

plans found in most articles and literature on the subject. In particular, attainment of an age close to retirement and significant service—e.g., age 50 and 20 years of service—were usually required for eligibility. All the plans contained reference to the contractor's unrestricted right to amend or terminate the plan.

There have also been a number of news stories in the print and broadcast media concerning retirees from large private companies who have lost their employer-based retiree health insurance and have been unable to purchase health insurance coverage on their own due to pre-existing conditions or cost. As the general public has become increasingly aware of this issue, some members of Congress have begun considering how the protections of the Employee Retirement Income Security Act of 1974 (ERISA) or other statutes might be extended to protect these retirees.

In response to a request from Representative Carolyn McCarthy, the GAO did a survey of three major defense contractors. In a letter to the Congresswoman dated February 27, 2003, which reported on "Retiree Health Benefits at Selected Government Contractors," the GAO wrote:

DCMA and DCAA closely monitored postretirement health benefits to ensure charges to the government were made in compliance with federal regulations. As part of their oversight efforts, the two agencies performed risk assessments and conducted regular reviews of the contractors' actual and projected postretirement health benefits costs and the assumptions underlying future projections. For the 2 years covered in our review, neither DCAA nor DCMA found any significant problems with the contractors' actual or projected postretirement health benefit costs. For example, DCAA took no exceptions to the projected costs reflected in the contractors' pricing proposals and took exception to less than 1 percent of the \$756 million in postretirement health benefits costs incurred by the contractors over the 2-year period.

#### Conclusions

Because contractors need the flexibility to modify, reduce, or even eliminate post-retirement benefits in the future in response to the pressures of medical inflation, an aging population, and global competition, the Board finds that the liability for post-retirement benefits cannot be made sufficiently firm to be recognized for government cost accounting purposes without undue financial risk to both the contractor and the government.

Therefore, the Board has decided to discontinue further development of the rule proposed in the ANPRM and the project (CASB Docket No. 96-02A) to develop a separate Cost Accounting Standard (CAS) that addresses the recognition of costs of post-retirement benefit plans under government cost-based contracts and subcontracts.

**Angela B. Styles,**

*Chair, Cost Accounting Standards Board.*

[FR Doc. 03-23053 Filed 9-9-03; 8:45 am]

**BILLING CODE 3110-01-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 171, 173 and 180

[Docket No. RSPA-03-14405 (HM-220F)]

RIN 2137-AD78

#### Hazardous Materials Regulations: Aluminum Cylinders Manufactured of Aluminum Alloy 6351-T6 Used in SCUBA, SCBA, and Oxygen Service—Revised Qualification and Use Criteria

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA proposes to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) pertaining to aluminum cylinders manufactured using aluminum alloy 6351-T6. The purpose of this rulemaking initiative is to enhance safety, minimize the potential for personal injury and property damage during the cylinder filling process, and adopt a standard for early detection of sustained load cracking (SLC) to reduce the risk of a cylinder rupture.

**DATES:** Comments must be received by November 10, 2003.

**ADDRESSES:** You may submit comments 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 20590-001.

- Hand Delivery: To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC between 9:00 am and 5:00 pm, Monday through Friday, except Federal Holidays.

**Instructions:** You must include the agency name and docket number RSPA-03-14405 (HM-220F) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act section of this document.

**Docket:** You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Mark Toughiry, Office of Hazardous Materials Technology, (202) 366-4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366-8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

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  - G. Unfunded Mandates Reform Act
  - H. Environmental Assessment
  - I. Privacy Act

