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[FR Doc. 03-24327 Filed 9-25-03; 8:45 am]

BILLING CODE 7050-01-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 107 and 180

[Docket No. RSPA-03-10373 (HM-220D)]

RIN 2137-AD86

#### Hazardous Materials: Approval Program for Certain Persons Performing Visual Requalification of DOT Specification Cylinders; Extension of Compliance Date

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

**ACTION:** Interim final rule; extension of compliance date and request for comments.

**SUMMARY:** RSPA is extending the compliance date of the regulations contained in 49 CFR 107.805(f) and 180.209(g) of the Hazardous Materials Regulations that require persons who perform visual requalification of DOT specification cylinders to obtain approval from RSPA and to mark the requalifier identification number assigned by RSPA on cylinders successfully requalified after September 30, 2003. This September 30, 2003 date is extended to May 31, 2004.

**DATES:** *Effective Date.* This rule is effective September 26, 2003.

*Compliance Date:* Delayed compliance with certain requirements is as specified in the regulatory text.

*Comments Date:* Comments must be received by October 27, 2003.

**ADDRESSES:** You may submit comments identified by the docket number RSPA-01-10373 (HM-220D) by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001. If sent by mail, comments are to be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard.

- Hand Delivery: Docket Management System; Room PL-401 on the plaza level

of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477-78), or you may visit <http://dms.dot.gov>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to the Docket Management System (*see ADDRESSES*).

**FOR FURTHER INFORMATION CONTACT:** Linda Cooper, (202) 366-4512, Office of Hazardous Materials Approvals and Exemptions, or Sandra Webb, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. RSPA-01-10373 (HM-220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions were made to simplify the regulations, respond to petitions for rulemaking, address recommendations of the National Transportation Safety Board, and enhance the safe transportation of hazardous materials in cylinders. The effective date of the final rule was October 1, 2002.

The August 8, 2002 final rule extended current approval requirements for persons who requalify DOT specification cylinders to persons who requalify certain cylinders by performing a complete external visual inspection. The rule requires each person who performs a visual inspection in accordance with § 180.209(g) to obtain an approval from us and to mark the requalifier identification number assigned by RSPA on a cylinder that successfully passes a visual requalification after September 30, 2003. The approval requirements are

contained in § 107.805(f). The approval requirements do not apply to a person who does prefill cylinder inspections such as prescribed in § 173.301(a)(2) or annual inspection of self-contained breathing apparatus (SCUBA) cylinders and who does no visual requalifications under § 180.209(g). After publication of the final rule, we received more than 2,300 applications and many telephone calls from persons asking about the approval requirements.

Because of the number of applications that we continue to receive, we are not able to complete processing and assigning requalifier identification numbers by the October 1, 2003 compliance date and we are concerned that many affected persons may not get their applications in by that date. Therefore, in this interim final rule, we are extending the compliance date after which persons who perform visual cylinder requalifications under § 180.209(g) must obtain approval from us and mark their assigned requalifier identification number on cylinders that have been successfully requalified to May 31, 2004.

##### II. Comments on This Interim Final Rule

Because October 1, 2003 is the mandatory compliance date currently prescribed in the HMR for marking cylinders with a requalifier identification number, we are issuing this interim final rule without prior notice and public comments. For this same reason, we are making these amendments effective without the customary 30-day delay following publication. Although an opportunity for public comment has not been provided prior to the issuance of this interim final rule, we are seeking public comments to this action. We may further amend the compliance date if warranted, based on the merits of comments.

##### III. Regulatory Analyses and Notices

###### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The interim final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This interim final rule amends an August 8, 2002 final rule that made revisions to requirements applicable to the maintenance, requalification, repair and use of DOT specification cylinders.

A regulatory evaluation prepared for the August 8, 2002 final rule is available for review in the docket.

#### *B. 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 economic impact on a substantial number of small entities. This interim final rule imposes no new costs of compliance on the regulated industry. Based on the assessment in the original regulatory evaluation, I hereby certify that while this interim final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed regulatory flexibility analysis for the August 8, 2002 final rule is available for review in the docket.

#### *C. Executive Order 13132*

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This interim final rule preempts state, local, and Indian tribe requirements but does not propose any regulation with 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 materials 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 material; or
- (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 interim final rule addresses covered subject item 5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at section 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 of this final rule is 90 days from publication of this final rule in the **Federal Register**.

#### *D. Executive Order 13175*

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this interim final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### *E. Unfunded Mandates Reform Act of 1995*

This interim 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, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector.

#### *F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. The amendments contained in this interim final rule impose no changes to the information collection and recordkeeping requirements contained in the August 8, 2002 final rule, which were approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and assigned control numbers 2137–0022 (approved through 09/30/2005) and 2137–0557 (approved through 12/31/2005).

#### *G. 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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### *H. Environmental Assessment*

This interim final rule extends the mandatory compliance date for certain persons who requalify cylinders to obtain approval from us and mark their assigned requalifier identification number on successfully requalified cylinders. The approval requirements were adopted in an August 8, 2002 final rule. The regulatory evaluation prepared for the August 8, 2002 final rule contains an environmental assessment and is in the public docket for this rulemaking. The August 8, 2002 final rule incorporates new cylinder technologies through new and updated incorporations by reference of consensus standards developed by CGA; increases flexibility for cylinder requalifiers, and users; and facilitates compliance with the HMR by clarifying and reorganizing regulatory requirements applicable to cylinders. In addition, the August 8, 2002 final rule improves the overall safety performance of DOT specification cylinders by addressing several identified safety problems. The August 8, 2002 final rule contains revisions to reduce unintentional releases of hazardous materials from cylinders during transportation and, therefore, will reduce environmental damage associated with such releases. To the extent that the revisions in this interim final rule maintain safety for transportation of hazardous materials in cylinders, we find that there are no significant environmental impacts associated with this final rule.

