

Street, NW., Washington, D.C. 20036, (202) 857-3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2001-9600; Notice 1]

Federal Motor Vehicle Safety Standards; FMVSS No. 121, Air Brake Systems

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

ACTION: Denial of petition for rulemaking, Motor & Equipment Manufacturers Association—Heavy Duty Brake Manufacturers Council

SUMMARY: On January 16, 2001, the Heavy Duty Brake Manufacturers Council (HDBMC) of the Motor & Equipment Manufacturers Association petitioned NHTSA to delay the implementation date for transmittal of antilock braking system (ABS) malfunction signals from trailers to tractors and trucks that are equipped to tow trailers. These requirements are specified in S5.1.6.2(b) for trucks and tractors, and S5.2.3.2 for trailers, of FMVSS No. 121, Air Brake Systems. The petitioner cites difficulties of its member companies in obtaining suitable computer chips at a reasonable cost to perform the ABS malfunction signal communications. However, the agency believes that the member companies' failure to reach suitable business arrangements with their supplier and a holder of a patent on this technology has resulted in this situation. The agency notes that nearly five years of lead time was provided to meet these requirements. The current difficulties cited by the petitioner normal commercial problems, not a lack of available technology. This petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Woods, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-6206; fax (202) 366-4329.

SUPPLEMENTARY INFORMATION: NHTSA has been petitioned by the Heavy Duty

Brake Manufacturers Council (HDBMC) to delay implementation of the in-cab warning lamp requirements in FMVSS No. 121. These requirements became effective March 1, 2001. The HDBMC petition dated January 16, 2001, asked for a one-year extension to March 1, 2002. The requirements apply to air-braked vehicles that tow or are towed by other air-braked vehicles, such as tractors, trucks, trailers, and converter dollies. The in-cab warning lamp provides the driver with an indication on the truck instrument panel that there is a malfunction in the ABS of a towed vehicle, so that the driver can identify such malfunctions and have them corrected. The requirements for ABS malfunction signaling between towed and towing vehicles were originally adopted in a final rule issued on March 10, 1995 (60 FR 13216). These requirements underwent slight revisions and were finalized in their present form in a final rule issued on May 31, 1996 (61 FR 27288).

In 1997, the industry formed the PLC-4-TRUCKS consortium to develop a system to transmit the trailer ABS malfunction signals between towing and towed vehicles. The industry believed that the systems commercially-available at that time did not meet all of the industry's needs, which include the ability of the system to be incorporated into the ABS electronic control units installed on the subject vehicles; the availability of a system that is not proprietary and thus any manufacturer could produce the needed components; and the ability of the system to work within the existing wiring common among heavy-duty tractors and trailers.

The PLC-4-TRUCKS system that was developed by the consortium uses computer chips manufactured by Intellon Corporation that provide spread-spectrum data communications capability over a power line, or power line carrier (PLC). These chips, which are used in other commercial applications, were adapted to heavy-duty truck use and through the PLC-4-TRUCKS consortium, a communications protocol was developed. As HDBMC states in their petition, Alan Lesesky of VES Corporation was granted a patent in October, 2000, which covers the use of spread-spectrum data communications on tractor-trailer applications, and subsequently VES filed a lawsuit against Intellon alleging patent infringement issues. Prior to filing the lawsuit, VES offered licensing agreements to the manufacturers of heavy-duty ABS systems to enable them to use this technology. As stated in the petition, the HDBMC believes that the licensing fees proposed by VES are commercially

unreasonable and inconsistent with past licensing arrangements for products covered by Society of Automotive Engineers (SAE) or NHTSA standards.

NHTSA notes that as early as 1998, the agency was prepared to initiate rulemaking to mandate one of the commercially-available systems for the purpose of communicating trailer ABS warning lamp signals, to ensure that the industry would comply with the March 1, 2001 compliance date. However, the agency was assured by the industry that the PLC-4-TRUCKS solution was indeed that way that the industry wanted to go and that such a mandate was unnecessary. The agency heeded the industry's recommendations and subsequently did not begin the rulemaking process for such a mandate.

NHTSA contacted VES and Intellon attorneys for an update on the lawsuit by VES against Intellon. The attorney for VES indicated that one of the HDBMC member companies, Eaton Corporation, had negotiated and signed a licensing agreement with VES to use the spread-spectrum technology for trailer ABS warning lamp purposes. The VES attorney indicated that he believed other ABS manufacturers would follow suit. The agency believes that if suitable licensing agreements are made between the ABS manufacturers and VES, then the lawsuit would be terminated so that manufacturing the PLC-4-TRUCKS system with the Intellon computer chips could resume.

The agency therefore denies the petition for a one-year extension of the March 1, 2001, compliance date for trailer ABS malfunction signals. The technology is available to transmit the trailer ABS malfunction signals. The agency believes that this issue is a business matter that the ABS suppliers need to work out with appropriate parties, including Intellon, VES, and the vehicle manufacturers to whom they sell their products. The agency notes that it was prepared to mandate one of the older, commercial systems on the market, but the agency was persuaded not to do so. Under these circumstances the fact that the vehicle manufacturers do not want to pay the amount proposed by VES is not an adequate basis to extend the effective date. Further, the agency notes that the cost of ABS in general has decreased significantly (i.e., a factor of two or three) compared to ABS costs prior to the tractor ABS mandate of March 1, 1997, and that the cost to incorporate the trailer ABS malfunction signaling would only amount to a small increase in the cost of current ABS equipment.

Issued on May 21, 2001.