#### I. Background

Cylinders made of aluminum alloy 6351-T6 are known to be susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder. The majority of the SLC-related ruptures have occurred in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. Since 1994, the Research and Special Programs Administration (RSPA, we) has been notified of twelve suspected SLC ruptures of cylinders manufactured of aluminum alloy 6351-T6. Five of the twelve ruptures resulted in serious injuries. RSPA's review of manufacturers' data revealed that there have been several thousand cylinders

that leaked, and many additional cylinders have been found with cracks in the cylinder's neck during the normal requalification process. Manufacturers of cylinders made from the 6351-T6 alloy have performed research, testing and analysis to determine whether there is any correlation between SLC and the probability of a cylinder rupture. The data indicated that the cylinders would leak but not rupture when operated at marked service pressure. It was also found that the probability of cracking increases with an increase in stress levels. We performed additional metallurgical analysis on several ruptured cylinders to verify the cause of failure and failure mode. (See the metallurgical analysis reports at [http://hazmat.dot.gov/3al\\_cyls\\_info.htm](http://hazmat.dot.gov/3al_cyls_info.htm).) Those metallurgical analyses revealed that SLC caused the cylinder ruptures, but the results were inconclusive as to why the cylinders abruptly ruptured instead of leaked. United States manufacturers discontinued using aluminum alloy 6351-T6 in mid-1990, replacing it with aluminum alloy 6061-T6, which is not susceptible to SLC. We estimate that approximately four million U.S. cylinders manufactured from aluminum alloy 6351-T6 are in use in SCUBA, SCBA, and oxygen services.

The primary domestic manufacturers of DOT 3AL cylinders currently in service are Luxfer USA; Walter Kidde Co.; Cliff Impact Division of Parker Hannifin Corporation; and Catalina Cylinders. The majority of the cylinders are being used in six major services: (1) SCUBA, (2) SCBA, (3) carbon dioxide, (4) oxygen, (5) industrial gases, and (6) fire extinguishers.

Cylinders manufactured of aluminum alloy 6351-T6 prior to July 1990 include seamless aluminum cylinders marked "DOT 3AL", including those marked with "DOT 3AL" above or near one of the following exemption or special permit numbers: 6498, 7042, 8107, 8364, and 8422. In addition, unless determined otherwise, affected individuals should assume that a DOT 3AL or DOT-E 7235 cylinder manufactured outside the United States is constructed of aluminum alloy 6351-T6.

On August 8, 2002, we published a final rule (Docket HM-220D, 67 FR 51626) that amended the requirements of the HMR applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. In that final rule, we added the following amendments pertaining to DOT specification cylinders made with aluminum alloy 6351-T6:

- We removed the authorization for the manufacture of DOT specification

cylinders from aluminum alloy 6351-T6 because cylinders manufactured with this aluminum alloy have a greater risk of failure than other aluminum cylinders.

- We prohibited these cylinders for Hazard Zone A materials effective on October 1, 2002. After that date, cylinders made of aluminum alloy 6351-T6 may not be filled and offered for transportation in toxic inhalation hazard service.

- We prohibited the use of cylinders manufactured of aluminum alloy 6351-T6 for gases having pyrophoric properties.

- We required a DOT specification or exemption cylinder made of aluminum alloy 6351-T6 to be inspected for evidence of sustained load cracking in the neck and shoulder area.

As stated earlier, the majority of the SLC-related ruptures occurred in SCUBA, SCBA and oxygen services. Additionally, for these services, the probability of cracking increases due to the increased frequency with which cylinders in these services are filled. We recognize that cylinders used in beverage service are also filled on a frequent basis. However, beverage service cylinders typically are filled to lower pressures than cylinders used in SCUBA, SCBA, and oxygen services, thereby reducing the stress levels to which beverage service cylinders are subjected. Moreover, in SCUBA and SCBA services, the cylinder is attached to the back of a diver or firefighter, which substantially increases the risk of injury or fatality in the event of a rupture. Similarly, an oxygen cylinder may be placed close to a patient in the hospital or home. SLC could also result in an oxygen leak that may cause an explosion. Therefore, because of the higher risk in SCUBA, SCBA and oxygen services, this rulemaking (HM-220F) proposes to adopt a standard for early detection of SLC to reduce the risk of a cylinder rupture.

We performed an analysis of costs associated with operating cylinders manufactured of aluminum alloy 6351-T6. The economic evaluation considered and compared the costs of three possible alternatives: (1) Leaving the cylinder in service without taking any additional measures to reduce the risk, (2) removing all cylinders made of aluminum alloy 6351-T6 from service, or (3) performing a non-destructive examination (NDE) at the time of the cylinder's periodic requalification and requiring additional operational controls (OC) during the cylinder filling process. Estimating the societal cost of injuries or fatalities that would otherwise be avoided if SLC were

eliminated is complicated. The uncertainties due to the unpredictability at which ruptures occur and the likelihood that aging cylinders may be progressively more prone to SLC makes option three to most prudent of the three options. It also addresses a known safety problem without imposing excessive costs.

