

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 571

[NEW DOT Docket No. 98-4633]

RIN 2127-AH18

Federal Motor Vehicle Safety
Standards; Lamps, Reflective Devices
and Associated EquipmentAGENCY: National Highway Traffic
Safety Administration, (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Motor Vehicle Safety Standard (FMVSS) on lamps, reflective devices, and associated equipment includes a provision regulating headlamp concealment devices. In this document, NHTSA proposes to amend that FMVSS so that manufacturers of motor vehicles with headlamp concealment devices may choose between complying with that existing provision, or with a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on headlamp concealment devices. The agency tentatively concludes that the ECE standard is at least functionally equivalent (i.e., yields at least as much safety benefit or requires at least as much safety performance) to NHTSA's existing provision on headlamp concealment devices.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: All comments should refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: DOT Docket Management Facility, U.S. Department of Transportation, Room PL-01, 400 Seventh Street, SW, Washington, DC 20590-0001. The DOT docket is open to the public from 10 am to 5 pm, Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

For technical issues: Mr. Patrick Boyd, Office of Crash Avoidance. Mr. Boyd's telephone number is: (202) 366-6346, and his FAX number is (202) 493-2739.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366-2992, and her FAX number is (202) 366-3820.

SUPPLEMENTARY INFORMATION:

Background

The United States is a party to several international agreements, including the General Agreement on Tariffs and Trade. That agreement was most recently amended by the Uruguay Round Agreements. One of those agreements is the Agreement on Technical Barriers to Trade (TBT). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal and plant life and health and the environment.

Among other things, the TBT Agreement also provides that a party to the Agreement will consider accepting as equivalent the technical regulations of other party nations, provided they adequately fulfill the objectives of the party's existing domestic standards. On May 13, 1998, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 553, *Rulemaking Procedures*, by adding a new Appendix B setting forth a statement of policy about the process that the agency will use to make potential findings of "functional equivalence" between Federal Motor Vehicle Safety Standards (FMVSSs) and the corresponding vehicle safety standards of other countries (63 FR 26508).

In a submission dated August 13, 1997, the American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers, Inc. (AIAM), petitioned the agency to amend several FMVSSs to permit vehicle manufacturers to choose to comply with either the existing requirements of those FMVSSs or the counterpart requirements of vehicle safety standards recognized in most European countries. These European standards take the form of European Union directives and are usually taken from a body of standards developed by the United Nations Economic Commission for Europe (UN/ECE). Of the several AAMA/AIAM petitions on functional equivalence, NHTSA believes the petition addressing headlamp concealment devices presents the easiest issues to resolve.

The first test used by NHTSA under Appendix B to determine functional equivalence is whether the requirements, test conditions, and test procedures appear to be the same or similar, with any differences being minor and lacking in safety consequences. NHTSA tentatively concludes that the European requirements for headlamp concealment devices pass this test. The fundamental

performance requirements of the U.S. and European standards are the same. Further, assuming that the option of complying with the ECE requirements would be restricted, as proposed below, to manufacturers of vehicles equipped with headlamps that do not require the use of external aimers, the differences between the standards are minor and inconsequential to safety. These issues are further discussed below.

Fundamental Performance
Requirements

FMVSS No. 108, *Lamps, reflective devices, and associated equipment*, at S12., Headlamp Concealment Devices, requires that, in normal operation, there be a single switch whose operation causes both the headlamps to illuminate and the headlamp concealment device to fully open in not more than 3 seconds, at any temperature within a range of -30 to +50 degrees Celsius. In ECE R.48.01, Paragraphs 5.14.3 and 5.14.5 set forth the same requirements.

Standard No. 108 also requires certain failsafe performance of headlamp concealment devices. In the event of a loss of power to a headlamp concealment device, an illuminated headlamp must stay in the fully open position. Also, in the event of a malfunction of a component that controls or conducts power for the actuation of the concealment device, it must be possible to open the concealment device without the use of tools and have it stay fully open until intentionally closed. Paragraph 5.14.2 of ECE R.48.01 requires the same failsafe performance.

Inconsequential Differences

Standard No. 108 also requires that a headlamp concealment device be installed so that the headlamp may be mounted, aimed and adjusted without removing any component of the device, other than components of the headlamp assembly. This requirement addresses a potential aiming problem that could affect safety. The external aimers, which are used for some kinds of U.S. headlamps and which attach to the headlamp lens, could potentially interfere with a component of the headlamp concealment device. If so, removal of the component could affect the accuracy of the aim. Alternatively, efforts to avoid the removal of components could result in improper shortcuts in aiming.

The ECE standard has no comparable aiming provision because vehicles in Europe do not use external aimers that could introduce an interference problem. Headlamps with the European beam pattern have always been visually

aimable on a screen because of sharp gradients which identify the beam position.

The ECE standard also has several provisions that do not have any parallel in S12. of Standard No. 108. The ECE standard prohibits the possibility of the driver being able to stop the movement of lighted headlamps before they reach the in-use position. It prohibits also the actuation of the headlamps until they reach the in-use position if there are intermediate positions in which illumination would result in glare to other drivers.

NHTSA also notes that the ECE standard does not have a phrase analogous to Standard No. 108's S12.3 and S12.5 "except for malfunctions covered by S12.2," that make it clear S12.3 and S12.5 apply only to functioning systems. NHTSA would interpret the ECE standard alternative by limiting it to functioning systems only, and would not require systems with a failure mode to comply with performance requirements in addition to the failsafe performance requirements.