Stephen R. Kratzke,

*Associate Administrator for Safety
Performance Standards.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 010-427105-1105-01; I.D.
011001F]

RIN 0648-AJ82

Magnuson-Stevens Act Provisions; Update of Regulations Governing Council Operations

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

ACTION: Proposed rule, request for
comments.

SUMMARY: NMFS proposes to update
regulations governing the operation of
Regional Fishery Management Councils
(Councils) under the Magnuson-Stevens
Fishery Conservation and Management
Act (Magnuson-Stevens Act). This
proposed rule would make amendments
by codifying recent administrative and
policy changes, and by making editorial
changes for readability, clarity, and
uniformity. The intent of this proposed
rule is to update Council regulations to
reflect current policies and procedures.

DATES: Comments must be received on
or before June 25, 2001.

ADDRESSES: Comments should be sent to
William T. Hogarth, Acting Assistant
Administrator, NMFS, 1315 East-West
Highway, Silver Spring, MD 20910.
Comments on this document will not be
accepted if submitted via email or the
Internet.

FOR FURTHER INFORMATION CONTACT:
Richard Surdi, F/SF5, NMFS, 301-713-
2337. This **Federal Register** document is
also accessible via the Internet at the
Office of the Federal Register website at
<http://www.access.gpo.gov/su-docs/aces/aces140.tml>.

SUPPLEMENTARY INFORMATION:

Background

Currently, regulations pertaining to
general provisions of the Magnuson-
Stevens Act related to Council
operations are contained in title 50 of
the Code of Federal Regulations (CFR).
NMFS is proposing to update part 600

(Regional Fishery Management
Councils, subpart B, and Council
Membership, subpart C), to codify
important provisions of the recently
withdrawn Council Operations and
Administration Handbook (Handbook),
which was a reference guide that
compiled various requirements of the
Magnuson-Stevens Act and other
applicable law, as well as policy
guidance. Some of the guidance
contained in the Handbook consisted of
regulations that were removed from title
50 of the CFR at the time the Handbook
was developed. NMFS is proposing to
reinstate some of those former
regulations because they are not
contained elsewhere and they are
necessary for the Councils to function.
Other proposed additions and revisions
reflect necessary policy changes that
were not contained in the Handbook,
and were not previously in regulation.

Proposal

1. The topic of compensation for
Council staff (not Council members)
would be added at § 600.120, noting that
Council pay rates must be consistent
with the pay rates established for
General Schedule Federal employees or
the alternative personnel management
system for the U.S. Department of
Commerce (62 FR 67434; December 24,
1997). The Councils have the discretion
to adjust pay rates and pay increases for
cost of living (COLA) and other
adjustments, but no pay adjustment may
exceed the applicable percentage of
salary for COLA and locality pay
available to Federal employees in the
same geographic area. In addition, the
regulations would prohibit salary
increases funded in lieu of life and
medical/dental policies, a former
regulation that was contained in the
Handbook. Other additions at § 600.120
that reinstate former regulations include
fair hiring practices and the hiring of an
independent legal counsel.

2. The topic of payment for unused
sick and annual leave would be added
at § 600.120. It would provide that
unused sick leave may be accumulated
to a maximum as established by the
Council. It also provides for the
distribution of accumulated funds for
unused sick leave to the employee upon
his or her retirement, or their estate
upon his or her death, as established in
the Council's Statement of Organization,
Practices, and Procedures (SOPP). Each
Council may pay for unused annual
leave upon separation, retirement, or
death of an employee.

3. A requirement would be added
under § 600.125 regarding agreements,
including grants, contracts, or
cooperative agreements. Councils may

not independently enter into agreements
in which they will receive funds, and all
such agreements must be approved and
entered into by NOAA on behalf of the
Council. A policy that was contained in
the Handbook regarding the receipt of
gifts or contributions would also be
added at § 600.125.

4. Policies in the Handbook regarding
meeting notification, meeting closures,
and voting procedures that were also
former regulations would be added at
§ 600.135.

5. A policy that was contained in the
Handbook regarding the disposition of
records that was also a former regulation
would be added at § 600.150.

6. A policy contained in the
Handbook regarding responding to
Freedom of Information Act requests
that was also a former regulation would
be added at § 600.155.

7. The constituent states of the eight
Regional Fishery Management Councils
are represented by "principal state
officials" designated by their Governors.
Each principal state official under
section 302(b) of the Magnuson-Stevens
Act is currently required to be
employed, on a full-time basis, in a
position related to the development of
fisheries management policies for that
state. The proposed rule would amend
the language at § 600.205 so that a
designee of that official would not have
to be a full-time employee of the state,
with the aforementioned
responsibilities, but must be a resident
of the state and knowledgeable and
experienced in the fishery resources of
the geographic area of concern to the
Council. This would grant greater
flexibility to the principal state official
in selecting a designee, who may have
the expertise and ability to serve, but
might not be a full-time state employee.

8. Section 302(d) of the Magnuson-
Stevens Act establishes GS-15, step 7
General Schedule as a Council
member's daily pay rate. This proposed
rule would remove § 600.245(a) which
is inconsistent with the statutory
provision.

Classification

This action has been determined to be
not significant for purposes of E.O.
12866.

The Chief Counsel for Legislation and
Regulation of the Department of
Commerce certified to the Chief Counsel
for Advocacy of the Small Business
Administration that this proposed rule,
if adopted, would not have a significant
economic impact on a substantial
number of small entities in the fishing
industry. This proposed rule does not
affect any small entities. Rather, it
establishes procedures or guidelines for