DOT 3AL cylinders must be requalified every five years (twelve years for fire extinguishers) in accordance with § 180.205 of the HMR. The requalification performed under § 180.205 includes a visual inspection (internal and external) and a volumetric expansion test. The requalification does not include a specific NDE of the cylinder neck or crown areas for detection of SLC. However, we understand that in addition to the visual inspection and volumetric expansion test, many users and requalifiers are currently performing an eddy current examination. Approximately 2,000 eddy current devices have been purchased by various cylinder requalifiers to examine aluminum cylinders for SLC. Cylinder manufacturers report that a large number of affected cylinders have been removed from service because of flaws discovered during eddy current examinations.

We evaluated three NDE methods—visual examination (VT), eddy current examination (ET), and ultrasonic examination (UT)—to detect a critical-size crack. A cylinder with a critical-size crack must be removed from service upon detection of the crack. Under the direction of RSPA, Texas Research Institute (TRI) evaluated these three NDE (VT, ET, UT) methods by performing blind examinations that were applied by individuals of varying skill levels (See the Nondestructive Inspection of High Pressure Aluminum Gas Cylinder, Final Report, dated September 2000, at <http://hazmat.dot.gov/ohmforms.htm#other>). TRI determined that each NDE method was capable of detecting SLC, but the detectability using VT was limited by external factors, such as the inspector's eye sight, lighting, position of the crack, and alertness of the examiner. TRI also determined that UT must be applied by a certified technician to produce accurate results in detecting SLC. TRI concluded that ET combined with a visual inspection (VT) provides the most accurate and practical examination for detecting SLC. Both ET and VT can be conducted by a requalifier with minimal training.

In this NPRM, we propose to require cylinders manufactured of aluminum alloy 6351-T6 used in SCUBA (diving), SCBA (firefighting), and oxygen service

to undergo a combined visual and eddy current examination (referred to as "VE" in this rulemaking) in order to requalify the cylinders in accordance with § 180.205. We propose to add a new Appendix C to part 180, to specify the procedure to be used to conduct the ET examination. No person may requalify a DOT specification or exemption cylinder in accordance with § 180.209 of this chapter unless that person has been issued a requalifier identification number (RIN) as provided in § 107.805(d). Each person who holds a valid RIN and performs an ET in accordance with § 180.205 must notify RSPA in writing in accordance with the procedural requirements in § 107.805. We are also proposing that suitable safeguards be provided to protect personnel and facilities should failure occur during the filling of cylinders manufactured of aluminum alloy 6351-T6 used in SCUBA, SCBA, and oxygen services. Additionally, we are recommending that only individuals essential to the filling process be allowed in the vicinity of the cylinder during the filling process.

Although we believe that the twelve reported SLC suspected ruptures under-represent the extent of the SLC issue, we do not have sufficient data to determine whether the SLC related ruptures extend beyond those services discussed above. Therefore, we are requesting additional information from manufactures and users who are aware of the rupture of any DOT 3AL cylinder or any other cylinder manufactured from aluminum alloy 6351-T6, whether the incident was domestic or foreign, to submit the information in their comments to this rulemaking. More broadly, we invite commenters to address the issue of whether the new inspection requirements proposed in this NPRM should apply to cylinders manufactured of aluminum alloy 6351-T6 and used in services other than SCUBA, SCBA, or oxygen.

## II. Public Participation

You should identify the docket number RSPA-03-14405 (HM-220F) at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you should include a self-addressed stamped postcard. Internet users may access all comments received by DOT at <http://dms.dot.gov>.

