Issued on: February 23, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR 571

[Docket No. NHTSA–99–5123]

RIN 2127–AH55

Federal Motor Vehicle Safety Standards; Light Vehicle Brake Systems

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

ACTION: Interim final rule; request for comments.

SUMMARY: Lucas Varity Light Vehicle Braking Systems (LVBS), a subsidiary of Lucas Varity Automotive of Livonia, MI, submitted a petition for reconsideration and for certain other modifications to the hydraulic brake standard. The petitioner first asked NHTSA to delay the compliance date of the antilock brake system (ABS) malfunction indicator lamp (MIL) activation protocol of the standard until September 1, 2002. The protocol is currently scheduled to become mandatory on and after March 1, 1999. Second, the petitioner asked NHTSA to continue in effect the existing lamp activation protocol and extend that protocol to all hydraulically-braked vehicles.

LVBS argued that the new lamp activation protocol presents significant compliance problems both for manufacturers and original equipment (OEM) customers. LVBS was also concerned about what it perceived as lack of coordination between the hydraulic brake standard and the light vehicle braking systems standard.

In order to provide LVBS and other manufacturers similarly situated sufficient time to design and test systems that will comply with the MIL activation protocol set forth in the recent amendments to the hydraulic brake standard, NHTSA has decided to delay the mandatory compliance date of the new MIL activation requirements from March 1 until September 1, 1999. This amendment is being issued as an interim final action given the short time remaining before the current March 1, 1999 compliance date. NHTSA also solicits comments on this amendment.

DATES: *Effective date:* The amendment made by this interim final rule is effective February 26, 1999.

Comments: Submit your comments on this interim final rule early enough so that they will be received in Docket Management on or before April 27, 1999.

ADDRESSES: Refer in your comments to the docket number noted in the heading and submit your comments to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The docket room is open from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Jeffrey Woods, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–6206; fax (202) 493–2739.

For legal issues: Mr. Walter Myers, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992; fax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1995 NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (Standard) Nos. 105, *Hydraulic and electric brake systems* and 121, *Air brake systems* (60 FR 13216) (hereinafter referred to as the ''ABS final rule.'').[1] The ABS final rule requires medium and heavy hydraulic and air-braked vehicles to be equipped with an ABS that directly controls the wheels of at least one front axle and the wheels of at least one rear axle.

The ABS final rule amended Standard No. 105 to require, among other things, that each vehicle with a gross vehicle weight (GVWR) of over 10,000 pounds (lbs) (4,536 kilograms (kg)) be equipped with an ABS MIL. Paragraph S5.3.3(a) of Standard No. 105, as amended, requires the MIL to activate when a condition specified in S5.3.1 exists and remain activated as long as the condition exists, whenever the ignition switch is in the ''on'' position, whether or not the engine is running. The lamp must not activate, however, when the system is functioning properly, except as a check of lamp function whenever the ignition is first turned to the ''on'' position.

Paragraph S5.3.3(b) of Standard No. 105, as amended, requires that each message of a malfunction in the ABS be stored after the ignition switch is turned to the ''off'' position and automatically reactivated when the ignition switch is again turned to the ''on'' position. That activation is in addition to the required check of lamp function whenever the ignition is turned to the ''on'' position.

The American Automobile Manufacturers Association (AAMA), the Truck Trailer Manufacturers Association (TTMA), the American Trucking Association (ATA), and brake manufacturers Rockwell WABCO and Midland-Grau, among others, submitted petitions for reconsideration of the ABS final rule. They requested in pertinent part that the agency define a pre-existing malfunction as a malfunction that existed when the ignition was last turned to the ''off'' position. The agency granted that request and amended paragraph S5.3.3(b) accordingly (60 FR 63965, December 13, 1995).

NHTSA received 13 petitions for reconsideration of the December 13, 1995 final rule, including those from Ford Motor Company, General Motors, Kelsey-Hayes (now LVBS), and the Recreational Vehicle Industry Association addressing the MIL activation protocol. In its January 1996 petition for reconsideration, Kelsey-Hayes requested that NHTSA reconsider the MIL activation protocol. Kelsey-Hayes requested that the MIL be allowed to remain activated until a low-speed drive away allows the system to verify that the vehicle's wheel speed sensors were functioning properly. NHTSA responded to those petitions for reconsideration by final rule of March 16, 1998 (63 FR 12660) declining to amend the activation lamp protocol. The agency stated that the standardized protocol would enable Federal and state safety inspectors to determine the operational status of a vehicle's ABS without the vehicle moving; would preclude confusion among drivers as to how the MIL functions; and would be consistent with Economic Commission for Europe (ECE) requirements, thereby promoting international harmonization.

