

C. Regulatory Flexibility Act

The regulatory evaluation developed in support of the January 8, 1997 final rule includes a benefit-cost analysis that justifies its adoption, primarily due to the positive net benefits that may be realized by small entities under the materials of trade exception. RSPA has reviewed this regulatory evaluation and determined it was not necessary to update it.

D. Paperwork Reduction Act

There are no information collection requirements in this final rule.

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 in 49 CFR Part 173

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

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

2. In § 173.5, the introductory text of paragraph (b) and paragraph (b)(3) are revised to read as follows:

§ 173.5 Agricultural operations.

\* \* \* \* \*

(b) The transportation of an agricultural product to or from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of this subchapter and from the specific packaging requirements of this subchapter when:

\* \* \* \* \*

(3) The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a State statute or regulation in effect before October 1, 1998; and

\* \* \* \* \*

3. In § 173.6, paragraph (c)(2) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

\* \* \* \* \*

(c) \* \* \* (2) A bulk packaging containing a diluted mixture of a Class 9 material must be marked on two opposing sides with the four-digit identification number of the material. The identification number must be displayed on placards, orange panels or, alternatively, a white square-on-point configuration having the same outside dimensions as a placard (at least 273 mm (10.8 inches) on a side), in the manner specified in § 172.332 (b) and (c) of this subchapter. Each digit in the identification number marking must be displayed in 100 mm (3.9 inches) black Helvetica Medium, Alpine Gothic or Alternate Gothic No. 3 numerals.

\* \* \* \* \*

§ 173.8 [Amended]

4. In § 173.8, paragraph (d)(1) is amended by revising the date "July 1, 1998" to read "October 1, 1998".

5. In addition, in § 173.8, paragraph (d)(5) is revised to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

\* \* \* \* \*

(d) \* \* \*

(5) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or a marine pollutant (except for gasoline); and

\* \* \* \* \*

Issued in Washington, DC on February 9, 1998, under authority delegated in 49 CFR, part 1.

Kelley S. Coyner,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR-6; Notice No. 46]

RIN 2130-AA81

Random Drug and Alcohol Testing: Determination of 1998 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Under §§ 219.602 and 219.608 of FRA's regulations on drug and alcohol testing (49 CFR Part 219), each year the Federal Railroad Administrator (Administrator)

determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1995 and 1996, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1998 through December 31, 1998 will remain at 25 percent of covered railroad employees.

DATES: This notice of determination is effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Operating Practices Division, Federal Railroad Administration, 400 7th Street, S.W., Room 8314, Washington, D.C. 20590, (Telephone: (202) 632-3378) or Patricia V. Sun, Trial Attorney (RCC-11), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 632-3183).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1998 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this and other program data, the Administrator publishes a Federal Register notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR §§ 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent

because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1998 through December 31, 1998, since the industry random positive rate for 1996 was 0.85 percent.

#### **Administrator's Determination of 1998 Random Alcohol Testing Rate**

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1995 MIS report indicated an industry-wide positive rate of 0.29 percent and the 1996 MIS report indicates a positive rate of 0.24 percent, recent FRA audits of railroad programs revealed significant random testing program problems which may have skewed the data. The most critical deficiency uncovered in these audits was the failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will obtain at least one additional year of data and continue to audit industry testing programs. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on February 11, 1998.

**Jolene M. Molitoris,**  
*Administrator, Federal Railroad Administration.*

[FR Doc. 98-4068 Filed 2-17-98; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

[Docket No. NHTSA-98-3452]

RIN 2127-AG47

#### **Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Federal motor vehicle safety standard on lighting to permit white reflex reflectors designed to be mounted horizontally in trailer and truck tractor conspicuity treatments to be mounted vertically in upper rear corner locations if they comply with appropriate photometric requirements for off-axis light entrance angles. This action simplifies compliance with the standard.

**DATES:** The amendments are effective February 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone 202-366-5265; fax 202-366-4329).

**SUPPLEMENTARY INFORMATION:** Paragraph S5.7 of Motor Vehicle Safety Standard No. 108 specifies conspicuity system requirements for truck tractors, and trailers of 80 or more inches overall width and a gross vehicle weight rating of more than 10,000 pounds. Part of the conspicuity treatment consists of two pairs of items of white material applied horizontally and vertically to the right and left upper contours of the rear of the body. This material may be either white retroreflective sheeting or white reflex reflectors.

NHTSA received a petition for rulemaking concerning white reflectors. Paragraph S5.7.2.1(c) requires white reflex reflectors to

provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

James King & Co wrote to NHTSA saying that white reflectors designed to give the required performance at 30 and 45 degrees right and left entrance angles when mounted horizontally cannot do so in the right and left directions when tested in the vertical position, i.e., when those reflectors are rotated 90 degrees. Consequently, when white reflex reflectors are molded in bars of multiple reflectors, the reflector bars required for the two upper rear vertical position must be different from the reflector bars that are used in horizontal positions to fulfill conspicuity requirements. King petitioned for rulemaking to allow use of horizontal bars meeting S5.7.2.1(c) in vertical directions.

NHTSA tentatively agreed with the petitioner, granted the petition, and published a notice of proposed rulemaking on May 14, 1997 (62 FR 26466) as Docket No. 97-30; Notice 1. As published, Standard No. 108 would be amended by adding a new paragraph "S7.5.2.2(c)" to read:

(c) If white reflex reflectors comply with paragraph S7.5.2.1(c) when installed horizontally, they may be installed in all orientations specified for rear upper locations in paragraph S5.7.4.1(b) or paragraph SS5.7.1.4.3(b).

Some numerals were transposed in the proposed amendment. In actuality, NHTSA meant to propose adding a new paragraph S5.7.2.2(c). Further, the initial reference in this new paragraph should have been to S5.7.2.1(c). However, these transpositions did not create any conflict as there are no existing paragraphs S7.5.2.1(c) and S7.5.2.2(c). The proposal was justified on the basis that the upper rear conspicuity treatment, unlike the lower treatment, does not need to reflect light at large horizontal entrance angles to achieve its intended purpose, and that it is desirable for conspicuity reflectors to be interchangeable and simple to use. For further information, the reader is referred to the notice of May 14.

Ford Motor Company ("Ford"), Advocates for Highway and Auto Safety ("Advocates"), 3M Traffic Control Materials Division ("3M"), and Mr. G.J.M. Meekel commented on the proposed amendment. Ford concurred with the proposal because its adoption would remove a design restriction without compromising the need to improve the nighttime conspicuity of large vehicles. However, Advocates and 3M opposed the proposal because they believed it would reduce the effectiveness of the conspicuity material. Advocates also opposed the use of any reflex reflectors in conspicuity treatments, citing the