

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

**PART 196—OPERATIONS (OCEANOGRAPHIC VESSELS)**

9. By revising § 196.07-1(a)(6) as follows:

**§ 196.07-1 Notice of marine casualty.**

(a) \* \* \* (6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

(Sec. 10, 18 Stat. 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat. 938 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b); 92 Stat. 655 (43 U.S.C. 1348)

Clyde T. Lusk, Jr., Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

March 7, 1983. [FR Doc. 83-0137 Filed 4-6-83; 8:45 am] BILLING CODE 4910-14-M

**Office of the Secretary**

**49 CFR Part 1**

[OST Docket No. 1; Amdt. 1-179]

**Organization and Delegation of Powers and Duties; Correction**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment corrects a delegation to the General Counsel which inadvertently displaced the delegation to the General Counsel regarding tort claims in the Office of the Secretary.

**DATE:** The effective date of this amendment is June 7, 1982.

**FOR FURTHER INFORMATION CONTACT:** Robert I. Ross, Office of the General Counsel, C-50, Department of Transportation, Washington, DC (202) 426-4723.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to Departmental

management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

In the Federal Register of June 7, 1982 (47 FR 24581), DOT published Amendment 1-171, which delegated to the General Counsel the authority to conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources Act. DOT intended that this authority appear as paragraph (o) of 49 CFR 1.57; it was mistakenly made paragraph (n), thereby displacing from the Code of Federal Regulations the then-existing delegation in paragraph (n) relating to tort claims arising from the activities of the Office of the Secretary. It was never intended in any way to affect the tort claim delegation; consequently, this amendment assigns the correct paragraph letters. The effective date for this change is the same date on which the incorrectly-lettered delegation which caused the problem took effect.

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

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

**PART 1—[AMENDED]**

In consideration of the foregoing, § 1.57 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising paragraphs (n) and (o), to read as follows:

**§ 1.57 Delegations to General Counsel.**

The General Counsel is delegated authority to:

(n) Consider, ascertain, adjust, determine, compromise, and settle for an amount not exceeding \$25,000, any tort claim arising from the activities of any employee of the Office of the Secretary. Request the approval of the Attorney General for any such award, compromise, or settlement in excess of \$25,000 (28 U.S.C. 2672).

(o) Conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources Act (June 21, 1980).

Authority: 49 U.S.C. 322; 49 CFR 1.57(1). Issued in Washington, DC, on March 30, 1983.

Rosalind A. Knapp, Acting General Counsel.

[FR Doc. 83-0020 Filed 4-6-83; 8:45 am] BILLING CODE 4910-62-M

**Research and Special Programs Administration**

**49 CFR Parts 173, 177, and 178**

**Carriers and Shippers Concerning Continuing Qualification of Cargo Tanks—83-1**

**AGENCY:** Materials Transportation Bureau, Research and Special Programs Administration Department of Transportation.

**ACTION:** Rule related notice.

**SUMMARY:** The purpose of this notice is to enhance safe transportation of hazardous materials in cargo tanks by emphasizing to operators of cargo tanks, marked as meeting DOT specifications as an indication they are authorized for transportation of hazardous materials, that, as a condition for their continued use, the cargo tanks must conform to the specifications under which they were manufactured. This notice also contains statements applicable to shippers who offer hazardous materials for transportation in cargo tanks.

**FOR FURTHER INFORMATION CONTACT:** Lee E. Metcalfe, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590; (202) 426-2075.

**SUMMARY:** Paragraph (b) of § 173.33 of the Department's Hazardous Materials Regulations (HMR, 49 CFR, Parts 171-179), specifies that qualification of a cargo tank as an authorized container includes compliance with applicable specifications (as listed) plus current compliance with the retest provisions of § 177.824. Applicable specifications means the specification in effect on the date a cargo tank was identified as a specification cargo tank by attachment of its metal certification plate and a manufacturer's certificate executed as required by the specification.

