

*Federalism* (64 FR 43255, August 10, 1999).

#### F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

#### G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

#### H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

#### J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 27, 2010.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10183 to subpart E to read as follows:

#### § 721.10183 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–08–199) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(ii), (a)(4), (a)(5) (National Institute for Occupational Safety and Health (NIOSH)-approved full-face respirators with N100 cartridges), (a)(6)(i), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (additive/filler for polymer composites and support media for industrial catalysts).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2010–2256 Filed 2–2–10; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 23

[Docket No. OST–2010–0022]

RIN 2105–AD88

#### Participation by Disadvantaged Business Enterprises in Airport Concessions

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation is proposing to remove the “sunset” provision from its rule governing the airport concessions disadvantaged business enterprise program. The rule would instead provide for periodic program reviews. In addition, in the interest of initiating a program review, the Department is soliciting comments on any changes that should be made in the rule. These comments would assist the Department in reviewing the rule and, if warranted, proposing modifications to it in the future.

**DATES:** Comments on the proposal to remove the sunset provision must be received by March 5, 2010. Responses to the request for comments on potential modifications to the rule must be received by November 1, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST–2010–0022) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2010–0022) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to <http://www.regulations.gov> including any

personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://DocketsInfo.dot.gov>.

**Docket:** For internet access to the docket to read background documents and comments received, go to <http://www.regulations.gov>. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave, SE., Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94-302, 202-366-9310, [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov).

**SUPPLEMENTARY INFORMATION:** When the Department issued its final rule revising its ACDBE rule (49 CFR Part 23) in 2005, the rule included at section 23.7 a "sunset" provision. This provision said unless extended by the Department, the provisions of Part 23 would terminate and become inoperative on April 21, 2010. The preamble to the rule explained the rationale for this provision as follows:

The Department is introducing a "sunset" provision into the final rule as a way of addressing the durational element of narrow tailoring. A narrowly-tailored rule is not intended to remain in effect indefinitely. Rather, the rule should be reviewed periodically to ensure that it continues to be needed and that it remains a constitutionally appropriate way of implementing its objectives. Consequently, this provision states that this rule will terminate and cease being operative in five years, unless the Department extends it. We intend, beginning four years from now, to review the rule to determine whether it should be extended, modified, or allowed to expire. Of course, the underlying DBE statute remains in place, and its requirements continue to apply regardless of the status of this regulation, absent future Congressional action. (70 FR 14502; March 22, 2005).

The Department believes that it would be useful to begin reviewing the provisions of Part 23 at this time, for the purpose of determining what, if any, modifications, are appropriate to improve its operations, in context of the "strict scrutiny" requirements of narrowly tailoring a program to meet a compelling need to combat discrimination and its effects.

Consequently, with this notice, the Department is soliciting comments from interested parties concerning any and all changes to Part 23 they believe would be useful in helping the Department, airports, ACDBEs, and other airport-related businesses to achieve the ACDBE program's objectives. The Department will use the information we receive to assist us in determining whether to issue a proposed rule to modify the ACDBE regulation. In addition, the Department is planning to meet with stakeholders, at times and places to be determined, to discuss potential changes to Part 23.

However, the Department does not believe it is appropriate to retain the "sunset" provision itself. The Department can, and will, review the provisions of the rule without this provision being in place. Moreover, as the preamble discussion for section 23.7 itself pointed out, the ACDBE program is mandated by statute. The Department does not believe that it would be meaningful to eliminate a regulation when its underlying statutory mandate remains applicable to airports and other participants. Doing so would simply cause confusion and disruption, making it more difficult for all parties concerned to carry out their responsibilities under the statute, which is not self-executing. A regulatory framework is necessary for rational implementation of the statute. Periodic program reviews by the Department, as well as consideration from time to time of the continuing need for the program by Congress, meet the durational element of narrow tailoring satisfactorily.

Moreover, the Department is convinced that programs like those in 49 CFR part 23 and its companion DBE rule, 49 CFR part 26, remain necessary to redress discrimination and its effects in airport programs and to ensure a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. The extensive evidence provided to a March 2009 hearing of the House Transportation and Infrastructure Committee on this subject, and the findings of continuing need for DBE programs in the House-passed version of the Federal Aviation Administration reauthorization bill (H.R. 915), as well as the Department's long-term experience in operating the program, support this conclusion.

For these reasons, the Department proposes to amend section 23.7 by removing the "sunset" language and substituting a requirement for program review. The current notice initiates such a review. The opportunity for

stakeholder input and public comment is part of this review. The Department seeks comment on whether the final rule should state a specific interval for future program reviews or whether this determination should, as stated in the text of the proposed amendment to the rule, be left to the Department's discretion.

