

1. On October 25, 1994, the Commission released a *Notice of Proposed Rule Making* in MM Docket No. 94-123, 59 FR 55402 (1994) ("Notice"), soliciting comment on the legal and policy justifications, in light of current economic and technological conditions, for the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, and to consider the continued need for the rule in its current form. By an *Order* adopted on December 7, 1994, the deadline for filing comments was extended to March 7, 1995, and the deadline for filing reply comments was extended to April 6, 1995. See *Order Granting Extension of Time for Filing Comments and Reply Comments* in MM Docket No. 94-123, 59 FR 64382 (1994). At the request of a number of commenters in this proceeding, the time for filing reply comments was substantially extended to May 12, 1995. See *Order Granting Extension of Time for Filing Comments and Reply Comments* in MM Docket No. 94-123, 60 FR 18793 (April 13, 1995).

2. On May 3, 1995, a motion for a further extension of time for filing reply comments in this proceeding was filed by the Coalition to Enhance Diversity, which states that it is authorized to represent the Association of Independent Television Stations, Inc., Capital Cities/ABC, Inc., CBS Inc., King World Productions, Inc., the Media Access Project, the Motion Picture Association of America, Inc., the National Broadcasting Company, Inc., the Network Affiliated Stations Alliance, and Viacom, Inc. ("Joint Petitioners") in this request. The motion requests that the deadline for filing reply comments be extended from May 12, 1995, to May 26, 1995.

3. The Joint Petitioners contend that the comments filed in this proceeding include detailed economic studies on all sides of the issues raised in the *Notice*. In order to properly evaluate these various economic studies, the parties have agreed to make available certain data underlying those studies, which information has recently become available and accessible for review at the Commission. (To accommodate the parties, this information is available at the Commission's Washington, D.C., headquarters and at the field office in Hayward, California.) These parties, who take differing views on the continued need for the Prime Time Access Rule, state that a brief extension of time will permit the completion of the evaluations and critiques of the comprehensive economic analyses submitted in this proceeding as called for in the *Notice*. These parties maintain that the grant of this request for a short

extension of time will serve the public interest by permitting a more thorough public and industry review of the economic data, which would, in turn, facilitate the submission of reply comments that will prove more useful in generating the comprehensive record that the Commission seeks in this proceeding.

4. As set forth in § 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, under the circumstances described above, we believe that the requested extension of time to file reply comments is warranted. This extension of time should facilitate the development of a full and complete record on the issues raised in the *Notice* and, thus, it appears reasonable to provide the commenting parties additional time to analyze and address these issues.

5. Accordingly, It is Ordered that the above-mentioned motion for an extension of time Is Granted, and that the time for filing reply comments in this proceeding is Extended to May 26, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.204(b), 0.283, and 1.45 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 70-27, Notice 33 and Docket No. 83-07, Notice 7]

RIN 2127-AF13

Federal Motor Vehicle Safety Standards; Burnish Procedures for Heavy Vehicles

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

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking to amend Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems*, with respect to the burnish procedures for

medium and heavy vehicles. The agency has determined that it would be unnecessary to extend the period during which a manufacturer may choose between two burnish procedures since manufacturers have been certifying compliance to the brake standards based on the "new" more representative burnish procedure since September 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SA., Washington, DC 20590. (202-366-5274).

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 105, *Hydraulic Brake Systems*, and Standard No. 121, *Air Brake Systems* (49 CFR 571.121), specify tests to measure whether medium and heavy vehicles¹ equipped with hydraulic or air brakes comply with the standards' performance requirements. These vehicles are subject to "burnish" procedures conducted at the outset of road testing and dynamometer testing. The burnish procedures serve to simulate the breaking-in of the brakes on new vehicles under normal driving conditions.

Until September 1, 1994, the standards contained old and new burnish procedures, identified in the standards as option "a" and option "b," respectively. The old burnish procedure consisted of a series of brake applications, known as "snubs," that result in the brakes being heated to not more than the specified maximum temperature of 550 °F.

In response to a petition from International Harvester, the agency amended the burnish procedures in a final rule published on March 14, 1988 (49 FR 8191). The agency initiated rulemaking because the temperature limit, which was established with drum brake designs in mind, appeared inappropriate for disc brake designs. Disc brake systems are designed to operate at appreciably higher temperatures than are drum brake systems. As a result, it had been difficult to avoid exceeding the specified maximum temperature during the burnish of vehicles with disc brake systems.

After issuing several notices, the agency added a new burnish procedure in 1988 providing that the brakes on heavy duty vehicles are to be burnished by 500 snubs slowing the vehicle from 40 mph to 20 mph, without regard to

¹ Hereafter, referred to as heavy vehicles.

brake temperatures generated during the burnish. NHTSA believes that under the new burnish procedure, brakes will be burnished in a manner that is more realistic and representative of the breaking-in that vehicle brakes actually receive in service without favoring drum brake designs over disc brake designs.