New construction of cargo tanks under certain specifications has not been authorized for a number of years. Most notable was the prohibition of new construction under seven specifications on September 1, 1967. However, a cargo tank constructed under one of those specifications may be continued in use if it conforms to its applicable specification.

Paragraph (h)(i) of § 177.824 reads as follows:

*Withdrawal of certification.* If, as the result of an accident or for any other reason a cargo tank no longer meets the applicable specification, the carrier shall remove the metal certification plate or make it illegible \* \* \*. The details of the conditions

necessitating withdrawal of the certification must be recorded and signed on the written certificate for that cargo tank. The vehicle owner shall retain the certificate for at least one year after withdrawal of the certification.

If for any reason a cargo tank does not meet the applicable specification under which it was constructed, its specification plate must be removed or rendered illegible thereby removing its certification as a specification cargo tank. The practical consequence of removal of the certification is the fact that the tank ceases to be identified and qualified as a packaging for those hazardous materials that are required to be transported in a specification cargo tank. It must be noted that required removal of the certification is not determined by whether a hazardous material is to be transported in the cargo tank; therefore, those persons in possession of a cargo tank, who are under the jurisdiction of the HMTA and the HMR, must remove the certification when the cargo tank ceases to be in compliance, regardless of the nature of the commodity carried therein. Section 105(c) of the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1804(c)) provides that a container may not be represented, by marking or otherwise, as qualified for use in the transportation of hazardous materials unless it meets "the requirements of all applicable regulations \* \* \*". Consequently, non-compliance with § 177.824(h)(1) (by failing to remove the certification) constitutes a misrepresentation under the HMTA and a violation of section 105(c) of the Act.

Determination of current compliance with a specification requires continuing reference to the specification in effect when the cargo tank was constructed. For example, the section in effect for the MC 310 cargo tank was § 178.330 until September 1, 1967. This section, unless modified by a provision in § 173.33 which addresses continuing qualification, maintenance and use of cargo tanks, is the section that must be followed in determining if a specification MC 310 cargo tank may be continued in service as evidenced by display of an MC 310 specification identification plate.

For purposes of illustration, the MC 310 specification contains a number of requirements such as those pertaining to closures for manholes, outlets, protection of fittings, shear sections, minimum thickness of metal, and linings. Concerning the lining requirements, which are essentially the same for the MC 311 and MC 312 specifications, we have the impression that some carriers believe these override (preclude) specification requirements

pertaining to minimum thickness. This is not the case. Paragraph (b) of § 178.330 of the MC 310 specification contains the basic requirements for linings and paragraph (c) the conditions under which tanks need not be lined. As a matter of practicability, paragraph (c) only proved beneficial when a purchaser placed an order for a cargo tank for specific products having known corrosive or noncorrosive effects on the materials of construction. The provision in paragraph (b) pertaining to 10 years of normal service without reduction in thickness below the minimum thickness specified for a cargo tank does not mean a cargo tank may be used continuously in the same service beyond 10 years or, more importantly, for any particular duration. It serves as a means whereby a manufacturer could certify a tank without lining when specified by a customer. This provision does not negate the minimum thickness requirement which is an essential function in determining the continuing qualification of a cargo tank as an authorized packaging. For example, if an MC 310 cargo tank has a capacity of 2000 gallons, its minimum thickness may be no less than  $\frac{3}{8}$  inch. If the tank is less than  $\frac{3}{8}$  inch thick at any point, e.g., as a result of internal or external corrosion, it may no longer be marked "MC 310" on its identification plate, nor may it be used as a specification cargo tank under the HMR.

