

D. Small Business Regulatory Enforcement Fairness Act

This rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to JDARAGAN@USDA.GOV, or contact us via fax at (202) 720-8972, if you would like additional information about this rule, or if you wish to submit comments.

List of Subjects in 48 CFR Parts 413 and 453

Government contracts, Government procurement.

For the reasons set out in the preamble, the Office of Procurement and Property Management amends 48 CFR Chapter 4 as set forth below:

1. Revise Part 413 to read as follows:

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.3—Simplified Acquisition Methods

- Sec.
- 413.301 Governmentwide commercial purchase card.
- 413.306 SF 44, Purchase Order-Invoice-Voucher.
- 413.307 Forms.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.3—Simplified Acquisition Methods

413.301 Governmentwide commercial purchase card.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

413.306 SF 44, Purchase Order-Invoice-Voucher.

The Standard Form 44 (and the previously prescribed USDA Form AD-744) is not authorized for use within USDA.

413.307 Forms.

Form AD-838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

2. The authority citation for part 453 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

453.213 [Amended]

3. In section 453.213, remove “413.505-1” and add, in its place, “413.307”.

Done at Washington, DC, this 12th day of August, 1999.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 99-21743 Filed 8-20-99; 8:45 am]

BILLING CODE 3410-XE-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA-99-6010]

RIN 2127-AH18

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

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

ACTION: Final rule.

SUMMARY: The Federal Motor Vehicle Safety Standard on lamps, reflective devices, and associated equipment includes a provision regulating headlamp concealment devices. In this document, NHTSA amends that Standard 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 those devices.

This rulemaking was initiated in response to a petition from the domestic and foreign motor vehicle industry. Our notice of proposed rulemaking was based on our tentative conclusion, after reviewing the U.S. and UN/ECE requirements, that the UN/ECE requirements were essentially identical to the U.S. requirements and thus would yield at least as much safety benefit as the U.S. requirements. Since NHTSA did not receive any response to its request for public comments, the agency reaffirms that conclusion and adopts the proposed amendment as final.

DATES: Effective date. This rule is effective October 22, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 22, 1999.

Early compliance date. You have the option of early compliance with the

changes made in this final rule beginning August 23, 1999.

Petitions for reconsideration deadline.

If you wish to petition for reconsideration of this final rule, you must submit it so that we (NHTSA) receive your petition not later than October 7, 1999.

ADDRESSES: In your petition for reconsideration, you should refer to the docket number for this action (cited in the heading of this final rule) and submit the petition to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: You may 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 the creation of 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 an agency process for making tentative findings that the vehicle safety standards of other countries are functionally equivalent to the corresponding Federal Motor Vehicle Safety Standards (FMVSSs) (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 provisions of those FMVSSs or new provisions incorporating by reference the requirements of counterpart 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).

The first test used by NHTSA under appendix B of part 553 to determine functional equivalence is whether the foreign requirements, test conditions, and test procedures appear to be the same or similar to the U.S. ones, with any differences being minor and lacking in safety consequences. In its review, NHTSA tentatively concluded that the European requirements for headlamp concealment devices passed this test. The fundamental performance requirements of the U.S. and European standards are the same. Further, NHTSA tentatively concluded that the differences between the standards are minor and inconsequential to safety except for vehicles equipped with headlamps for which external aimers must be used to aim them properly. These issues are further discussed below.

Fundamental Performance Requirements and Inconsequential Differences

Standard No. 108, *Lamps, reflective devices, and associated equipment*, and ECE R.48.01 are alike in all important respects. Standard No. 108, at S12., Headlamp Concealment Devices, specifies requirements for vehicles equipped with headlamp concealment devices. It requires that there be a single switch whose operation, in normal circumstances, 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 while the headlamp is illuminated, the 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 fail-safe performance.