**Regulatory Analyses and Notices**

*Administrative Procedure Act*

Having considered the potentially high risk of disruption posed by the current "sunset" provision, the Department believes that the program review approach proposed by this NPRM provides a better way of achieving the objective of ensuring that the durational element of narrow tailoring is achieved. In order to ensure that all parties understand that the program and regulation will continue without interruption or uncertainty, the Department believes that it is important to propose removing the provision at this time and substituting the program review approach at this time. A short comment period is essential in order to permit a final rule to be issued before April 21, 2010. We also believe that beginning the program review now, rather than later, will serve the interests of the program and program participants well.

*Executive Order 12866 and Regulatory Flexibility Act*

The Department has determined that this action is not a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The rule would not impose any costs or burdens on grantees or other parties and would keep in place the opportunity for interested parties to participate in a program review. It makes no changes in the obligations of any party. For these reasons, the Department certifies that the rule would not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

This rule does not create any information collection requirements covered by the Paperwork Reduction Act.

**List of Subjects in 49 CFR Part 23**

Administrative practice and procedures, Airports, Civil rights, Government contracts, Grant programs—transportation, Minority business, Reporting and recordkeeping requirements.

Issued at Washington, DC this 20th day of January 2010.

**Raymond F. LaHood,**  
Secretary of Transportation.

For reasons discussed in the preamble, the Department of Transportation proposes to amend Title 49 of the Code of Federal Regulations, Part 23, as follows:

#### **PART 23—[AMENDED]**

1. The authority citation for 49 CFR Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

2. Section 23.7 is proposed to be revised to read as follows:

#### **§ 23.7 Program Reviews.**

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this Part.

[FR Doc. 2010–2293 Filed 2–2–10; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

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

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

[Docket No. NHTSA–2010–0012]

**RIN 2127–AK58**

### **Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids**

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

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

**SUMMARY:** This NPRM proposes to amend FMVSS No. 116, *Motor Vehicle Brake Fluids*, so that brake fluids would be tested with ethylene, propylene, and diene terpolymer (EPDM) rubber, as this type of rubber is increasingly being used in brake fluid seals. This NPRM also updates references to standards issued by the Society of Automotive Engineers (SAE) and the American Society for Materials and Testing (ASTM) (no substantive changes to the standard would be made by these updates), and corrects minor errors in the standard.

**DATES:** Comments must be received on or before April 5, 2010.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery or Courier:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- **Fax:** (202) 493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

**Instructions:** For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below.

**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 (65 FR 19477–78).

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

**For non-legal issues:** Mr. Samuel Daniel, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–4921). Mr. Daniel's fax number is: (202) 366–7002.

**For legal issues:** Ms. Dorothy Nakama, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–2992). Ms. Nakama's fax number is: (202) 366–3820.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. Background
- II. Testing With Ethylene, Propylene, and Diene Terpolymer Rubber
- III. Updating SAE Standard J1703
- IV. Updating American Society for Testing and Materials Standards
- V. Other Proposed Corrections and Updates to FMVSS No. 116
- VI. Effective Date

VII. Rulemaking Analyses and Notices  
VIII. Public Participation

## **I. Background**

Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids* (49 CFR 571.116), specifies requirements for fluids for use in hydraulic brake systems of motor vehicles, containers for these fluids, and labeling of the containers. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles that may occur because of the manufacture or use of improper or contaminated fluid. FMVSS No. 116 was developed from Society of Automotive Engineers (SAE) Standards J1703, J1704, and J1705, which address the performance requirements and test procedures for DOT3, DOT4, and DOT5 brake fluid, respectively. FMVSS No. 116 incorporates by reference or otherwise refers to particular editions (by date) of SAE J1703. FMVSS No. 116 also references several standards published by the American Society for Testing and Materials (ASTM) relating to test procedures and devices.

## **II. Testing With Ethylene, Propylene, and Diene Terpolymer Rubber**

This document proposes to update FMVSS No. 116 so that brake fluids would be tested with the materials currently used in the manufacture of brake fluid seals. Over the past two decades, the motor vehicle industry has increasingly gone from using styrene-butadiene rubber (SBR) for the brake system seals to ethylene, propylene, and diene terpolymer (EPDM) (as characterized by SAE J1703 AUG2008) rubber because EPDM rubber is more heat resistant and less expensive to manufacture. At present, FMVSS No. 116 tests the effects of brake fluid on SBR, but not on EPDM rubber.<sup>1</sup> In this NPRM, we propose to include the testing of brake fluid on EPDM rubber. The following amendments are proposed.

### **a. Definition of “Brake Fluid”**

To apply FMVSS No. 116 to brake fluid that contacts EPDM rubber, we propose to expand the definition of “brake fluid” at S4 of the standard to expressly state that “brake fluid” includes liquids that contact EPDM rubber in a hydraulic brake system.

### **b. Corrosion Test**

The corrosion test in FMVSS No. 116 (S5.1.6 and S6.6) evaluates the corrosive effects of brake fluid on several

<sup>1</sup> In the early 1980s, SAE added testing of EPDM rubber to SAE J1703, *Motor Vehicle Brake Fluid*, and SAE J1704, *Borate Ether Based Brake Fluid*.