NHTSA allowed a five-year transition period for implementing the new burnish procedure. The agency provided this longer than normal lead time to minimize the rulemaking's cost impact by allowing manufacturers to phase-in any required changes to brake systems as design changes were made. During the transition period, manufacturers could choose between the old and new burnish procedures. As established in the 1988 final rule, the period lasted until September 1, 1993. On and after that date, the only burnish procedure in the standards was to be the new one.

II. Petitions

NHTSA received petitions from Eaton Corporation and the American Automobile Manufacturers Association (AAMA) concerning the effective date for the new burnish procedure. Eaton petitioned the agency either to permit the old burnish procedure as an option indefinitely or at least to postpone the date on which the new procedure became the only procedure, to allow the agency to investigate problems associated with that procedure.

The AAMA petitioned NHTSA to delete the effective date for the new brake burnish procedure. If AAMA's request were granted, a choice between the old and new burnish procedures would be allowed indefinitely. AAMA stated that specifying only the new procedure would result in increased variability that could adversely affect brake effectiveness. The petitioner also believed that the new procedure would increase the stringency of the parking brake requirements because, it claimed, braking performance generally degrades at lower burnish temperatures. In addition, AAMA stated that many current vehicles that comply with the brake standards after being subjected to the old burnish procedure will not comply when tested after being subjected to the new burnish procedure. It suggested that this noncompliance was not indicative of a safety problem, noting that it is not aware of any safety problem arising from the braking performance of vehicles tested after using the old procedure.

After receiving these petitions, NHTSA staff met with representatives of Eaton, Freightliner, PACCAR, Navistar,

Rockwell, Lucas, Carlisle, and Ford.² According to these representatives of the heavy truck industry, the new burnish procedure would result in significant variability problems and potential compliance problems. Accordingly, they requested that NHTSA either (1) Delay the September 1, 1993 effective date, (2) allow either procedure indefinitely, or (3) develop a new burnish procedure.

III. Interim Final Rule and Notice of Proposed Rulemaking

On August 30, 1993, NHTSA published two notices in response to the petitions for rulemaking from Eaton and AAMA: an interim final rule extending the period during which either the old or new burnish procedures could be used until September 1, 1994 (58 FR 45459); and a notice of proposed rulemaking (NPRM) proposing to extend the optional period for the new burnish procedure an additional 18 months to March 1, 1996. (58 FR 45476)

In justifying these notices, NHTSA explained that the March 14, 1988 final rule was not intended to impose additional or more stringent performance requirements for heavy vehicles. Instead, the adoption of the new burnish procedure was intended to ensure that the compliance tests are more representative of actual vehicle break-in and to eliminate the current burnish procedure's bias against new brake designs.

NHTSA stated that the time period during which either burnish procedure may be used should be extended. The agency explained that without the delay to September 1, 1994, vehicle manufacturers would have faced a significant cost burden related to compliance testing and product development, without corresponding safety benefits. The agency further explained that, under a February 23, 1993 proposal to reinstate stopping distance requirements for heavy vehicles, manufacturers would have had to conduct two sets of compliance testing using both the old and new burnish procedures within the comment period. (58 FR 11003, 11009). It further explained that the agency needed to assess the petitioners' contention that the new burnish procedures result in a more stringent requirement.

In response to the proposal to extend the optional burnish procedure until March 1, 1996, the agency received comments from AAMA, the Heavy Duty Brake Manufacturers Council (HDBMC), Ford, General Motors (GM), Chrysler,

² A memo has been placed in the docket summarizing these meetings.

and four brake manufacturers (Eaton, Rockwell International, Lucas, and Midland-Grau. The commenters requested that vehicle manufacturers be permitted to use either the old or new burnish procedure indefinitely.

AAMA submitted test data on the braking performance of combination vehicles, including a vehicle tested at NHTSA's Vehicle Research Testing Center (VRTC). AAMA stated that these tests indicate that the proposed stopping distance requirements and braking-in-a-curve test could not be consistently met unless the initial brake temperature was reduced to between 150°F and 200°F from 250° and 300°F. Specifically, AAMA said that the proposed increase in initial brake temperature³ would cause an increase in stopping distance, and thus would cause a vehicle to fail to comply with the proposed stopping distance requirements.

As explained above, the new burnish procedures took effect on September 1, 1994. Since that date, vehicle manufacturers have been required to certify compliance to the braking standards using the new burnish procedures and have not been permitted to burnish brakes using the old procedures. In proposing to extend optional compliance with the old procedure until March 1996, the agency sought to simplify compliance for vehicle manufacturers by only having them conduct the braking tests once if they relied on the old burnish procedures. However, this consideration became moot because the new burnish procedures went into effect in September and the agency was unable to issue the stopping distance and stability and control rulemakings prior to that date.

