

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

[Docket No. 96-56, Notice 01]

RIN 2127-AF77

Federal Motor Vehicle Safety Standards; Warning Devices**AGENCY:** National Highway Traffic Safety Administration, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: In this document, NHTSA proposes to rescind the Federal Motor Vehicle Safety Standard that regulates triangular warning devices intended to be placed on the roadway behind disabled buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. The Federal Highway Administration (FHWA) requires commercial carriers to carry and use one of three types of warning devices: triangular devices meeting Standard No. 125, fusees or flares. NHTSA is proposing to rescind the Standard because FHWA can readily specify the carrying and using of triangular warning devices meeting requirements other than those in Standard No. 125. This proposal is part of the agency's efforts to implement the President's Regulatory Reform Initiative to remove unnecessary regulations.

DATES: Comments must be received on or before July 25, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration (NHTSA), 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies of the comments be submitted.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, NPS-21, telephone (202) 366-5280, FAX (202) 366-4329.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC-20, telephone (202) 366-2992, FAX (202) 366-3820.

Both may be reached at NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Comments should not be faxed to these persons, but should be sent to the Docket Section.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive "Regulatory Reinvention

Initiative" from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified regulations that it could propose to rescind as unnecessary or to amend to improve their comprehensibility, application, or appropriateness. Among the regulations identified for potential rescission is Federal Motor Vehicle Safety Standard No. 125, *Warning devices* (49 CFR § 571.125).

Background of Standard No. 125

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning devices*, specifies requirements for warning devices that do not have self-contained energy sources (unpowered warning devices) and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. The unpowered warning devices are intended to be placed on the roadway behind a disabled vehicle to warn approaching traffic of its presence. The Standard does not apply to unpowered warning devices designed to be permanently affixed to the vehicle. The purpose of the Standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and stopped vehicles.

The standard requires that the unpowered warning devices be triangular, covered with orange fluorescent and red reflex reflective material, and open in the center. These characteristics are intended to assure that the warning device has a standardized shape for quick message recognition and can be readily observed during both daytime and nighttime, and does not blow over when deployed.

NHTSA has never required that any new vehicle be equipped with the Standard No. 125 warning device or any other warning device. However, as explained below, FHWA, which has authority to regulate interstate commercial vehicles-in-use, mandates that operators of those vehicles carry and use unpowered warning devices meeting Standard No. 125, fusees or flares.

Previous Changes to Standard No. 125

Before 1994, Standard No. 125 applied to unpowered warning devices that are designed to be carried in any type of motor vehicle. On May 10, 1993 (58 FR 27314), NHTSA issued a notice of proposed rulemaking to amend Standard No. 125 so that the Standard applies only to warning devices that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs.

NHTSA proposed to limit the scope of Standard No. 125 in order to provide manufacturers of unpowered warning devices with greater design freedom and to relieve an unnecessary regulatory burden on industry. At the same time, the agency proposed to retain the requirements for warning devices for buses and trucks with a GVWR greater than 10,000 lbs., primarily to support FHWA's regulation of commercial motor vehicles under the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 350-399). Section 393.95 of the FMCSR requires either that three Standard No. 125 warning devices or specified numbers of fusees or flares be carried on all trucks and buses used in interstate commerce. In a final rule published on September 29, 1994 (59 FR 49586), NHTSA limited the applicability of Standard No. 125 as proposed.

Proposed Rescission of Standard No. 125

In the September 1994 final rule limiting Standard No. 125 to unpowered warning devices designed to be carried in buses and trucks with a GVWR greater than 10,000 lbs., NHTSA stated that it was retaining Standard No. 125 in its narrowed form largely to ensure the continued availability of standardized unpowered warning devices which FHWA could specify as a means of complying with its warning device requirements for commercial vehicle operators. After reviewing Standard No. 125 in light of the President's Regulatory Review Initiative, NHTSA tentatively has determined that the retention of Standard No. 125 is not necessary to ensure the continued availability of unpowered warning devices.

If Standard No. 125 were rescinded, FHWA would have two options. First, it could adopt the current manufacturing standards for the warning devices as an appendix to the Federal Motor Carrier Safety Regulations. Section 393.95 would be revised to reference the newly created appendix as opposed to Section 571.125.

Second, it could work with an industry voluntary standards setting organization such as the Society of Automotive Engineers (SAE) to develop an industry standard on unpowered warning devices containing requirements similar to those in Standard No. 125. Once those requirements were developed, FHWA could incorporate them by reference in Section 393.95.

NHTSA notes that it has a pending petition from the Transportation Safety Equipment Institute (TSEI) requesting that NHTSA's testing protocol for Standard No. 125, Laboratory Test Procedure for Warning Devices (TP-125-00, April 1, 1977) be amended to reflect the TSEI's recommended changes. If NHTSA were to rescind Standard No. 125, equipment manufacturers could work with an industry standard setting organization to specify the testing protocol that it deems appropriate.

