

address shown below on or before May 23, 1995, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. R.G. Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D006 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.G. Layser, (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule was issued to allow the head of the contracting activity to determine the appropriate level to delegate authority for the approval of second and subsequent rounds of best and final offers for competitive negotiated acquisitions under other than formal source selection.

**B. Regulatory Flexibility Act**

The rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98-577 because this rule only changes internal agency approval procedures.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this proposed rule does not impose any new recordkeeping, information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 215**

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 215 is proposed to be amended as follows:

1. The authority citation for Part 215 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 215—CONTRACTING BY NEGOTIATION**

2. Section 215.611 is amended by revising paragraph (c)(i)(B) to read as follows:

**§ 215.611 Best and final offers.**

(c)(i) \* \* \*

(B) The head of the contracting activity (HCA) or designee for all other competitive negotiated acquisitions.

\* \* \* \* \*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 575**

[Docket No. 95-19; Notice 1]

RIN 2127-AF-64

**Consumer Information Regulations; Fees for Course Monitoring Tires and for Use of Traction Skid Pads**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend NHTSA's consumer information regulations on uniform tire quality grading by establishing fees for the purchase of treadwear course monitoring tires and for the use of the traction skid pads at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo, Texas.

**DATES:** *Comments.* Comments must be received on or before May 23, 1995.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202-366-2830).

**SUPPLEMENTARY INFORMATION:** Section 203 of the National Traffic and Motor Vehicle Safety Act of 1966 directed the Secretary of Transportation to prescribe standards establishing "a uniform quality grading system for motor vehicle tires." Those standards are found at 49 CFR 575.104. For the purpose of aiding consumers in making an informed choice in the purchase of passenger car tires, the standards require motor vehicle and tire manufacturers and tire brand owners to label such tires with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance.

The uniform tire quality grading standards require treadwear performance to be evaluated on a specific roadway course, approximately 400 miles in length, which was established by NHTSA in the vicinity of Goodfellow Air Force Base in San Angelo, Texas. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The standards require manufacturers to correct the projected mileage obtained for tested tires to account for environmental and other variations that occur during testing on the course. This is done by comparing the performance of the tested tires to that of course monitoring tires placed on a vehicle that is part of the same convoy as the vehicles on which the tires being tested are placed. The course monitoring tires are specially manufactured under controlled conditions for NHTSA so that they can be used as a standard for grading the tires being tested. Section 575.104(e)(ii) of the standards states that "the course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course."

The uniform tire quality grading standards also require that tire traction be "evaluated on skid pads that are established, and whose severity is monitored, by the NHTSA \* \* \*." 49 CFR 575.104(f)(1). As further described in the standards, these test pads are paved with asphalt and concrete surfaces that have specified locked-wheel traction coefficients when evaluated in a manner prescribed in the standards. Two of these traction skid pads have been constructed at NHTSA's Uniform Tire Quality Grading Test Facility in San Angelo. This facility also includes an instrumented vehicle and test trailer, and maintenance support equipment. In addition to this government test facility, traction skid pads have been constructed at several commercial facilities. These include the Transportation Research Center's facility in East Liberty, Ohio, Juan Lopez in Laredo, Texas (formerly the Uniroyal Proving Grounds), Firestone's facility in Fort Stockton, Texas, General Tire's Test Track in Uvalde, Texas, and the Smithers Transportation Test Center in Pecos, Texas. For the purpose of evaluating tire traction, manufacturers are not restricted to the use of the traction skid pads at the government facility in San Angelo, and may use those at any commercial facility.

The Department of Transportation's Office of Inspector General (OIG) recently completed an audit of NHTSA's

Uniform Tire Quality Grading Test Facility in San Angelo. As a result of this audit, the OIG concluded that NHTSA was not recovering the full cost of the course monitoring tires that it sells at San Angelo and was not charging a user fee for the use of the traction skid pads at that facility, contrary to the requirements of Office of Management and Budget (OMB) Circular A-25.

OMB Circular A-25 establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. The Circular expresses the general policy that "[a] user charge \* \* \* will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." For the purpose of determining the amount of user charges to assess, the Circular states that "user charges will be sufficient to recover the full cost to the Federal Government \* \* \* of providing the service, resource, or good when the Government is acting in its capacity as sovereign." Full cost is defined in the Circular as "all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service \* \* \*." The Circular further provides that when the Government is not acting in its capacity as sovereign, "user charges will be based on market prices \* \* \*."

