

List of Subjects in 48 CFR Parts 2, 11, 23, and 52

Government procurement.

Dated: July 6, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 11, 23, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 11, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS**§ 2.101 [Amended]**

2. Amend section 2.101 by removing from paragraph (b)(2), in the definition “biobased product”, the words “(including plant, animal, and marine materials) or” and adding “and” in its place.

PART 11—DESCRIBING AGENCY NEEDS

3. Amend section 11.302 by revising paragraph (c)(2) to read as follows:

§ 11.302 Policy.

* * * * *

(c) * * *

(2) For biobased products, agencies may not require, as a condition of purchase of such products, the vendor or manufacturer to provide more data than would typically be provided by other business entities offering products for sale to the agency, other than data confirming the biobased content of a product (see 7 CFR 2902.8).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**§ 23.404 [Amended]**

4. Amend section 23.404 by removing from paragraph (e)(1) the words “(including plant, animal, and marine materials)”.

5. Amend section 23.405 by revising paragraph (a)(2) and adding (a)(3) to read as follows:

§ 23.405 Procedures.

(a) * * *

(2) *Biobased products.* Contracting officers should refer to USDA’s list of USDA-designated items (available through the Internet at [http://](http://www.biopreferred.gov)

www.biopreferred.gov) and to their agencies’ affirmative procurement program when purchasing supplies that contain biobased material or when purchasing services that could include supplies that contain biobased material.

(3) When acquiring recovered material or biobased products, the contracting officer may request information or data on such products, including on the recycled or biobased content or related standards of the products (see 11.302(c)).

* * * * *

§ 23.406 [Amended]

6. Amend section 23.406 by removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding “<http://www.biopreferred.gov>” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.223–2 by—

a. Revising the date of the clause;

b. Removing from paragraph (b) “<http://www.usda.gov/biopreferred>” and adding <http://www.biopreferred.gov> in its place; and

c. Adding paragraphs (c) and (d) to read as follows:

52.223–2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts

* * * * *

Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Date)

* * * * *

(c) In the performance of this contract, the Contractor shall—

(1) Report to the cognizant Contracting Officer and the agency environmental manager on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous year, between October 1 and September 30, in this contract;

(2) Submit this report no later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance; and
(iii) Contact the cognizant environmental manager to obtain the preferred submittal format, if that format is not specified in this contract.

(d) The cognizant environmental manager for this contract is: _____.

[Contracting Officer shall insert full name, phone number, and email address or Web site for reporting.]

[FR Doc. 2011–17453 Filed 7–12–11; 8:45 am]

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

[Docket No. NHTSA–2011–0101]

RIN 2127–AK99

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to restore the blue and green color boundaries to Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices and Associated Equipment*, that were removed when the agency published a final rule reorganizing the standard on December 4, 2007.

DATES: Comments to this proposal must be received on or before September 12, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”

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

- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, 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 comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

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.

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) or you may visit <http://www.dot.gov/privacy.html>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Markus Price, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (Telephone: (202) 366–0098) (Fax: (202) 366–7002).

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA published a NPRM on December 30, 2005¹ to reorganize FMVSS No. 108 and improve the clarity of the standard's requirements thereby increasing its utility for regulated parties. It was the agency's goal during the rewrite process to make no substantive changes to the requirements of the standard.

FMVSS No. 108 has been in existence since 1968. The standard had been amended on an *ad hoc* basis over time resulting in a patchwork organization of the standard. Regulated parties had stated that the standard was difficult to interpret because of its organization. In response to these concerns the agency sought to rewrite the standard to make it more understandable by adopting a simplified numbering scheme, to improve organization by grouping related materials in a more logical and consistent sequence, and to reduce the certification burden of regulated parties who previously needed to review a few dozen third-party documents. The agency issued the December 30, 2005, NPRM in an attempt to address these concerns.

Based on the comments received in response to the NPRM, NHTSA published a final rule on December 4,

2007,² amending FMVSS No. 108 by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements; incorporating important agency interpretations of the existing requirements; and reducing reliance on third-party documents incorporated by reference. The preamble of the final rule again stated that the rewrite of FMVSS No. 108 was administrative in nature and would have no impact on the substantive requirements of the standard. The final rule made several changes to the proposal contained in the NPRM including removing the blue and green color boundary requirements from paragraph S14.4.1.3.2.

On August 11, 2008, SABIC Innovative Plastics sent a letter to NHTSA claiming that the agency did not allow for public comment when it made the decision to remove the blue and green color boundaries from the standard. SABIC further argued that in removing the blue and green color boundaries from paragraph S14.4.1.3.2, the agency substantively changed the requirements of FMVSS No. 108 during the rewrite process.

