DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-183D; Amendment No. 107-28]

RIN 2137-AC37

Cargo Tanks; Registration of Registered Inspectors and Design Certifying Engineers; Grandfather Provision

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends requirements concerning the registration of Registered Inspectors and Design Certifying Engineers for certification of cargo tank motor vehicles. Affected persons are those meeting the prescribed experience qualification before September 1, 1991, but not the education qualification. This action, to reopen the registration period which closed on December 31, 1991, is in response to a petition for rulemaking. The intended effect of this action is to provide another opportunity for persons meeting the specified criteria to register under the grandfather provision.

DATES: The effective date of this interim final rule is September 3, 1993. Comments must be received by October 13, 1993.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On March 3, 1993, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register under Docket HM-183C, Notice No. 93-7 [58 FR 12316]. The NPRM proposed to make various miscellaneous changes to the regulations pertaining to cargo tank motor vehicles. Most of the proposed changes were based on petitions for rulemaking received by RSPA. However, a petition for rulemaking [P-1167] filed by the National Tank Truck Carriers, Inc. (NTTC) was not included. NTTC requested that § 107.502(f) be amended by removing the date by which registration statements must be submitted. Section 107.502(f) allowed persons who had at least three years of experience in performing the functions of a Registered Inspector or a Design Certifying Engineer by September 1, 1991, but who did not meet the minimum education requirement, to register with DOT. The registration statements had to be submitted to DOT before December 31, 1991.

NTTC stated that RSPA has presented no reason to justify denying qualified persons who may have successfully performed a job for over 20 years from doing that job because they did not graduate from high school or because an employer failed to register such employees by some arbitrarily selected date. NTTC requested that should DOT deny the request to remove the date, the date should be changed to a future date, such as, December 31, 1995.

RSPA also has received telephone calls from persons stating that they had failed to register because they were unaware of the requirement to register under the grandfather provision. Some employers cited instances where they were unable to hire new employees because they were not registered. RSPA agrees with NTTC that there is a need to provide another opportunity for those persons who performed the specified functions before December 31, 1991, to register. NTTC requested the extension only for Registered Inspectors; however, RSPA believes an extension should also be provided for Design Certifying Engineers. Therefore, RSPA is reopening and extending the registration period for such persons to December 31, 1995. This extension applies only to persons who met the three year work experience requirement no later than September 1, 1991.

NTTC requested clarification concerning whether a person who is not a Registered Inspector can perform the tests and inspections prescribed in § 180.407(c), under the supervision of a person who is a Registered Inspector, provided the Registered Inspector signs the test or inspection forms. RSPA allows persons not meeting the education or experience qualification to work under the supervision of a Register Inspector. The Registered Inspector would ensure that the tests or inspections are performed according to applicable requirements and certify the applicable reports.

RSPA has determined that good cause exists for finding that notice and public procedure are unnecessary. RSPA believes that any further delay in issuing these regulations would create further hardship on those persons who were not registered before December 31, 1991, and on their employers. This rule provides regulatory relief without adversely affecting safety. For these same reasons, these amendments are being made 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, RSPA is seeking public comment to this action. All comments submitted to this interim final rule will be addressed in a Federal Register publication along with comments received to the NPRM under Docket HM-183C.

Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This interim final rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This Interim final rule does not impose additional requirements and, in fact, will provide regulatory and economic relief in some areas. A supplement to the draft regulatory evaluation for Docket HM-183C has been placed in the docket.

B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle

to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

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

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 App. U.S.C. 1804(a)(4)(A) and (B)).

This interim final rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials. This interim final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if 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. That 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 of these requirements will be 90 days after issuance of the final rule. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

This rule will have no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137-0014.

E. 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has concluded that this interim final rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

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

In consideration of the foregoing, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

Authority: 49 App. U.S.C. 1421(c); 1802, 1804, 1805, 1806, 1808–1811, 1815; Public Law 89–670, 80 Stat. 933 [49 App. U.S.C. 1653(d), 1655]; 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

§ 107.502 [Amended]

2. In § 107.502, in paragraph (f)(2), the date "December 31, 1991" is revised to read "December 31, 1995".

Issued in Washington, DC, on August 30, 1993, under authority delegated in 49 CFR Part 1.

George W. Tenley, Jr.,

Acting Administrator, Research and Special Programs Administration.

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