and Recommended Practices" is revised and a new entry is added, in alphabetical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) Table of material incorporated by reference. * * *

Source and name of material	49 CFR reference
* * * * * * *	
Association of American Railroads	
AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, September 1992.	173.31; 174.63; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400.
AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988.	174.63.
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PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

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

4. In § 174.61, paragraph (c) is removed and the section heading and the first sentence in paragraph (a) are revised to read as follows:

§ 174.61 Transport vehicles and freight containers on flat cars.

(a) A transport vehicle, freight container, or package containing a hazardous material must be designed and loaded so that it will not become damaged to an extent that would affect its integrity under conditions normally incident to transportation * * *

* * * * *

5. Section 174.63 is revised to read as follows:

§ 174.63 Portable tanks, IM portable tanks, intermediate bulk containers, cargo tanks, and multi-unit tank car tanks.

(a) A carrier may not transport a bulk packaging (e.g., portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service except as authorized by this section or unless approved for transportation by the Associate Administrator for Safety, FRA.

(b) A bulk packaging containing a hazardous material (including IM 101 and IM 102 when appropriate according to dimensions and weight distribution) may be transported inside a fully closed transport vehicle or fully closed freight container provided it is properly secured with a restraint system that will prevent it from changing position, sliding into other packages, or contacting the side or end walls (including doors) under conditions normally incident to transportation.

(c) When not transported in conformance with and subject to paragraph (b) of this section, a bulk packaging may be transported in COFC service or TOFC service subject to the following conditions as applicable:

(1) The bulk packaging contains a material packaged in accordance with § 173.240, 173.241, 173.242, or 173.243 of this subchapter;

(2) The tank and flatcar conform to requirements in AAR 600 of the AAR Specifications for Tank Cars, Specification M–1002, entitled "Specifications for Acceptability of Tank Containers";

(3) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M–943 "Container Chassis For TOFC Service" of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment".

(4) For COFC service, the container support and securement systems conform to requirements in Specification M–952 "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment";

(5) If transported in a well car—

(i) The tank is not in a double-stacked configuration (i.e., no freight container or portable tank is placed above or below the tank); and

(ii) The tank is transported in the well with its outlet valve facing outward towards the end of the well and away from any adjacent tank or container; and

(6) All securement fittings shall be fully engaged and in the locked position, provided; however, if the tank is transported in a well car, it must be loaded into a well appropriate for the length of the container and any void

filling device present must be secured in its designed appropriate position.

(d) An approval in effect on February 28, 1991 for the transportation of portable tanks or IM portable tanks in TOFC or COFC service expires on the date stated in the approval letter or June 15, 1995, whichever is later.

(e) A carrier may not transport a cargo tank or multi-unit tank car tank containing a hazardous material in TOFC or COFC service unless approved for such service by the Associate Administrator for Safety, FRA. However, in the event of an accident or incident, no such approval is necessary for the transportation of a cargo tank containing a hazardous material in TOFC service under the following condition(s):

(1) There is an emergency need for the cargo tank in order to mitigate the consequences of an incident; and

(2) Movement of the cargo tank is limited to transportation necessary for emergency purposes.

Issued in Washington, DC, on December 7, 1994, under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration

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