Based on these considerations, NHTSA has decided to terminate the burnish rulemaking that would have permitted optional compliance to the old burnish procedures until March 1, 1996. As explained in the stopping distance final rule, "vehicle manufacturers have had sufficient time to conduct any additional testing and to make any necessary design changes in order to meet the requirements of Standard No. 121, with the new burnish procedures." (60 FR 13286, 13292) As a result, vehicles must be burnished pursuant to the new brake burnish procedure set forth in S7.4.2.1(b) of Standard No. 105 and in S6.1.8.1(b) of Standard No. 121.

³ In the stopping distance NPRM, NHTSA proposed an initial brake temperature of 250°F to 300°F. However, in the final rule the agency concluded that an initial brake temperature of between 150°F to 200°F is more appropriate. 60 FR 13292.

NHTSA believes that the new burnish procedure is more valid because it has a lower energy input level that is closer to the burnish achieved in actual use. Accordingly, it would be inappropriate to permit the old procedure indefinitely. The agency further believes that achieving compliance using the new burnish procedure is feasible given the industry's considerable progress in developing new brake linings that can meet the brake system performance requirements when using the new burnish procedures. The agency notes that the additional year allowed by the interim final rule, together with the initial five year transition period, provided ample time for vehicle and brake manufacturers to evaluate brake block materials.

NHTSA believes that there is only very limited validity to the manufacturers' argument that the new burnish procedure is more stringent. The objections to the new burnish procedure come from those manufacturers whose existing brake systems have to be burnished to peak perfection in order to pass the minimum requirements. The new burnish procedure is more stringent only in the sense that it does not produce temperatures that are as high as the old procedure and in the sense that the lower temperature of the burnish reduces brake performance. NHTSA notes that brake manufacturers are continuing to develop brake block materials that are less sensitive to burnish and do not require high temperatures of the old burnish to complete the manufacturing process. As these materials are developed, the new procedure's already limited effect will become progressively smaller.

Authority: 49 U.S.C. 322, 30111, 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 10, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Public Comment Periods on Proposed Critical Habitat Designation and Draft Economic Analysis for the Pacific Coast Population of the Western Snowy Plover (*Charadrius alexandrinus nivosus*)

AGENCY: Fish and Wildlife Service Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that public hearings will be held on the proposed designation of critical habitat for the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*). The hearings will allow all interested parties to submit oral or written comments on the proposal. In addition, the Service extends the public comment period on all aspects of this proposed critical habitat designation including the draft economic analysis.

DATES: The public hearings will be held from 6 p.m. to 8 p.m. on Wednesday, June 7, 1995, in Florence, Oregon; from 6 p.m. to 8 p.m. on Tuesday, June 13, 1995, in Monterey, California; and from 2 p.m. to 4 p.m. and 6 p.m. to 8 p.m. on Thursday, June 15, 1995, in Eureka, California. The public comment period now closes on June 30, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Public hearings will be held in Florence, Oregon, at the Driftwood Shores Conference Center, 88416 First Avenue; in Monterey, California, at the Hyatt Regency, 1 Old Golf Course Road; and in Eureka, California, at the Eureka Inn, 518 7th Street. Written comments and materials may be submitted at the hearings or sent directly to Mr. Joel A. Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT:

Ms. Karen J. Miller, Sacramento Field Office, at the above address (telephone (916) 979-2725).

SUPPLEMENTARY INFORMATION:

Background

The Pacific coast population of the western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California. Other less common nesting habitat includes salt pans, coastal dredge disposal sites, dry salt ponds and salt pond levees. Historically, the Pacific coast population of the western snowy plover nested at over 80 locations on the coast of California, Oregon, and Washington. Today only 28 major nesting areas remain. In addition to loss of nesting areas, the size of the coastal population also has decline. Human activity on beaches (walking, jogging, walking pets, off-road vehicle use, horseback riding, etc.) during the plover breeding season, and encroachment of exotic European beachgrass (*Ammophila arenaria*) are primary factors in the observed decline of the western snowy plover on the Pacific coast. The Service expects that only small portions (5 to 15 percent) of these beaches would be affected by this designation, if made final. The Pacific coast population of the western snowy plover was listed as a threatened species without critical habitat on March 5, 1993.

A proposal was published in the **Federal Register** (60 FR 11763) on March 2, 1995, to designate 28 critical habitat areas for the coastal population of the western snowy plover. These 28 areas total approximately 20,000 acres and about 210 miles of coastline, or about 10 percent of the coastline in California, Oregon, and Washington. Two of the proposed critical habitat areas are in Washington, seven are in Oregon, and 19 are in California. The areas range in size from less than 10 acres to over 2,000 acres.

Subsection 4(b)(5)(E) of the Act, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. The Service received several written requests for public hearings from private citizens and organizations. As a result, the Service has scheduled three public hearings to be held on Wednesday, June 7, 1995, from 6 p.m. to 8 p.m. in Florence Oregon at the Driftwood Shores Conference Center, 88416 First Avenue; Tuesday, June 13, 1995, from 6 p.m. to 8 p.m. in Monterey, California, at the Hyatt Regency, 1 Old Golf Course Road; and Thursday, June 15, 1995,