## III. Section-by-Section Review

### Part 171

#### Section 171.7

As a result of RSPA's proposal to require cylinders manufactured of aluminum alloy 6351-T6 used in SCUBA, SCBA, and oxygen service to undergo an NDE, we are proposing to revise the incorporation by reference entry CGA Pamphlet C-6.1, "Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995," under the Compressed Gas Association, Inc., to incorporate by reference the 2002 edition of this pamphlet. The 2002 edition of the standard has provisions discussing cleaning methods that may result in the removal of cylinder wall material. It also contains a new requirement that all aluminum cylinders be internally inspected for cracks in the neck region. Persons who may be affected by these changes should review the standard to determine any potential impacts on their operations.

### Part 173

#### Section 173.302

We are proposing to revise this section by adding a new paragraph (e) to require that operational controls must be in place during the filling process, for cylinders manufactured of aluminum alloy 6351-T6. The operational controls will reduce the risk of injury and property damage during the filling process.

### Part 180

#### Section 180.209

We are proposing to revise in paragraph (a), the entry for the DOT 3AL cylinder in the "Requalification of Cylinders" table to add a reference to the new paragraph (m). In addition, we are proposing to add a new paragraph (m) to include a non-destructive examination for cylinders manufactured of aluminum alloy 6351-T6. The non-destructive examination will be used to detect sustained load cracking in the neck and shoulder area.

#### Section 180.213

We are proposing to revise paragraph (d) and to add a new paragraph (f)(8) to specify the requalification marking requirements for those aluminum cylinders that successfully pass the combined eddy current examination and visual inspection.

## IV. Regulatory Analyses and Notices

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

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory analysis is available for review in the docket.

The compliance costs associated with this rule are minimal. The regulatory analysis revealed the increased cost for performing an NDE and OC to be small compared to the cost and safety risks of "doing nothing," and it is significantly less than the cost of "removing all cylinders from service." The economic evaluation data were based on information obtained from cylinder manufacturers, industrial gas companies, cylinder inspectors, and on metallurgical evaluation of the ruptured cylinders. We determined that the removal of cylinders manufactured of aluminum alloy 6351-T6 will result in a significant economic impact to cylinder owners and may cause a serious shortage of breathing air cylinders used in fire fighting and medical applications. Therefore, based on the risk assessment and regulatory analysis, we conclude that a requirement to perform an eddy current examination combined with a visual inspection at the required five-year requalification period is the best alternative. Since the NDE would take place at the time of the currently required five-year requalification period, the cost would be reduced substantially. We estimate the cost of volumetric expansion test and internal visual inspection that is required under the current regulation to be \$5.00 per cylinder every five years. We estimate that the eddy current examination combined with the current volumetric expansion test and visual inspection to be \$7.25 per cylinder every five years. The estimated \$7.25 per cylinder includes the initial start-up cost (e.g., training and cost of purchasing eddy current equipment). Therefore, we estimate the additional annual cost of the eddy current examination combined with the visual inspection to be \$0.45 per cylinder. The average annual cost of this examination is the annual cost per cylinder multiplied by the number of cylinders, or \$1,800,000. The cost of additional operational controls is nominal.

While researching a viable NDE method that could accurately detect SLC, we made a significant effort to reduce the risk of injury by educating cylinder users regarding the risk of using cylinders manufactured of aluminum alloy 6351-T6. As a result of this effort, we published the following safety advisory notices in the **Federal Register** between 1983 and 1999, concerning SLC in cylinders manufactured of aluminum alloy 6351-T6:

Aug. 11, 1983; Vol. 48, No. 156; pg. 36559

Feb. 27, 1984; Vol. 49, No. 39; pg. 7182

Nov. 01, 1984; Vol. 49, No. 213; pg. 44047

Jul. 17, 1985; Vol. 50, No. 137; pg. 29037

Aug. 15, 1985; Vol. 50, No. 158; pg. 32944

Jul. 10, 1987; Vol. 52, No. 132; pg. 26027

Mar. 24, 1993; Vol. 58, No. 55; pg. 15895

Aug. 10, 1993; Vol. 58, No. 152; pg. 42620

Jul. 26, 1994; Vol. 59, No. 142; pg. 38028

Dec. 14, 1998; Vol. 63, No. 239; pg. 68819

Oct. 18, 1999; Vol. 64, No. 2001; pg. 56243

#### B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt State, local and Indian tribe requirements, but does not propose any regulation that has 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.

The Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

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

(3) the preparation, execution, and use of shipping documents related to hazardous material 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, manufacturing, fabricating, marking, maintenance,

reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule covers items 2 and 5 and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary 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. We propose that the effective date of Federal preemption will be 90 days from publication of a final rule in the **Federal Register**.

#### C. Executive Order 13175

This proposed 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 proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

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 rule imposes only minimal new costs of compliance on the regulated industry. Based on the assessment in the regulatory evaluation, I hereby certify that while this 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 is available for review in the docket.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### E. Paperwork Reduction Act

This proposed rule may result in a modest increase in annual burden and costs based on a new information collection requirement. These proposals regarding the shipment of aluminum cylinders which result in a new information collection requirement will be submitted to OMB for review and approval. RSPA currently has an approved information collection under OMB Control No. 2137-0022, "Testing, Inspection, and Marking Requirements for Cylinders."

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that RSPA will submit to OMB for approval based on the requirements in this proposed rule. RSPA has developed burden estimates to reflect changes in this proposed rule. RSPA estimates that the total information collection and recordkeeping burden as proposed in this rule would be as follows:

OMB No. 2137-0022:

Total Annual Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 271,461.

Total Annual Burden Cost:

\$2,615,515.

Total One-Time Start-Up Cost:

\$964,000.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Direct your requests for a copy of the information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of comment period identified in the **DATES** section of this rulemaking. 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. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the

Office of Management and Budget for approval.

**F. 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.

**G. Unfunded Mandates Reform Act**

This proposed 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 to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

**H. Environmental Assessment**

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule.

RSPA proposes to amend requirements in the HMR pertaining to DOT 3AL aluminum cylinders. The purpose of this rulemaking initiative is to minimize personal injury during the cylinder filling process and to adopt a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture. Adopting a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture has no potential for environmental damage or contamination.

**I. Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). 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>.

**List of Subjects**

**49 CFR Part 171**

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

**49 CFR Part 173**

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

**49 CFR Part 180**

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I, Subchapter C, as follows:

**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 the table in paragraph (a)(3), the entry for pamphlet C–6.1 under the Compressed Gas Association, Inc., is revised to read as follows:

**§ 171.7 Reference material.**

(a) \* \* \*  
\* \* \* \* \*

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

Source and name of material	49 CFR reference
* * * * *	* * * * *
Compressed Gas Association, Inc.,	
* * * * *	* * * * *
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002.	180.205; 180.209; Appendix C to part 180.
* * * * *	* * * * *

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENT AND PACKAGES**

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

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53

4. In § 173.302, paragraph (e) is added to read as follows:

**§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.**

\* \* \* \* \*

(e) *Aluminum cylinders manufactured of 6351–T6 aluminum alloy.* Suitable safeguards must be

provided to protect personnel and facilities should failure occur while filling cylinders manufactured of aluminum alloy 6351–T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. The cylinder filler should allow only those individuals essential to the filling process to be in the vicinity of the cylinder during the filling process.

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

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

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

6. In § 180.209 in paragraph (a), in the “Requalification of Cylinders table” the entry “DOT 3AL” is revised, and a new paragraph (m) is added to read as follows:

**§ 180.209 Requirements for requalification of specification cylinders.**

\* \* \* \* \*

(a) \* \* \*

TABLE 1.—REQUALIFICATION OF CYLINDERS <sup>1</sup>

Specification under which cylinder was made	Minimum test pressure (psig.) <sup>2</sup>	Requalification period (years)
* * * * *	* * * * *	* * * * *
DOT 3AL .....	5/3 times service pressure .....	5 or 12 (see § 180.209(j) and § 180.209(m) <sup>3</sup> ).
* * * * *	* * * * *	* * * * *

<sup>1</sup> Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.

<sup>2</sup> For cylinders not marked with a service pressure, see § 173.301(e)(1) of this subchapter.

<sup>3</sup> This provision does not apply to aluminum cylinders used in fire extinguisher service.

