

because 1992 and 1993 industry drug testing data indicated a random drug positive rate below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1998 through December 31, 1998, since the industry random positive rate for 1996 was 0.85 percent.

Administrator's Determination of 1998 Random Alcohol Testing Rate

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1995 MIS report indicated an industry-wide positive rate of 0.29 percent and the 1996 MIS report indicates a positive rate of 0.24 percent, recent FRA audits of railroad programs revealed significant random testing program problems which may have skewed the data. The most critical deficiency uncovered in these audits was the failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will obtain at least one additional year of data and continue to audit industry testing programs. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on February 11, 1998.

Jolene M. Molitoris,
Administrator, Federal Railroad Administration.

[FR Doc. 98-4068 Filed 2-17-98; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-98-3452]

RIN 2127-AG47

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

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on lighting to permit white reflex reflectors designed to be mounted horizontally in trailer and truck tractor conspicuity treatments to be mounted vertically in upper rear corner locations if they comply with appropriate photometric requirements for off-axis light entrance angles. This action simplifies compliance with the standard.

DATES: The amendments are effective February 18, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone 202-366-5265; fax 202-366-4329).

SUPPLEMENTARY INFORMATION: Paragraph S5.7 of Motor Vehicle Safety Standard No. 108 specifies conspicuity system requirements for truck tractors, and trailers of 80 or more inches overall width and a gross vehicle weight rating of more than 10,000 pounds. Part of the conspicuity treatment consists of two pairs of items of white material applied horizontally and vertically to the right and left upper contours of the rear of the body. This material may be either white retroreflective sheeting or white reflex reflectors.

NHTSA received a petition for rulemaking concerning white reflectors. Paragraph S5.7.2.1(c) requires white reflex reflectors to

provide at an observation angle of 0.2 degree, not less than 1250 millicandelas/lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 300 millicandelas/lux at any light entrance angle between 45 degrees left and 45 degrees right.

James King & Co wrote to NHTSA saying that white reflectors designed to give the required performance at 30 and 45 degrees right and left entrance angles when mounted horizontally cannot do so in the right and left directions when tested in the vertical position, i.e., when those reflectors are rotated 90 degrees. Consequently, when white reflex reflectors are molded in bars of multiple reflectors, the reflector bars required for the two upper rear vertical position must be different from the reflector bars that are used in horizontal positions to fulfill conspicuity requirements. King petitioned for rulemaking to allow use of horizontal bars meeting S5.7.2.1(c) in vertical directions.

NHTSA tentatively agreed with the petitioner, granted the petition, and published a notice of proposed rulemaking on May 14, 1997 (62 FR 26466) as Docket No. 97-30; Notice 1. As published, Standard No. 108 would be amended by adding a new paragraph "S7.5.2.2(c)" to read:

(c) If white reflex reflectors comply with paragraph S7.5.2.1(c) when installed horizontally, they may be installed in all orientations specified for rear upper locations in paragraph S5.7.4.1(b) or paragraph SS5.7.1.4.3(b).

Some numerals were transposed in the proposed amendment. In actuality, NHTSA meant to propose adding a new paragraph S5.7.2.2(c). Further, the initial reference in this new paragraph should have been to S5.7.2.1(c). However, these transpositions did not create any conflict as there are no existing paragraphs S7.5.2.1(c) and S7.5.2.2(c). The proposal was justified on the basis that the upper rear conspicuity treatment, unlike the lower treatment, does not need to reflect light at large horizontal entrance angles to achieve its intended purpose, and that it is desirable for conspicuity reflectors to be interchangeable and simple to use. For further information, the reader is referred to the notice of May 14.

Ford Motor Company ("Ford"), Advocates for Highway and Auto Safety ("Advocates"), 3M Traffic Control Materials Division ("3M"), and Mr. G.J.M. Meekel commented on the proposed amendment. Ford concurred with the proposal because its adoption would remove a design restriction without compromising the need to improve the nighttime conspicuity of large vehicles. However, Advocates and 3M opposed the proposal because they believed it would reduce the effectiveness of the conspicuity material. Advocates also opposed the use of any reflex reflectors in conspicuity treatments, citing the

possibility of damage and the lack of interchangeability of vertical and horizontal reflectors.