The Petition

On October 16, 1998, LVBS, formerly Kelsey-Hayes, submitted a petition for reconsideration,[2] asking NHTSA to

[1] NHTSA published 3 final rules on that date that amended the brake standards for medium and heavy vehicles. In addition to the ABS final rule, one reinstates stopping distance requirements for air-braked heavy vehicles and the other establishes stopping distance requirements for hydraulic-braked heavy vehicles (60 FR 13286 and 13297 respectively).

[2] Although LVBS styled its petition as a petition for reconsideration, in the text of the petition LVBS stated that it petitions the Administrator of NHTSA ''pursuant to the provisions of 49 CFR, Part 552.''

extend the compliance date of the MIL activating protocol specified in the amendments to Standard No. 105 (referred to by LVBS as the ''New 105''), currently scheduled to become mandatory on March 1, 1999, to coincide with the mandatory compliance date of September 1, 2002 for trucks, buses, and multipurpose passenger vehicles to which Standard No. 135, *Light vehicle brake systems,* is applicable. LVBS stated that this would allow NHTSA and industry representatives to work together to establish a coordinated lamp activation protocol. LVBS also asked NHTSA to continue in effect the current lamp activation protocol in Standard No. 105 pending future rulemaking to standardize the lamp activation protocols on all hydraulic braked vehicles and, further, that the current lamp activation protocol be extended to all hydraulically braked vehicles.

LVBS asserted that the new lamp activation protocol presents significant compliance problems for manufacturers and OEM customers that can be avoided by relatively modest changes to Standard No. 105. LVBS is also concerned about the ''lack of coordination'' between the ''new'' Standard No. 105 and Standard No.135. Specifically, LVBS stated that the lamp activation protocols in Standard Nos. 105 and 135, although similar, differ in subtle but material respects. Thus, LVBS argued that unless Standard No. 105 is coordinated with Standard No. 135, when the latter becomes mandatory on September 1, 2002, many vehicle platforms may be covered by as many as three different lamp activation protocols. This in turn will give rise to serious engineering, manufacturing, maintenance, and product liability problems. This is particularly true with vans, since their configurations vary so widely within the same platforms.

Navistar International Transportation Corporation (Navistar), by letter dated October 27, 1998, expressed support for the changes LVBS asked for in its petition, ''in the interest of clarity and coordination.'' Navistar stated that it is desirable to have common ABS lamp illumination requirements for air and hydraulic braked vehicles so that everyone, including drivers, mechanics, fleet operators and inspectors know what illumination of the lamp means. Accordingly, Navistar supports a technical review by NHTSA and other interested parties to develop ABS lamp illumination protocols for all vehicles equipped with ABS.

The AAMA also sent NHTSA a letter supporting the LVBS petition. AAMA stated that LVBS requested a delay in the March 1, 1999 compliance date for the new Standard No. 105 requirements for two reasons. The first is to allow LVBS additional time for full validation of the software it has developed to bring its ABS into compliance with the amendments to Standard No. 105. AAMA explained that its member companies purchase ABS from LVBS and are concerned that without full validation of the LVBS process, unintended problems could result. AAMA asserted that the second reason for the LVBS petition is to give NHTSA time to resolve the inconsistencies in the lamp activation protocols among the various brake standards. AAMA urged NHTSA to provide a quick response to the petition, acknowledging that such an extraordinary request is necessitated by ''a failure on industry's part,'' but again expressed concern over the unintended malfunctions that could result from LVBS not having the additional time to identify and resolve such inconsistencies.

Agency Decision

It is apparent that, although the amendments to Standard No. 105 were first published on March 10, 1995 and the last petition for reconsideration was resolved by final rule on March 16, 1998, LVBS, a major supplier of ABS for the automotive industry, has not completed the design or redesign of its ABSs in time to comply with the new MIL activation protocol requirements of Standard No. 105. NHTSA understands that LVBS can program the necessary software, but would not be able to fully test its systems and equipment and resolve any unanticipated problems before the March 1, 1999 deadline. Since this situation affects not only LVBS but vehicle manufacturers as well, the agency has tentatively decided to extend the compliance date of paragraph S5.3.3(b) of Standard No. 105, as amended, from March 1, 1999 until September 1, 1999. While LVBS asked for approximately three years to complete the testing, NHTSA believes three years is far in excess of what is needed for an expedited testing program. This would seem especially true since the vehicle manufacturers can assist in the testing and validation. Accordingly, as stated above, NHTSA is extending the compliance date for S5.3.3(b) of Standard No. 105 for six months, that is from March 1, 1999 to September 1, 1999.