<p>* * * * *</p> <p>(m) <i>Aluminum cylinders manufactured of 6351-T6 aluminum alloy.</i> In addition to the periodic requalification and marking described in § 180.205, cylinders manufactured of aluminum alloy 6351-T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained</p>	<p>breathing apparatus (SCBA), and oxygen service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Cylinders with sustained load cracking that has expanded into the neck threads must be condemned in accordance with</p>	<p>§ 180.205(i). This provision does not apply to aluminum cylinders used in fire extinguisher service and to cylinders used to transport carbon dioxide or industrial gases. Requalification and inspection of the aluminum cylinders must conform to the following table.</p>
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**REQUALIFICATION AND INSPECTION OF ALUMINUM CYLINDERS MADE OF ALUMINUM ALLOY 6351-T6 MANUFACTURED PRIOR TO JULY 1990**

Requalification requirement	Examination procedure <sup>1</sup>	Sustained load cracking rejection criteria <sup>2</sup>	Requalification period (years)
Eddy current examination combined with visual inspection.	In accordance with Appendix C of this part. Visual inspection—In accordance with CGA Pamphlet C-6.1 (IBR; see § 171.1 of this subchapter).	2 threads long .....	5

<sup>1</sup> The requalifier performing eddy current must be familiar with the eddy current equipment and standardize (calibrate) the system in accordance with the requirements provided in Appendix C to this part. The requalifier must perform the visual inspection of the cylinder neck and shoulder in accordance with CGA Pamphlet C-6.1 (IBR; see § 171.7 of this subchapter).

<sup>2</sup> The eddy current must be applied from the inside of the cylinder's neck to detect any sustained load cracking that has expanded into the neck threads.

7. In § 180.213, paragraph (d) is revised and a new paragraph (f)(8) is added to read as follows:

**§ 180.213 Requalification markings.**

\* \* \* \* \*

(d) *Requalification markings.* Each cylinder that has successfully passed requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right; and the fourth in the lower left. Example: A cylinder requalified in September 1998, and approved by a person who has been issued RIN “A123”, would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is a follows:

A1	
9	98 X
32	

Where:

“9” is the month of requalification  
 “A123” is the RIN  
 “98” is the year of requalification, and  
 “X” represents the symbols described in paragraphs (f)(2) through (f)(8) of this section.

\* \* \* \* \*

(f) \* \* \*

\* \* \* \* \*

(8) For designation of the eddy current examination combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section, except that the “X” is replaced with the letters “VE”.

8. In Part 180, Appendix C is added to read as follows:

**Appendix C to Part 180—Acceptable Eddy Current Examination for Cylinders Manufactured of Aluminum Alloy 6351-T6**

1. This examination procedure is designed to detect critical size cracks in cylinders made of aluminum alloy 6351-T6.

2. *Eddy Current Equipment*—Equipment, such as Visual Plus, Visual Eddy, or equivalent non-destructive testing equipment must be capable of detecting the notches on the standard reference ring.

3. *Eddy Current Reference Ring*—The reference ring must be produced to represent the outer diameter (O.D.) of each cylinder to be tested. The reference ring must include artificial notches that will simulate a neck crack. The size of the artificial notch (depth and length) must be obtained from the eddy current equipment manufacturer. The standard reference must have a drawing that includes the depth of each notch, diameter and alloy.

4. *Eddy Current Equipment Standardization*—Each day prior to testing, the eddy current equipment must be standardized for each size (O.D.) of aluminum cylinder, using the reference ring described in item number 3 above. The minimum standardization requirements of the eddy current equipment are as follows:

(i) Screw reference ring onto the probe until the base of the reference ring is flush with the probe bottom, then back off two turns.

(ii) Warm the equipment for at least 20 minutes.

(iii) Set up the system between 150–215 kHz.

(iv) Locate the line  $\frac{1}{4}$  from the screen bottom.

(v) Rotate the reference ring counterclockwise and observe the spike signal on the screen. Adjust the gain (using gain control) until the spike peaks to  $\frac{3}{4}$  of the screen height (from home position to  $\frac{1}{4}$  of screen from the top).