Section 178.330-6(a) of the MC 310 specification, as well as requirements pertaining to other specifications, specifies that all joints between manhole covers and their seats shall be tight against leakage of vapor and liquid (§ 178.341-3 of the MC 306 specification requires a secure closure, the intent of which is the same as the more specifically stated requirements of other specifications). The Materials Transportation Bureau (MTB) and the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) are concerned that some operators of cargo tanks, and shippers who load or participate in or supervise the loading of cargo tanks, are not paying serious attention to compliance with these requirements. Put simply, if a cargo tank does not conform to the specification requirements applicable to it, it may not be identified or used as a specification cargo tank.

Section 173.22(a)(3)(ii) provides for arrangements between carriers and shippers for the communication of information pertaining to identification of specification cargo tanks. Although this provision is particularly reasonable with regard to determining conformance with basic design requirements, it could

also be construed to grant a shipper total relief from any responsibility relative to the condition of a cargo tank, even when it is loaded by or under supervision of the shipper. BMCS and MTB do not take this view.

Section 173.24 reads, in part, as follows:

(a) Each package used for shipping hazardous materials under this subchapter shall be so designed and constructed, and its contents so limited, that under conditions normally incident to transportation—

(1) There will be no significant release of the hazardous materials to the environment;

(2) The effectiveness of the packaging will not be substantially reduced; and \* \* \*

Under these provisions, a shipper may be held accountable for failure to make a reasonable determination that specification deficiencies, e.g., loose dome covers and faulty gaskets, of which the shipper has knowledge, were corrected before or at the time a cargo tank was loaded. Further, it is under this section that BMCS and MTB take the view that a shipper has substantial responsibility for assessing the compatibility of its products with the materials of construction of a cargo tank. For example, it is well recognized that the corrosion rate on certain steels is rapidly accelerated when sulfuric acid is loaded at elevated temperatures. Beyond a basic determination that a cargo tank meets specification requirements, a shipper has a responsibility to ascertain that its actions will not result in a violation of the above quoted regulation. An illustration of this view, based on the results of an accident in Castaic, California on November 5, 1981, is contained in a notice entitled "Prohibition; Propylene Dichloride in Aluminum Packagings" published in the Federal Register on March 25, 1982 (47 FR 12911).

In conclusion, it is recommended that a positive and continuing determination be made that each cargo tank marked with a DOT specification identification meets the requirements of that specification. If not, its metal identification plate must be removed or rendered illegible. Shippers should examine their operating practices relative to the offering of hazardous materials for transportation in cargo tanks to be assured of their compliance with the HMR.

Copies of the specifications that are no longer printed in the present edition of the HMR may be obtained for \$13.00 from National Tank Truck Carriers, Inc., 1616 P St., NW., Washington, D.C. 20036. The specifications are included in their document entitled "Cargo Tank

Hazardous Materials Regulations." A recommended standard for performing wall thickness measurements of cargo tanks by ultrasonic examination may be found in ASTM E 797-81, "Standard Practice for Measuring Thickness by Manual Ultrasonic Pulse-Echo Contact Method" (See 49 CFR 171.7(b)(6) for address).

In addition to matters raised in this notice concerning the present regulations pertaining to cargo tanks, the Governor of New Jersey has petitioned for changes to the HMR addressing maintenance and use of cargo tanks. His request was prompted by an accident involving a cargo tank transporting hydrochloric acid on the New Jersey Turnpike which "broke open and spilled its entire load." The Governor's requested changes are presently under consideration along with other proposals that address design and maintenance of cargo tanks.

(49 U.S.C. 1804(c) and 1808(d)(3); 49 CFR 1.53(e))

Issued in Washington, D.C. on March 31, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-9256 Filed 4-6-83; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 351

[Docket No. 30310-37]

#### Whaling; Amendments to Schedule of the International Convention for Regulation of Whaling

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Final rule.