In its review of Standard No. 108 and the ECE Standard, the agency noted several differences between the two standards. First, Standard No. 108 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. There is no comparable provision in the ECE standard. This requirement in Standard No. 108 addresses a potential aiming problem that could affect safety. Unless properly designed, a headlamp concealment device could potentially interfere with the use of external aimers. These devices, which are used to aim some kinds of U.S. headlamps, attach to the outside of the headlamp lens. If such interference occurred and if the component were removed to allow aiming, and then were replaced, the accuracy of the aim could be adversely affected. Alternatively, efforts to aim the headlamps without removing the interfering components could result in improper shortcuts in aiming. To address this difference between the two standards, NHTSA is limiting the applicability of its finding of functional equivalence to headlamps that do not use external aimers.

Second, NHTSA noted 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 expressly clear S12.3 and S12.5 apply only to functioning systems. NHTSA concluded that the ECE standard was intended to apply to functioning systems only and that the ECE standard alternative should be so interpreted. The alternative would not require systems with a failure mode to comply with performance requirements in addition to the failsafe performance requirements.

Third, NHTSA noted several ECE standard provisions that have no parallel in S12 of Standard No. 108. However, compliance with those provisions does not affect compliance with S12. Consequently, there is no impediment to a finding of functional equivalence.

Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on October 28, 1998 (63 FR

57638), NHTSA proposed to amend Standard No. 108 so that manufacturers of motor vehicles with headlamp concealment devices would have a choice between complying with existing provisions in Standard No. 108 or meeting a new provision incorporating by reference the United Nations Economic Commission for Europe's standard (ECE standard) on headlamp concealment devices. In the NPRM, NHTSA discussed its review of the ECE standard under appendix B of 49 CFR part 553, and addressed the following issues:

ECE Standard Meets Part 553, Appendix B Test

NHTSA tentatively concluded that paragraph 5.14 of ECE R.48.01 meets the test in 49 CFR Part 553 Appendix B and accordingly proposed to amend Standard No. 108 to permit manufacturers of motor vehicles with headlamp concealment devices to choose between complying with S12.1 through S12.5 of Standard No. 108, or with a new provision (S12.6 of Standard No. 108) incorporating by reference paragraph 5.14 of ECE R. 48.01. NHTSA proposed to limit optional compliance with the ECE standard 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. NHTSA stated its belief that 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 noted that, when a safety standard provides manufacturers with 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 stated it was 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 shift in a manufacturer's stance 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, first for one compliance option, then for another, to

determine whether there is a noncompliance.

Accordingly, NHTSA proposed that 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 is certifying that vehicle as meeting S12.1 through S12.5 or the ECE standard (that would be established in S12.6). NHTSA further proposed that 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 proposed 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. NHTSA must reference only one European standard (and make that standard publicly available) to meet the **Federal Register's** procedures for incorporating documents by reference.

NHTSA stated its intent 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 possible potential for being treated as functionally equivalent alternatives to Federal motor vehicle safety standards have no ECE counterpart.

Proposed Leadtime

NHTSA proposed that, if made final, the changes would 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.

Final Rule

NHTSA did not receive any comments on its proposal. Accordingly, the agency adopts its proposal as set forth in the NPRM. NHTSA concludes that paragraph 5.14 of ECE R.48.01 meets the test established in 49 CFR part 553 appendix B for determining functional equivalence; i.e., that the agency's analysis of paragraph 5.14 indicates that its requirements are the same or similar to the requirements of S12.1 through S12.5 of Standard No. 108. The differences are minor and lacking in safety consequences for vehicles equipped with headlamps for which external aimers must be used to aim them properly. Accordingly, NHTSA restricts the option of complying with the ECE regulation to manufacturers of 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.

The final rule requires that, not later than the time when 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 the basis for its certification is that the vehicle meets S12.1 through S12.5 of Standard No. 108 or S12.6 (incorporating the ECE regulation). Although the selected alternative need not be stated on the certification label, the manufacturer must advise the agency of its selection when asked by the agency to do so. The manufacturer's decision is irrevocable.