Proposed Effective Date

Because the proposed removal of Standard No. 125 would relieve regulatory restrictions without compromising safety, the agency has tentatively determined that there is good cause for concluding that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the agency proposes that, if adopted, the effective date for the final rule be 45 days after its publication in the Federal Register.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule was not reviewed under E.O. 12866, Regulatory Planning and Review. NHTSA has analyzed the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that it is not "significant." If made final, this rulemaking action would remove an unnecessary regulation from the Federal Motor Vehicle Safety Standards.

This action is not expected to have any economic impact on manufacturers of unpowered warning devices designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less since the agency does not currently regulate the manufacture of those devices.

Based on its assumption that there would continue to be performance requirements similar to those currently in Standard No. 125, NHTSA tentatively concludes that the rescission of the Standard would, at most, have only slight, nonquantifiable economic effects on manufacturers of unpowered warning devices designed to be carried in buses and trucks over 10,000 lbs. GVWR.

For these reasons, the agency has concluded that the economic effects of this proposal would be so minimal that a full regulatory evaluation is not required.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that this proposal would not have a significant economic impact on a substantial number of small entities. If FHWA continued to specify an unpowered warning device for buses and trucks that have a GVWR greater than 10,000 lbs. that meets requirements similar or identical to those in Standard No. 125, and to require operators of such vehicles to carry the devices or other types of warning devices, the cost of the unpowered warning devices should not change. Further, manufacturers of those unpowered warning devices would continue to have essentially the same market that they currently have. Accordingly, the agency has not prepared an initial regulatory flexibility analysis.

3. Executive Order 12612 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency has also analyzed this proposed rule for the purpose of the National Environmental Policy Act. NHTSA has determined that the proposed rule would not significantly affect the human environment.

5. Paperwork Reduction Act

Standard No. 125 specifies that the warning devices be marked with certain information, that is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. This collection of information has been assigned OMB Control No. 2127-0506, (Warning Devices (Labeling)) and has been approved for use through March 31, 1996. Whether NHTSA decides to ask for a reinstatement of this collection of information will depend on the final action for this rulemaking.

6. Executive Order 12866 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except

to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.125 [Removed and reserved]

2. § 571.125 would be removed, and reserved.

Issued on: May 31, 1996.

Barry Felrice,
Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 641**

[I.D. 052096A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene five public hearings on Draft Amendment 14 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP) and a draft environmental assessment (EA).

DATES: Written comments will be accepted until July 1, 1996. The public hearings will be held from June 17 to

June 21, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the draft amendment are available from Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609.

The hearings will be held in Florida. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and public accommodations.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813 228-2815.

SUPPLEMENTARY INFORMATION: The Council will be holding public hearings on Draft Amendment 14 to the FMP and its draft EA. Amendment 14 includes management alternatives for regulating the fish trap fishery. Alternatives under consideration include: (1) Creation of a commercial vessel license system limiting participants in the trap fishery along with provisions for the transfer of vessel permits, (2) extending the current moratorium on the issuance of fish trap endorsements for 4 more years, (3) limiting permits to current trap fishery participants and phasing out the trap fishery after 10 years, and (4) evaluating the effectiveness of enforcement of trap rules over 2 years before taking further action. The current moratorium on new fish trap endorsements expires in February 1997. Amendment 14 also includes several alternatives related to area prohibitions on the use of fish traps including prohibiting: (1) The use of fish traps south of 24°54' N. lat. (i.e., off Dry Tortugas, FL);

(2) use of traps in the Gulf of Mexico west of Cape San Blas, FL (Appalachicola area); (3) use of traps on Riley's Hump (a 20 square mile (51 km) spawning aggregation site, south of Dry Tortugas); and (4) all fishing on Riley's Hump year round, making it a marine sanctuary. Amendment 14 would modify the provisions for tending traps and establish compliance conditions for the trap permit.

Additional management measures in Amendment 14 include: (1) Modifying the FMP framework procedure for

specifying total allowable catch by allowing the Regional Director, in addition to being able to open and close a commercial fishery, to reopen a closed commercial fishery if needed to ensure that the fishery quota is harvested; (2) modifying the transfer provisions for reef fish vessel permits (under the reef fish commercial vessel permit moratorium) to allow transfers of permits to an income qualifying operator; also allowing a vessel owner 1 year to meet the income qualifications if the permit has been issued based on income qualifications of the operator; and (3) prohibiting the harvest of Nassau grouper in the Gulf of Mexico because of resource declines.

The hearings are scheduled from 7:00 p.m. to 10:00 p.m. as follows:

1. Monday, June 17, 1996—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040

2. Tuesday, June 18, 1996—Naples Depot Civic-Cultural Center, 1051 Fifth Avenue South, Naples, FL 33940

3. Wednesday, June 19, 1996—Plantation Inn and Golf Resort, West Fort Island Trail (CR 44W), Crystal River, FL 34423

4. Thursday, June 20, 1996—Steinhatchee Elementary School, First Avenue South, Steinhatchee, FL 32359

5. Friday, June 21, 1996—Crawfordville Board of County Commissioners Conference Room, Old Aaron Road (behind the Courthouse), Crawfordville, FL 32326

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 12, 1996.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-14494 Filed 6-7-96; 8:45 am]

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