**SUMMARY:** Section 916k of the Whaling Convention Act, 16 U.S.C. 916 et seq., requires that the Secretary of Commerce publish the Schedule of the International Convention for the Regulation of Whaling, 1946, in the *Federal Register*, so that the Schedule will "become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations" \* \* \*. This final rule publishes the most recent amendments to the Schedule of the International Convention for the Regulation of Whaling as required even though 50 CFR Part 351 (except as provided for in § 351.36) relates to commercial whaling which is currently

proscribed for all persons and vessels subject to the jurisdiction of the United States. Subsistence whaling by United States citizens is the subject of a periodic rulemaking published in 50 CFR Part 230.

**EFFECTIVE DATE:** These amendments to the Schedule were effective with respect to the United States on February 3, 1983. This final rule becomes effective on publication.

**FOR FURTHER INFORMATION CONTACT:**

Dean Swanson, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235, Telephone—(202) 634-1792.

**SUPPLEMENTARY INFORMATION:** At its 34th Annual Meeting held in Brighton, England, July 19-24, 1982, the International Whaling Commission (IWC) adopted amendments to the Schedule establishing a cessation of commercial whaling to take effect from the beginning of the 1985-86 pelagic and 1986 coastal whaling seasons, an aboriginal subsistence whaling management procedure to take effect from the beginning of the 1984 whaling season, and catch limits for the 1982-83 pelagic and 1983 coastal whaling seasons.

Notification of amendments to the Schedule was made by the Secretary to the IWC on August 6, 1982, and clarification to the notice was made on September 2, 1982. By terms of the Convention, the amendments become effective at the end of a 90 day objection period except for any to which one or more Contracting Governments file objection. If any amendment is the subject of an objection, it becomes effective with respect to all Contracting Governments that have not objected at the conclusion of a second 90 day objection period or 30 days after the last objection is filed, whichever is later.

At the conclusion of the initial objection period on November 4, 1982, three new Schedule amendments had been the subject of objection: that establishing a catch limit for the Peruvian stock of Bryde's whales, that establishing a catch limit for the Eastern South Pacific stock of Bryde's whales, and that establishing the cessation of commercial whaling. When the second objection period expired on February 2, 1983, no additional objections had been filed. The United States did not object to these or any other Schedule amendments. This publication incorporates all amendments to the Schedule that were or became binding on the United States as of February 3, 1983.

Regulations under the Whaling Convention Act relating to the 1983 harvest of bowhead whales by Alaskan Natives will be published at a later date and will appear in 50 CFR Part 230.

16 U.S.C. 916k requires the Secretary to promulgate IWC Schedule amendments. These amendments result from a process in which NOAA provided ample opportunity for public comment in the development of the United States position for the most recent IWC meeting. Because of the perfunctory nature of this publication and in view of the public's participation in preparing for the IWC meeting that produced the subject Schedule amendments, I for good cause find that a delay of 30 days in effectiveness under 5 U.S.C. 553 is impracticable and contrary to the public interest. Also, this promulgation is exempt from the NEPA environmental document requirements pursuant to Section 6(c)(3) of the revised NOAA Directive (NDM 02-10; 45 FR 49312-49321) implementing NEPA because it constitutes a programmatic function with no potential for significant environmental impact.

The Administrator has reviewed this final rule in accordance with the specifications of Executive Order 12291, "Federal Regulation," and the Departmental guidelines implementing that Order and determined that it has no impact on competition, employment, investment, or productivity. Accordingly, no regulatory impact analysis is required.

The Administrator has certified that this rule will not have a significant economic impact on a substantial number of small entities because it would regulate activities that are otherwise prohibited with the exception of aboriginal subsistence whaling allowed under 50 CFR Part 351.36. This exception will be the subject of a separate rulemaking to be published in 50 CFR Part 230. Accordingly, no regulatory flexibility analysis is required. Finally, this action does not increase the Federal paperwork burden for agencies, individuals, small businesses, or other persons. Therefore, the Paperwork Reduction Act of 1980 does not apply.

#### List of Subjects in 50 CFR Part 351

Whales, Marine mammals, Conservation/management.

Date: March 28, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management.