Before issuing this final rule, NHTSA obtained the latest version of the ECE regulation directly from the ECE rather than relying on the petitioners' version (the version proposed in the NPRM). The version provided by the ECE is identical to the petitioner's version except that a typographical error in Paragraph 5.15.5 (found in the petitioner's version) does not appear in the version NHTSA received from the ECE. Accordingly, in the final rule, the citation of ECE R48 proposed for S12.6 (of Standard No. 108) is updated to E/ECE/324—E/ECE/TRAN/505, Rev. 1/Add.47/Rev.1/Corr.2, 26 February 1996.

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." We have determined that this action is not "significant" under DOT's regulatory policies and procedures. This final rule has no substantive effect on manufacturers of motor vehicles that have headlamp concealment devices. The ECE standard on headlamp concealment devices that is included in the Federal motor vehicle safety standards does not differ substantively from existing requirements. Vehicle manufacturers will not incur additional costs as a result of meeting any new requirements. The impacts of this action are so minor that a full regulatory evaluation for this final rule has not been prepared.

B. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-112, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

NHTSA is not aware of a standard established by the SAE or other private organization that would apply to the same aspect of performance as the headlamp concealment lamp provisions of Standard No. 108. ECE Regulation 48 is not a voluntary consensus standard.

C. 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 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 certification. (5 U.S.C. 605(b)).

The final rule affects 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 final rule applies to the previously described vehicle manufacturers, regardless of their volume of production. There is no significant economic impact on any vehicle manufacturer because no manufacturer is required to provide headlamp concealment devices. There is no economic impact on manufacturers that already provide the devices because the devices meet the existing headlamp concealment device requirements in Standard No. 108, and NHTSA concludes that the ECE standard does not differ substantively from that Standard. The final rule permits vehicle manufacturers to choose between certifying that the vehicle with a headlamp concealment device meets the previously existing requirements in the Standard or the ECE standard now incorporated in the Standard. NHTSA does not believe there will be a cost advantage to certifying to one set of requirements over the other.

D. Environmental Impacts

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

E. 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This final rule does not have a 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. 301651 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 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 final rule does not have a \$100 million effect, no Unfunded Mandates assessment has been prepared.

H. Economically Significant Effects on Children

Executive Order 13045 (62 FR 19885, April 23, 1997) 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 planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Further, nothing in the final rule establishes an environmental, health, or safety risk that NHTSA believes may have a disproportionate effect on children.

I. Paperwork Reduction Act

Under 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 final rule does not establish any collection of information requirements.

J. 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.

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, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended 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, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by adding paragraph (b)(9) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(9) *Regulations of the United Nations Economic Commission for Europe (ECE)*. They are published by the United Nations. Information and copies may be obtained by writing to: United Nations, Conference Services Division, Distribution and Sales Section, Office C.115-1, Palais des Nations, CH-1211, Geneva 10, Switzerland. Copies of Regulations also are available on the ECE internet web site: www.unece.org/trans/main/wp29/wp29regs.html.

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3. Section 571.108 is amended by adding S12.6 and S12.7 to read as follows:

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

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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 5.14 of the following version of the Economic Commission for Europe Regulation 48 "Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices": E/ECE/324-E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 (page 17), in the English language version. A copy of paragraph 5.14 may be reviewed at the DOT Docket Management Facility, U.S. Department of Transportation, Room PL-01, 400 Seventh Street, SW., Washington, D.C. 20590-0001. Copies of E/ECE/324-E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 may be obtained from the ECE internet site:

www.unece.org/trans/main/wp29/wp29regs.html or by writing to:

United Nations, Conference Services
Division, Distribution and Sales Section,
Office C.115-1, Palais des Nations, CH-
1211, Geneva 10, Switzerland.

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: July 21, 1999.

Ricardo Martinez,

Administrator.

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