In addition, the agency will examine the differences between the MIL activation protocols in its different braking standards. Contrary to the assertions in the LVBS petition, however, NHTSA does not believe any action is needed in this rulemaking. There are no inconsistencies among the different requirements and no other brake manufacturers have reported any difficulties in simultaneously meeting these requirements. The agency will consider addressing these differences in a separate rulemaking.

NHTSA finds that the issuance of this interim final rule without prior opportunity for public comment is necessary because LVBS, a major ABS manufacturer, has stated that it is having considerable difficulty in meeting the March 1, 1999 compliance date of the new MIL activation protocol of paragraph S5.3.3(b), Standard No. 105. This could have an adverse effect on a significant part of the automotive industry since LVBS supplies a large percentage of the ABSs currently installed on hydraulic-braked vehicles with GVWRs greater than 10,000 lb. This amendment imposes no new costs or requirements, but rather provides brake manufacturers additional time and flexibility to comply with the new requirements and thereby provide complying systems to their vehicle manufacturer customers.

Rulemaking Analyses and Notices

(a) Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.*

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not ''significant'' within the meaning of the DOT's regulatory policies and procedures. This action tentatively extends the compliance date of the antilock brake system malfunction indicator lamp activation protocol of paragraph S5.3.3(b), Standard No. 105, from March 1, 1999 until September 1, 1999. This action does not impose any new requirements or costs on automotive or brake manufacturers. Rather, it gives them more time and additional flexibility in meeting the new

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Part 552, *Petitions for Rulemaking, Defect, and Noncompliance Orders,* contains procedures for the submission and disposition of petitions for rulemaking or for a decision that a motor vehicle or item of equipment does not comply with an applicable Federal motor vehicle safety standard or contains a defect relating to motor vehicle safety. Moreover, 49 CFR § 553.35, *Petitions for reconsideration,* provides that any petition for reconsideration must be ''received not later than 45 days after publication of the rule in the **Federal Register**.'' Petitions submitted after that date will be treated as petitions submitted under Part 552. In view of these provisions, NHTSA is treating the LVBS petition as a petition for rulemaking under Part 552 rather than as a petition for reconsideration under Part 553.

requirements. Thus, the agency concludes that the impacts of this action are so minimal that a full regulatory evaluation is not required. For a discussion of the costs of implementing the amendments to Standard No. 105, including the malfunction indicator lamp requirements of paragraph S5.3.3(b), see the ABS final rule of March 10, 1995 (60 FR 13216, at 13253).

(b) Regulatory Flexibility Act

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

This interim final rule would primarily affect the manufacturers of brake systems and medium and heavy vehicle manufacturers. The Small Business Administration's regulations at 13 CFR Part 121 define a ''small business,'' in part, as a business entity ''which operates primarily within the United States'' (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. Under that classification system, SIC No. 3711, ''Motor Vehicles and Passenger Car Bodies,'' has a small business size standard of 1,000 employees or fewer. SIC code No. 3714, ''Motor Vehicle Parts and Accessories,'' has a small business size standard of 750 employees or fewer. NHTSA believes that brake system manufacturers would fall within SIC code No. 3714 and may include both large and small businesses. On the other hand, NHTSA believes that medium and heavy vehicle manufacturers would fall within SIC code No. 3711 and are primarily large businesses.

As pointed out in (a) above, this interim final rule does not impose any new requirements but simply extends the compliance date of one requirement of the amendments to Standard No. 105 for 6 months, from March 1 until September 1, 1999. NHTSA also notes that the cost of brake systems and new medium and heavy vehicles would not be affected by this interim final rule.

(c) Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, as amended, there are no information collection requirements associated with this interim final rule.

(d) National Environmental Policy Act

NHTSA has analyzed this interim final rule under the National Environmental Policy Act and has determined that this rule will not have a significant impact on the human environment.

(e) Executive Order 12612, Federalism

NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

(f) Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires agencies to prepare a written assessment of the costs, 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. This interim final rule does not meet the definition of a Federal mandate because it merely extends the compliance date of an pending requirement. It creates no new requirements nor involves any additional costs. Annual expenditures will not exceed the $100 million threshold.

(g) Civil Justice Reform

This rule does not have any retroactive effect. Under 49 U.S.C. 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 that 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 own use. Section 30161 of Title 49, U.S.C. 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.

Comments

Interested persons are invited to submit comments on this document. It is requested but not required that any such comments be submitted in duplicate (original and 1 copy).

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

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address noted in **FOR FURTHER INFORMATION CONTACT** above. One copy from which the purportedly confidential business information has been deleted should be submitted to Docket Management (see **ADDRESSES** above). A request for confidentiality should be accompanied by a cover letter setting forth the information called for in 49 CFR Part 512, *Confidential Business Information*.