(vi) When spike signals break the centerline the threshold light must come on.

5. *Eddy Current Examination and Visual Inspection*—A written examination procedure for performing the eddy current examination and visual inspection must be kept at each facility that performs examinations under this procedure. The visual inspection procedure must be in accordance with CGA pamphlet C-6.1 (IBR; see § 171.1 of this subchapter).

At a minimum, the written examination procedure for performing the eddy current must include the following instructions:

(i) Remove the probe from the reference ring and screw probe clockwise half-way into cylinder's neck and press the sweep (e.g. NULL) button.

(ii) Continue rotating the probe clockwise until the threshold line moves off top of the screen, indicating probe is inside shoulder area (probe is in air).

(iii) Rotate probe counterclockwise towards the outlet of the cylinder until the threshold line appears on the screen indicating the probe is in the cylinder's neck.

(iv) Press the sweep (e.g. NULL) button to ensure that the line is positioned on screen, preferably at home position.

(v) Watch for spike signals indicating cracks. Mark positions with a grease pencil. When the spike occurs rotate the probe 360 degrees.

(vi) Check for successive indications at same angle indicating multiple cracks. Two successive spikes that break the threshold at the same angle indicate a two thread crack. A two thread crack is the rejection criteria.

(vii) Perform the visual inspection for confirmation.

#### 6. *Examination equipment records.*

Records of eddy current inspection shall contain the following information:

(i) Equipment manufacturer, model number and serial number.

(ii) Probe description and unique identification (e.g., serial number, part number, etc.).

#### 7. *Eddy current examination reporting and record retention requirements.*

Daily records of eddy current examinations must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. These records must be made available for inspection by a representative of the Department on request. Eddy current examination records shall contain the following information:

(i) Specification of each standard reference ring used to perform the eddy current examination.

(ii) DOT specification or exemption number, manufacturer's name or symbol, owner's name or symbol and date of manufacture.

(iii) Name of test operator performing the eddy current examination.

(iv) Date of eddy current examination.

(v) Location and type of defect on the cylinder crown or the threaded neck (e.g., 5 threads).

(vi) Acceptance/rejection results (e.g. pass or fail).

(vii) Legible identification of test operator.

Issued in Washington, DC on September 3, 2003, under authority delegated in 49 CFR part 106.

**Frits Wybenga,**

*Deputy Associate Administrator for Hazardous Materials Safety.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 13 and 17

**RIN 1018-A185**

#### **Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Revisions to the Regulations**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to revise our regulations pertaining to enhancement of survival permits issued under the Endangered Species Act. The purpose of the proposed revisions is to revise the current implementing regulations for permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. These revisions will make Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to understand and implement.

**DATES:** Comments from all interested parties must be received by November 10, 2003.

**ADDRESSES:** Comments or materials concerning the proposed rule should be sent to Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (Telephone 703/358-2171, Facsimile 703/358-1735). Comments and materials received on the proposed rule

will be available for inspection, by appointment, during normal business hours, at the above address.

#### **FOR FURTHER INFORMATION CONTACT:**

Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service (Telephone 703/358-2171, Facsimile 703/358-1735).

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the Act authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(d) requires that such permits be applied for in good faith, and if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

In June of 1999, we issued two policies and revised our regulations to add two categories of permits to enhance the propagation or survival of listed, proposed, candidate, and other at-risk species. One category, called "permits for the enhancement of survival through Safe Harbor Agreements," is detailed at §§ 17.22(c) and 17.32(c), and in the Safe Harbor Policy (64 FR 32717). The other category, called "permits for the enhancement of survival through Candidate Conservation Agreements with Assurances," is detailed at §§ 17.22(d) and 17.32(d), and in the Candidate Conservation Agreements with Assurances Policy (64 FR 32726).

The purpose of the Safe Harbor Program is to promote voluntary management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. In return for the participant's efforts, the Service will authorize incidental take through an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. In issuing such a permit, we expect a net conservation benefit will be accrued for the covered species through implementation of the Safe Harbor Agreement. The permit would allow participants to take individual listed animals to return