

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended adding Channel 290A at Ingalls.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-15478 Filed 6-23-95; 8:45 am]

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47 CFR Part 73

[MM Docket No. 94-57; RM-8467]

Radio Broadcasting Services; Sanger & Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harmon G. Husbands and Durant Broadcasting Corporation, substitutes Channel 281C3 for Channel 281A at Sherman, Texas, and reallocates Channel 281C3 from Sherman to Sanger, Texas, and modifies Station KWSM(FM)'s license to specify Sanger as its community of license. See 59 FR 35894, July 14, 1994. Channel 281C3 can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) northwest to accommodate petitioners' desired site. The coordinates for Channel 281C3 are 33-25-10 and 97-15-28.

With this action, this proceeding is terminated.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-57, adopted June 12, 1995, and released June 19, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sanger, Channel 281C3 and removing Channel 281A at Sherman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 575**

RIN 2127-AE61

[Docket No. 92-65; Notice 2]

Consumer Information Regulations; Vehicle Stopping Distance

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

ACTION: Final rule.

SUMMARY: This rule amends the Consumer Information Regulations by rescinding the requirement that motor vehicle manufacturers provide information about vehicle stopping distance. Upon reevaluation of the vehicle stopping distance information requirements, NHTSA concludes that this information is of little safety value to consumers and might even be misleading. Rescinding the requirement eliminates an unnecessary Federal regulatory burden on the industry.

DATES: *Effective Date.* The amendment becomes effective July 26, 1995.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than July 26, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 92-65; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400

Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4802).

SUPPLEMENTARY INFORMATION:**I. Background Information**

Pursuant to the March 4, 1995 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for rescission. One candidate¹ was the consumer information regulation about a passenger car's or motorcycle's stopping distance performance.² Manufacturers are currently required to provide an information sheet at automobile dealers that specifies each model's stopping distance from at least 60 miles per hour (mph) on dry pavement with (a) fully operational service brakes under light load and maximum load conditions, (b) partially failed service brakes, and (c) inoperative brake power assist unit or brake power unit (i.e., the power assist part of the brake system is disabled).

In the November 1992 notice of proposed rulemaking (NPRM) preceding this rule, NHTSA explained that the information currently supplied by manufacturers pursuant to the stopping distance requirement did not help consumers compare between vehicles, because it did not meaningfully distinguish the relative stopping ability among different makes and models of vehicles. The information's lack of value was confirmed by the agency's dealership audits which found that little, if any, use was being made of the vehicle stopping distance information. The agency further stated that there was no feasible, cost effective method for obtaining stopping distance information that would properly compare differences in stopping ability among various vehicles. Costly and extensive

¹ Prior to the President's directive, NHTSA had previously identified the stopping distance requirement as a candidate for rescission and had published a notice proposing to rescind it (57 FR 54962, November 23, 1992).

² The *Consumer Information Regulations* (49 CFR part 575) are intended to provide prospective purchasers of new motor vehicles with information about vehicle safety performance in several areas. One type of information is the stopping distance of new passenger cars and motorcycles under specified speed, brake, loading, and pavement conditions (49 CFR 575.101).

testing of large samples of each model would be necessary to determine that two or more models really had different stopping distances. Since there was no information supporting a contrary decision, the agency re-identified the requirement as a candidate for rescission as part of the current review.

II. Comments on the NPRM

In response to the NPRM, NHTSA received comments from motor vehicle manufacturers (American Honda, BMW, Chrysler, Fiat, Ford, General Motors (GM), and Volkswagen), advocacy groups (the Coalition for Consumer Health and Safety (Coalition) and Advocates for Highway and Auto Safety (Advocates)), the Association of International Automobile Manufacturers (AIAM), and an individual interested in automobile safety. Fiat, BMW, and Mr. John Kourik agreed with the agency's proposal to rescind the requirements related to stopping distance information. Honda, Chrysler, Volkswagen, GM, Ford, and AIAM believe that the current requirements were unnecessary but were concerned that States or local governments could require manufacturers to provide information about vehicle stopping distance if the Federal requirements were rescinded. In support of rescission, the manufacturers argued that the required information is potentially misleading, that the information is an unnecessary economic burden on vehicle manufacturers, and that the information is not actually used by consumers.

The Coalition and Advocates opposed the proposal to rescind the stopping distance information requirement. These commenters stated that rather than rescinding this consumer information regulation, NHTSA should expand and strengthen it. Advocates further stated that NHTSA must determine that dissemination of stopping distance information is no longer necessary to the furtherance of the National Traffic and Motor Vehicle Safety Act.³

III. Agency Response to Comments

A. Summary of Agency Decision and Rationale

After considering the comments and other available information, NHTSA has decided to rescind the stopping distance information requirements. The agency reached this decision after concluding that the current stopping distance requirement is not providing meaningful information to consumers

about the differences between different vehicle models in stopping distance and that an upgraded requirement would be prohibitively expensive and might not provide significant safety benefits.

B. Rationale for Agency Decision to Rescind.

1. *Current stopping distance information is not meaningful.* NHTSA has decided to rescind the stopping distance information requirement of § 575.101 because it is not providing meaningful information to consumers about stopping ability among different models. The agency notes that Chrysler, Ford, and GM, which together manufacture over 60 percent of new passenger cars, list only the maximum allowable stopping distance permitted under Federal Motor Vehicle Safety Standard No. 105, *Hydraulic brake systems* for all of their cars. Information (e.g., GM and Chrysler's comments on the NPRM) indicates that manufacturers appear to do this in part out of a concern that listing specific stopping distance information could mislead vehicle owners about their vehicle's braking ability. The stopping distance measurements are taken under optimum conditions of vehicle loading, tire-to-road peak friction coefficient, environment, and driver braking skills. Manufacturers are concerned that a consumer could mistakenly believe that his or her vehicle will stop in the listed distance under conditions that are less than optimum, e.g., under wet road conditions with a unskilled driver. They have thus listed under § 575.101 the maximum allowable stopping permitted under Standard No. 105.