NHTSA believes that this concern is unfounded. The upper and lower treatments have different relationships to conspicuity. The side of a trailer turning or backing across a road is often angled to the lane it blocks. Therefore, reflectors for trailer conspicuity are required to have very high reflective performance for light entrance angles up to 30 degrees and a lower level of performance up to 45 degrees. The red/white color scheme on the side identifies the single line of retroreflective material as the nighttime reflective image of the side of a trailer. Drivers approaching the long line of alternating red and white reflectors visible on the side of a trailer can presume their road speed to be their closing speed with the trailer.

However, drivers overtaking a moving trailer from the rear cannot make the same presumption. The white material for the upper conspicuity treatment provides a two-dimensional reflective image to improve the perception of closing speed. As the preamble for the final rule on truck tractor conspicuity stated (60 FR 413255),

* * * The purpose of the upper material is to improve the distance perception of a driver of a faster vehicle approaching in the same lane. In this circumstance, the usual view of the truck tractor [or trailer] is close to orthogonal.

NHTSA emphasizes that, even when mounted vertically, a horizontal conspicuity reflex reflector retains excellent performance over the 20 degrees right to 20 degrees left range of horizontal light entrance angles, as required for the conventional reflex reflectors meeting SAE J594f that are used on trucks and cars. Advocates commented that NHTSA has no measurement of actual millicandela readings for upper rear corner treatments executed with horizontal bars for the vertical portions of the reflectorized right angle. In fact, NHTSA had reviewed a manufacturer's test data of a horizontal DOT-C reflex reflector bar used in a vertical position which showed that it greatly exceeded the performance specified by SAE J594f (at an observation angle of 0.2 degree) for conventional truck reflex reflectors which is limited to horizontal light entrance angles of 20 degrees. Performance at greater light entrance angles is necessary to highlight the side of a trailer blocking the road at an angle to the observer but not for the rear of a tractor or trailer being overtaken by an observer directly behind it. Thus, to

assure that all horizontal conspicuity reflectors that could be mounted vertically achieve the necessary performance, the agency will require that the devices comply with SAE J594f when tested in the vertical position.

3M also commented that an amendment is unnecessary because there is no technological barrier to the design of reflex reflectors capable of meeting the DOT-C specification in both orientations.

NHTSA concurs that large reflex reflectors could be made incorporating facets for both orientations. However, this would negate the advantage of using existing reflectors and the new reflectors would be less cost competitive with retroreflective tape. NHTSA does not wish to place unnecessary burdens on either of the competing conspicuity material industries inasmuch as the product of each offers distinct advantages to users. Retroreflective tape is less likely to be compromised by harsh docking impacts, while the compactness of reflex reflector bars may be important to the practicability of the upper treatment on some truck tractors.

Mr. G.J.M. Meekel is the chairman of ECE-WP29-GRE (Economic Commission for Europe, Working Party 29 on the construction of vehicles, Groupe de Rapporteurs sur Eclairage), a United Nations committee that has facilitated a large degree of lighting device harmonization between European countries regarding safety standards for new vehicles. The Committee has discussed amending ECE-Regulation 48 in order to create a sufficiently broad "window of harmonization" so that vehicles manufactured in compliance with it can be sold worldwide. Mr. Meekel commented that the use of white reflex reflectors as conspicuity treatment is "not in line with the harmonization activities in GRE." NHTSA believes that the explanation for his remark lies in an artificial distinction that European regulations make between reflex reflectors, which are considered "lighting devices", and retroreflective sheeting, which is not. The only white "lighting devices" allowed on the rear of vehicles in Europe are backup and license plate lamps, thereby excluding white reflex reflectors. But white elements of retroreflective sheeting are allowed on the rear of vehicles because they are not considered to be "lighting devices." Standard No. 108, the U.S. conspicuity regulation, makes no distinction between types of retroreflective material because it requires the minimum retroreflective performance of both sheeting material and reflex reflectors to be identical.