#### **List of Subjects**

##### *49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

##### *49 CFR Part 180*

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

■ In consideration of the foregoing, title 49, Chapter I, Subchapters A and C of the Code of Federal Regulations, are amended as follows:

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

■ 1. The authority citation for Part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

**§ 107.805 [Amended]**

■ 2. In § 107.805, in the last sentence in paragraph (f), amend by revising the date “September 30, 2003” to read “May 31, 2004”.

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

■ 3. The authority citation for part 180 continues to read as follows:

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

**§ 180.209 [Amended]**

■ 4. In § 180.209(g), in the fourth sentence, amend by revising the date “September 30, 2003” to read “May 31, 2004”.

Issued in Washington DC on September 17, 2003 under authority delegated in 49 CFR Part 1.

**Samuel G. Bonasso,**

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 03–24354 Filed 9–25–03; 8:45 am]

**BILLING CODE 4910–60–P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–03–15712]

**RIN 2127–AH08**

**Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles**

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

**ACTION:** Final rule, delay of effective date and correcting amendment.

**SUMMARY:** This document delays the effective date of, and makes a correcting amendment to, the final rule published on July 25, 2003 (68 FR 43964) that updates the Federal motor vehicle safety standard on glazing materials.

**DATES:** The effective date of the final rule amending 49 CFR part 571, published at 68 FR 43964, July 25, 2003, as corrected by the amendment in this

document, is delayed from September 23, 2003, to January 22, 2004. Voluntary compliance is permitted before that date.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

**SUPPLEMENTARY INFORMATION:****Background**

The standards that are the subject of these corrections are Federal Motor Vehicle Safety Standard (FMVSS) No. 205, “Glazing materials,” and FMVSS No. 500, “Low-speed vehicles.” A final rule amending these standards was published on July 25, 2003 (68 FR 43964). The rule updates FMVSS No. 205 so that it incorporates by reference the 1996 version of the industry standard, American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways (“ANSI/SAE Z26.1–1996”), on motor vehicle glazing. Currently, the Federal standard references the 1977 version of the industry standard and the 1980 supplement to that standard. The July 2003 final rule also simplifies understanding of the Federal glazing performance requirements. The amendments of the past 20 years to the standard resulted in a patchwork of requirements in the Federal standard that needed to be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of the Federal standard.

**Need for Correction**

As published, the July 2003 final rule contained errors that need correction. First, this document corrects the effective date of the final rule to provide the 180-day lead-time discussed in the preamble. The **DATES** section of the document incorrectly cited that the rule would become effective on September 23, 2003. This has been corrected in the **DATES** section of this document to state that the effective date for the July 2003 final rule is January 22, 2004, which is 180 days after the publication date of the July 2003 final rule.

Second, this document corrects an inadvertent omission of a location restriction for Item 4A glazing. In the current FMVSS No. 205 (S5.1.2.11), NHTSA only permits Item 4A glazing—Rigid Plastic for Use in Side Windows Rearward of the “C” Pillar—to be used in side windows rearward of the “C” pillar. As stated in the final rule permitting the installation of Item 4A glazing published on August 12, 1996 (61 FR 41739) and subsequent letters of interpretation, NHTSA does not permit Item 4A glazing near rear-facing seats or side-facing seats in any motor vehicle because of the concern that occupants riding in those seating locations may be able to contact their heads against Item 4A glazing in a crash. The breaking of rigid plastic windows in a crash could leave sharp, pointed shards in the window frame which could easily be contacted by an occupant’s head. There is also concern about occupant injury resulting from large shards of rigid plastic glazing being propelled inward by vehicle impacts with trees, poles, or other vehicles.<sup>1</sup>

In the July 2003 final rule, NHTSA incorporated by reference the ANSI/SAE Z26.1–1996 provision for Item 4A glazing that closely mirrors the requirements contained in the current FMVSS No. 205. It has come to our attention, however, that the ANSI/SAE Z26.1–1996 provision for Item 4A glazing does not contain the restriction that this Item of glazing only be permitted for use in side windows rearward of the “C” pillar. It would also permit Item 4A glazing in the rear windows of vehicles that previously were not allowed to have Item 4A glazing in any windows other than some rear side windows. The omission of this restriction was inadvertent and, as such, was not discussed or considered in either the Notice of Proposed Rulemaking published on August 4, 1999 proposing to amend FMVSS No. 205 by incorporating by reference ANSI/SAE Z26.1–1996 or in the July 2003 final rule. As such, the agency is taking this opportunity to correct the regulatory text of FMVSS No. 205 to make clear that Item 4A glazing is only permitted for use in side windows rearward of the “C” pillar.

<sup>1</sup> While not discussed in the 1996 final rule, the reduction in visibility through rear windows using plastic glazing due to abrasion and weathering creates significant safety concerns because a driver may have insufficient visibility to avoid a crash in the first place. This issue was not discussed in the 1996 final rule because all parties to that rulemaking agreed that inferior visibility in the rear window created an unsafe driving condition.