Finally, NHTSA notes a typographical error in Paragraph 5.14.5 of the ECE standard, that states: "Then the concealment device has a temperature of - 30 degrees Celsius to +50 degrees Celsius the headlamps must be capable of reaching the position of use within three seconds of initial operation of the control." Clearly, "then" should be "when." NHTSA would interpret Paragraph 5.14.5 as beginning with "When."

NHTSA's Proposal

NHTSA tentatively concludes that paragraph 5.14 of ECE R.48.01 meets the Appendix B test set forth above and accordingly proposes to amend Standard No. 108 to permit manufacturers of motor vehicles with headlamp concealment devices to choose between complying with S12 of that standard, or with a new provision incorporating by reference paragraph 5.14 of ECE standard R. 48.01. This proposal to permit compliance with the ECE standard is limited to vehicles using either a new U.S. alternative beam pattern which allows European-style visual/optical aim or a headlamp with a built-in aimer (VHAD) that eliminates the need for external aimers. Therefore, there is no safety consequence to the lack of a provision in paragraph 5.14 addressing the interference problem that may be associated with the use of external aimers.

Vehicle Manufacturer's Certification

NHTSA notes that, when a safety standard provides manufacturers more

than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency is aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This response creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests for first one compliance option, then another, to determine whether there is a noncompliance.

Accordingly, under this proposed rule, prior to or at the time a manufacturer certifies that a vehicle with headlamp concealment devices meets all applicable FMVSSs (pursuant to 49 CFR Part 567, *Certification*), the manufacturer must decide whether it certifies that vehicle as meeting S12.1 through S12.5 or the ECE standard (that would be established in S12.6). The selected alternative need not be stated on the certification label. However, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision would be irrevocable.

NHTSA's Choice of European Standard to Reference

Most of the harmonized standards among the countries of the European Union (EU) were developed as ECE regulations and later adopted as EU directives. Consequently, the same standards are known under both ECE regulation numbers and EU directive numbers. The petitioner asked that both the ECE and EU numbers for the identical technical requirements be cited as alternatives to the requirements of Standard No. 108. However, NHTSA is proposing that only one reference to the European standard be cited to avoid confusion and to reduce the potential need for amendments to updated versions of European standards. We intend to cite the ECE regulation when possible because the ECE is a body in which the U.S. participates, and also its regulations may be adopted by countries outside of the European Union as well. The agency understands that it will not always be possible to cite an ECE standard because some EU directives with potential as functionally equivalent alternatives to Federal motor

vehicle safety standards have no ECE counterpart.

Leadtime

NHTSA proposes that, if made final, the changes proposed in this NPRM take effect 60 days after the publication of the final rule, with manufacturers given the option to comply with (and certify to) the ECE standard for headlamp concealment devices, immediately.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E. O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under DOT's regulatory policies and procedures. If made final, this rule would have no substantive effect on manufacturers of motor vehicles that have headlamp concealment devices. The ECE standard on headlamp concealment devices proposed for inclusion in the Federal motor vehicle safety standards does not differ substantively from existing requirements. Vehicle manufacturers would not incur additional costs as a result of meeting any new requirements. The impacts of this action would be so minor that a full regulatory evaluation for this proposed rule has not been prepared.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification. (5 U.S.C. § 605(b)).

The proposed rule would affect passenger car, light truck, and multipurpose passenger vehicle manufacturers that have headlamp concealment devices on the vehicles they manufacture. The Small Business Administration's size standards (13 CFR Part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

The proposed rule would apply to the previously described vehicle manufacturers, regardless of their

volume of production. There would be no significant economic impact on any vehicle manufacturer because no manufacturer would be required to provide headlamp concealment devices. There would be no economic impact on manufacturers that already provide the devices because the devices meet the existing headlamp concealment device requirements in the FMVSSs, and NHTSA tentatively concludes that the ECE standard does not differ substantively from the FMVSSs. If made final, the rule would permit vehicle manufacturers a choice between certifying that the vehicle with a headlamp concealment device meets the old FMVSS or the incorporated ECE standard. NHTSA does not believe there would be a cost advantage to certifying to one standard over another.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

D. Federalism

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

E. Civil Justice Reform

This proposed rule would not have a 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. A procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards is set forth in 49 U.S.C. Section 30106. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the

expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this proposed rule would not have a \$100 million effect, no Unfunded Mandates assessment has been prepared.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, 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 a 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 late 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, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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.

2. Section 571.108 would be amended by adding S12.6 and S12.7 to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S12.6 As an alternative to complying with the requirements of S12.1 through S12.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with paragraph S7 may meet the requirements for *Concealable lamps* in paragraph S5.14 of the following version of the Economic Commission for Europe Regulation 48: E/ECE/324—E/ECE/TRAN/505, Rev.1/ Add.47/Rev.1, 22 March 1994, in the English language version.

S12.7 Manufacturers of vehicles with headlamps incorporating VHAD or visual/optical aiming shall elect to certify to S12.1 through S12.5 or to S12.6 prior to, or at the time of certification of the vehicle, pursuant to 49 CFR part 567. The selection is irrevocable.

Issued on: October 23, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-28817 Filed 10-27-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Junaluska Salamander as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.