Both U.S. and European manufacturers are free to choose sheeting material rather than reflex reflectors. Mr. Meekel's general opposition to the use of reflex reflectors in conspicuity treatments is not relevant to the rulemaking action at hand because the NPRM dealt only with the interchangeability of horizontal and vertical reflectors.

In sum, the agency does not consider the arguments against the proposal to be compelling. However, the rule as amended will specify that the reflectors satisfy the test points of SAE J594f for other truck reflectors at an observation angle in the vertical position to guarantee continued satisfactory performance of future reflectors in the rotated position.

Thus, adopted paragraph S5.7.2.1(d) reads:

A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Effective Date

Because the amendment relieves a cost and testing burden and affords an optional means of complying with conspicuity requirements of 49 CFR 571.108, it is hereby found that an effective date earlier than 180 days after issuance of the final rule is in the public interest. Accordingly, the amendment effected by this notice is effective upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The final rule does not impose any additional burden upon any person. It will slightly reduce costs to both manufacturers and consumers. NHTSA believes that all horizontal reflex reflectors currently installed on trailers pursuant to S5.7 conform to SAE J594f. The effect of the final rule is to allow the same white reflex reflector bars to be used for vertical and horizontal locations on the rear of truck tractors

and trailers, rather than two different types of bars. Accordingly, NHTSA anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* I certify that this rulemaking action will not have a significant economic impact upon 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 final rule does not have a mandatory effect upon any person. It provides manufacturers of truck tractors and large trailers an optional means of compliance with an optional requirement already in effect. If such manufacturers are installing white reflex reflectors in horizontal and vertical segments on the upper corners of these vehicles instead of retroreflective sheeting as a means of complying with paragraph S5.7, the final rule allows these manufacturers to use in vertical positions reflex reflectors designed to be mounted horizontally that meet horizontal photometric requirements. Before the final rule, manufacturers of vehicles covered by the requirements could not use horizontal reflex reflectors in vertical positions unless they also met the photometric requirements for reflex reflectors mounted vertically. The effect of the final rule, therefore, is to simplify compliance. The cost of white reflex reflectors and the costs of truck tractors and trailers on which they are installed should not be affected. Since there is no economic impact, let alone one that is significant, it is not necessary to determine formally whether the entities affected by the rules are "small businesses" within the meaning of the Regulatory Flexibility Act. In NHTSA's experience, manufacturers of truck tractors, trailers, and reflex reflectors are generally not "small businesses." Accordingly, no regulatory flexibility analysis has been prepared.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment as it does not affect the present method of manufacturing reflex reflectors.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the

principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The final rule will 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 which is not identical to the Federal standard. 49 U.S.C. 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation continues to read as follows:

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

§ 571.108 [Amended]

2. Section 571.108 is amended by adding new paragraph S5.7.2.1(d) to read as set forth below:

S5.7.2.1 * * *

(d) A white reflex reflector complying with S5.7.2.1(a) and (c) when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in S5.7.1.4.1(b) or S5.7.1.4.3(b) if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1680 millicandelas/lux at a light entrance angle of 0 degree, not less than 1120 millicandelas/lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas/lux at any light entrance angle from 20 degrees right to 20 degrees left.

Issued on: February 10, 1998.

Ricardo Martinez,
Administrator.

[FR Doc. 98-3904 Filed 2-17-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub-No. 2)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1998 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 1998 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1998 Government salary increases.

EFFECTIVE DATE: These rules are effective March 20, 1998.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565-1551, or Anne Quinlan, (202) 565-1652. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 2.45% in January 1998, we are updating our user fees to recover our increased personnel cost. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that notice and comment is unnecessary for this proceeding. See *Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes, which are being adopted here, will not have a significant economic impact on a substantial number of small entities