In selling course monitoring tires to manufacturers, the government is acting in its capacity as sovereign, because the manufacturers have no practical alternative means of acquiring tires with a specific base course wear rate that must be used in grading the treadwear of the tires they are testing. Before it was audited by the OIG, NHTSA was charging \$304.50 for each course monitoring tire that it sold. In its audit report, the OIG noted that this amount was not sufficient to recover the full cost incurred by the government in furnishing these tires. In order to recover this full cost, NHTSA raised the charge for each course monitoring tire to \$379.00 in January, 1995. Through this notice, NHTSA is proposing to formally establish \$379.00 as the fee for each course monitoring tire that it sells. This amount was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by NHTSA:

Purchase price of course monitoring tires .....	\$175,000
General facility costs relating to tires .....	3,400
Warehouse storage fees .....	24,000
Salaries relating to tires .....	29,825

Testing fees to establish base course wear rate for tires .....	32,800
Total .....	265,025
Number of tires purchased= 700	
\$265,025/700 = \$378.61 cost per tire.	

Because manufacturers are not required to use the traction skid pads at NHTSA's San Angelo facility for the purpose of meeting the tire traction grading requirements of 49 CFR 575.104(d), and may use any of the several commercial facilities that are available for that purpose, the government is not acting as sovereign in making the San Angelo facility available for traction tests. Accordingly, the government may charge a market rate for the use of the traction pads. Based on an agency review of the rates charged by commercial facilities, NHTSA proposes to assess a user charge of \$288 per day for the use of the traction skid pads at San Angelo. While not exceeding market rates, such a charge would be sufficient for NHTSA to recover the costs that can be allocated to industry use of its traction skid pads. Those costs are calculated as follows, based on an equivalent of 360 days of industry use in 1993:

Skid pad calibration expenses ..	\$ 6,210
General facility costs relating to skid pads .....	7,140
Depreciable items (skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings) .....	65,904
Salaries relating to skid pads ....	24,375
Total .....	103,629
\$103,629/360 days industry use = \$287.86 cost per day.	

**Rulemaking Analyses and Notices**

*1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

*2. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Motor vehicle and tire manufacturers and tire brand owners typically would not qualify as small entities. This amendment would affect

small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires. However, because the user fees proposed in this amendment could be spread across a manufacturer's entire production, the amendment would have a negligible cost impact on vehicles and tires. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units that purchase motor vehicles would not be significantly affected by the proposed user fees. Accordingly, no regulatory flexibility analysis has been prepared.

*3. Executive Order 12612 (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 proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

*4. National Environmental Policy Act*

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

*5. Civil Justice Reform*

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), 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. Section 105 of the Act (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.

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage

commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

#### List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend § 575.104, *Uniform tire quality grading standards*, in Title 49 of the Code of Federal Regulations at part 575 as follows:

#### PART 575—[AMENDED]

1. The authority citation for Part 575 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, and 30123; delegation of authority at 49 CFR 1.50.

2. A new appendix D would be added to § 575.104, to read as follows:

#### § 575.104 Uniform tire quality grading standards.

\* \* \* \* \*

#### Appendix D—User Fees

1. *Course monitoring tires:* A fee of \$379.00 will be assessed for each course monitoring tire purchased from NHTSA at Goodfellow Air Force Base, San Angelo, Tex. This fee is

based upon the direct and indirect costs attributable to: (a) The purchase of course monitoring tires by NHTSA, (b) a pro rata allocation of salaries and general facility costs associated with maintenance of the tires, (c) warehouse storage fees for the tires, and (d) testing fees paid by NHTSA to establish the base course wear rate for the tires.

2. *Use of Government traction skid pads:* A fee of \$288.00 will be assessed for each day that the traction skid pads at Goodfellow Air Force Base, San Angelo, Tex. are used. This fee is based upon the direct and indirect costs attributable to: (a) Depreciation on facilities and equipment comprising or used in conjunction with the traction skid pads (i.e., skid system, water truck, air compressor, skid track, tractor sweeper, equipment, buildings), (b) the calibration of the traction skid pads, and (c) a pro rata allocation of salaries and office operating expenses associated with maintenance of the traction skid pads.

3. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

4. The fees set forth in this appendix continue in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fees set forth in this appendix and, if appropriate, adjusts them by rule at least every 2 years.

Issued on: March 21, 1995.

**Barry Felrice,**

*Associate Administrator for Safety Performance Standards.*

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