II. Green and Blue Color Boundaries

Previous to the rewrite of the standard, paragraph S5.1.5 of FMVSS No. 108 required that the color of all lamps required by the standard comply with SAE J578c, *Color Specification for Electric Signal Lighting Devices*, (FEB 1977). SAE J578c contained color boundary definitions for red, yellow, white, green, restricted blue, and signal blue light. The NPRM included the boundary definition for the colors blue and green, but left out restricted blue. In the final rule the agency removed the color boundary definitions for green and blue from paragraph S14.4.1.3.2, retaining only the definitions for the red, yellow, and white color boundaries.

The agency is aware that, although neither blue nor green are directly used within the standard, it is possible to use these color boundaries to certify a material to the outdoor exposure test located in the paragraphs of S14.4.2.2. Prior to the reorganization final rule, a manufacturer could separately certify both a clear (white) material and a blue material to the haze test. The blue material alone could not be used in a lamp because the lamp itself would not emit the color of light required by the standard (only white, amber, and red lights are permitted). Once individually certified to the three year haze test, however, the blue and clear material

could be mixed to produce a clear material with a blue tint, which could then be used in a lamp lens provided the lamp itself emits light within the white color boundary. Under the standard, the mixed material can be certified to the haze test without an additional three years of testing.

The agency recognizes that removing the color definitions for blue and green creates a substantive change to the requirements of FMVSS No. 108. Since it was not the agency's intention to create any substantive modifications to the standard, as stated in the NPRM and preamble of the final rule, the agency is proposing to amend FMVSS No. 108 to add color boundary definitions for green, restricted blue and signal blue so that the requirements of the rewrite coincide with those of the old standard. Further, the agency notes that these additional color boundary definitions have no impact on color that any lamp must emit. The agency is not proposing to change the color requirements for any lamp mandated by FMVSS No. 108.

III. Costs, Benefits, and the Proposed Compliance Date

Because this proposal only restores an existing requirement to the standard, the agency does not anticipate that there would be any costs or benefits associated with this rulemaking action. Accordingly, the agency did not conduct a separate economic analysis for this rulemaking.

The agency proposes an effective date of December 1, 2012, should a final rule be issued, to coincide with the effective date of the FMVSS No. 108 administrative rewrite.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.³ We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal:* go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on "Help" or "FAQ."

¹ 70 FR 77454, (Dec. 30, 2005).

² 72 FR 68234, (Dec. 4, 2007).

³ See 49 CFR 553.21.

- *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.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.⁴

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

How can I be sure that my comments were received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.⁵

In addition, you should submit a copy, from which you have deleted the

claimed confidential business information, to the Docket by one of the methods set forth above.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

V. Regulatory Notices and Analyses

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures.

B. National Environmental Policy Act

We have reviewed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). 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). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of the proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposal restores the green and blue color boundaries contained in the currently applicable version of FMVSS No. 108 to the administrative rewrite of FMVSS No. 108 which has not yet taken effect. Accordingly, we do not anticipate that this proposal would have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform,"⁶ NHTSA has

⁴ Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

⁵ See 49 CFR part 512.

⁶ 61 FR 4729 (Feb. 7, 1996).

considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes 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 in any one year (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually. The cost impact of this proposed rule is expected to be \$0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule does not contain any collection of information requirements requiring review under the PRA.

H. Executive Order 13045

Executive Order 13045⁷ applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule does not pose such a risk for children. The primary effects of this proposal are to amend the lighting standard to restore the green and blue color boundaries.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This proposal would not adopt or reference any new industry or consensus standards that were not already present in FMVSS No. 108.

J. Executive Order 13211

Executive Order 13211⁸ applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the

regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This proposal restores the green and blue color boundaries contained in the currently applicable version of FMVSS No. 108 to the administrative rewrite of FMVSS No. 108 which has not yet taken effect. Therefore, this proposed rule will not have any adverse energy effects. Accordingly, this proposed rulemaking action is not designated as a significant energy action.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

M. 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 organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you

⁷ 62 FR 19885 (Apr. 23, 1997).

⁸ 66 FR 28355 (May 18, 2001).

may visit <http://www.dot.gov/privacy.html>.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

§ 571.108 [Amended]

Section 571.108 is amended effective December 1, 2012 by adding paragraphs S14.4.1.4.2.4, S14.1.4.2.5, and S14.4.1.4.2.6 to read as follows:

* * * * *

S14.4.1.4.2.4 Green. The color of light emitted must fall within the following boundaries:

$y = 0.73 - 0.73x$ (yellow boundary);

$y = 0.50 - 0.50x$ (blue boundary);

$x = 0.63y - 0.04$ (white boundary).

S14.4.1.4.2.5 Restricted Blue. The color of light emitted must fall within the following boundaries:

$y = 0.07 + 0.81x$ (green boundary);

$x = 0.40 - y$ (white boundary);

$x = 0.13 + 0.60y$ (violet boundary).

S14.4.1.4.2.6 Signal Blue. The color of light emitted must fall within the following boundaries:

$y = 0.32$ (green boundary);

$x = 0.40 - y$ (white boundary);

$x = 0.16$ (white boundary);

$x = 0.13 + 0.60y$ (violet boundary).

* * * * *

Issued on: July 7, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

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