All comments received on or before the close of business on the comment closing date indicated above for this interim final rule will be considered, and will be available to the public for examination in the docket at the above address, both before and after the comment closing date. To the extent possible, comments received after the closing date will 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 today's interim final rule will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the comment closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rule docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving those 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, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49, CFR, continues 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 571.105 is amended by revising S5.3.3(b) to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S5.3.3 (a) * * *

(b) For vehicles manufactured on and after September 1, 1999 with GVWRs greater than 10,000 lbs, each message about the existence of a malfunction, as described in S5.3.1(c), shall be stored in the antilock brake system after the ignition switch is turned to the ''off'' position and the indicator lamp shall be automatically reactivated when the ignition switch is again turned to the ''on'' position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the ''on'' (run) position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the ''off'' position.

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Issued on: February 23, 1999.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990119023–9023–01; I.D. 111898B]

RIN 0648–AL38

Atlantic Sturgeon Fishery; Moratorium in Exclusive Economic Zone

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

ACTION: Direct final rule; request for comments.

SUMMARY: NMFS issues this direct final rule prohibiting the possession in, or harvest from, the exclusive economic zone (EEZ) of Atlantic sturgeon from Maine through Florida. The intent of the rule is to provide protection for the overfished stock of Atlantic sturgeon, to ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

DATES: This rule is effective May 27, 1999 without further action, unless an adverse comment or a notice of intent to submit an adverse comment is received by March 29, 1999. If an adverse comment or a notice of intent is received, the NMFS will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: Comments on the direct final rule should be sent to, and copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review, are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles. These regulations must be (1) necessary to support the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission (Commission) and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act (16 U.S.C. 1851).

Historically, Atlantic sturgeon were managed by individual states until 1989 when the Commission adopted an Atlantic Sturgeon ISFMP (Atlantic Sturgeon Plan) in response to low levels of Atlantic sturgeon. The Commission approved and implemented Amendment 1 to its Atlantic Sturgeon Plan on June 11, 1998. Amendment 1 proposed to restore Atlantic sturgeon spawning stocks to population levels that will provide for sustainable fisheries. Its primary objective is to establish 20 protected year classes in each and every spawning stock, which should eventually allow for controlled commercial harvests on self-sustaining spawning stocks. Amendment 1 mandates that all Atlantic coastal jurisdictions close their Atlantic sturgeon fisheries, implement a stock monitoring program, adhere to stocking and aquaculture guidelines, and establish a means for tracking importation of foreign Atlantic sturgeon products.

All Atlantic coastal marine fisheries jurisdictions closed their Atlantic sturgeon fisheries prior to the passage of Amendment 1. Amendment 1 mandates that these closures remain in place until the Commission determines that the stocks have recovered. Because of the species' life history (7 to 30 years for females to reach maturity) and depletion of Atlantic sturgeon stocks, the Commission believes the Atlantic sturgeon recovery will take about 41 years. Jurisdictions that do not comply with Amendment 1 could face federally imposed closures on their fisheries under section 807(c) of the ACFCMA. In addition, Amendment 1 requests that the Secretary prohibit the possession of Atlantic sturgeon in the EEZ, and monitor bycatch of Atlantic sturgeon in the dogfish and monkfish fisheries and, if such bycatch is excessive, implement measures to reduce the bycatch.

To support the Commission's Atlantic sturgeon conservation efforts under Amendment 1, Federal regulations are needed in the EEZ to provide protection for Atlantic sturgeon in Federal waters, and to close loopholes in state landing laws that would exist without the Federal regulations. No Federal regulations currently exist to control Atlantic sturgeon fishing in the EEZ. Therefore, while no landing of the species would be allowed in Atlantic coastal jurisdictions, it can be taken in the EEZ, where it can be legally killed, consumed, or shipped to a non-Atlantic coastal jurisdiction for sale. Atlantic sturgeon products, especially eggs sold as caviar, bring a high price, i.e., about $50 per pound, to fishermen. Therefore, law enforcement efforts to maintain closed fisheries are a very important part of the management for this species. A Federal regulation in the EEZ to prohibit possession of Atlantic sturgeon will improve the ability of state law enforcement agencies to enforce their own Atlantic sturgeon state closures. Furthermore, a Federal prohibition on possession should close any ''loopholes'' in state laws if persons take Atlantic sturgeon in the EEZ and attempt to land them in states. This rule should deter poaching of Atlantic sturgeon in the EEZ by imposing Federal penalties, which are generally stricter than state penalties, on individuals who do not comply with the EEZ closure.

The U.S. Department of Commerce's National Marine Fisheries Service and U.S. Department of the Interior's Fish and Wildlife Service have recently conducted an Endangered Species Status Review (Status Review) of the