As a result of the practice of listing the maximum allowable stopping distances permitted under Standard No. 105, consumers cannot use stopping distance information to identify which vehicles have the best stopping distance. Given this, it is not surprising that dealers reported to NHTSA that consumers typically neither ask for stopping distance information nor rely upon it in making purchase decisions.

2. *Improving stopping distance information would be prohibitively expensive.* NHTSA believes that the requirement should be rescinded because improving stopping distance information would be prohibitively expensive. Several manufacturers stated their belief that there is no cost effective method for obtaining adequate stopping distance information. For instance, GM stated that there was no cost effective method for obtaining stopping distance information that properly compares differences in stopping ability among various models. In contrast, Advocates

suggested that, as an alternative to rescission, NHTSA should adopt a "more stringent" requirement and require manufacturers to provide actual model-specific stopping distance information for each make and model.

In considering whether to rescind § 575.101, NHTSA analyzed several alternatives to rescission, including an alternative to require manufacturers to provide model-specific stopping information. NHTSA believes that such stopping distance information would be unduly burdensome for manufacturers to obtain, based on its assessment of the costs of such a program and the small safety benefits, if any, that might result. Tests measuring stopping distance would have to be conducted for each of over 400 car models. Each stopping distance test costs approximately \$1000 to conduct, and manufacturers typically conduct tests on three or four different vehicles of the same model, since no two vehicles have the same stopping distance. Therefore, the aggregate costs of the 60 mph dry surface stops would be greater than a million dollars.

NHTSA has decided not to adopt more stringent stopping distance information requirements because it does not appear that consumers will use the stopping distance information in making their purchasing decisions. Consumers typically consider and value such attributes as reliability, styling, price, reputation, roominess, and safety. While stopping distance relates to safety, NHTSA does not believe the information would impact purchasing decisions because precise stopping distance information would in many, perhaps most, cases yield differences insufficiently large to make stopping distance a factor in consumers' selections among similar vehicle models. For example, based on compiled information from NHTSA compliance stopping distance tests for several passenger cars, these family size vehicles achieved the following stopping distances: Buick Park Avenue—161.7 feet; Chevrolet Caprice—166.3 feet; Volkswagen Passat—170 feet; and Nissan Infiniti G20—171.3 feet. These small differences are insignificant and are unlikely to provide any meaningful comparative data to consumers.

3. *Alternative methods.* In considering whether to rescind the stopping distance information requirements, NHTSA considered the suitability of alternative methods to characterize braking performance, including an array of stopping distance tests and braking efficiency tests. However, any comprehensive, meaningful information about braking performance could only

³Subsequent to the comments, Congress codified this Act at 49 U.S.C. section 30101 *et seq.*

be derived from a battery of tests that evaluated stopping performance at different speeds and on different surfaces. Monetary constraints have precluded (and in all likelihood will continue to preclude) the agency from spending additional money to further develop brake performance tests for consumer information.

4. *NAS Study.* While NHTSA has rescinded the stopping distance requirement, this decision does not signal that the agency disfavors consumer information. On the contrary, the agency believes that certain consumer information provides valuable information to the public. NHTSA is working with the National Academy of Sciences (NAS) to review and possibly expand the agency's consumer information efforts related to motor vehicle safety. According to the House Appropriations Committee report addressing the NAS study, "The study should focus on the validity of current programs, public and private, in providing accurate information to consumers on the real-world safety of vehicles, the possibility of improving the system in a cost effective and realistic manner, and the best methods of providing useful information to consumers." This study is currently in process with a legislative due date of March 31, 1996 for a final report on the NAS findings to the House and Senate Appropriations Committees. NHTSA will review the NAS study for insights into whether there is an effective means to provide consumers with information about vehicle stopping ability. However, since all parties agree that the current information is not meaningful or helpful to consumers, no purpose is served by retaining section 575.101.

C. Impacts of Rescission

1. *Economic costs and burdens of the regulation.* In the NPRM, NHTSA stated that rescinding the stopping distance information requirement would eliminate an unnecessary regulatory burden on vehicle manufacturers. The agency estimated that the costs associated with providing the stopping distance information to prospective customers was approximately \$600,000 a year. The agency reasoned that rescinding this provision would relieve the automobile industry of this cost, without depriving consumers of any truly meaningful information.

Several manufacturers stated their belief that rescinding the requirement would eliminate administrative costs. Chrysler, Volkswagen, AIAM, and Mr. Kourik agreed that rescinding the stopping distance requirement would relieve administrative costs. Ford

believed that no substantial cost results from requiring vehicle manufacturers to furnish stopping distance information to consumers.

NHTSA notes that the testing required by this requirement results in an unwarranted cost for the agency as well as the manufacturers. The agency incurs costs associated with monitoring the information reported by manufacturers. Similarly, manufacturers incur costs associated with testing to generate the stopping distance information as well as printing and distributing materials. These costs to the agency and manufacturers, while not large in absolute terms, serve no real safety purpose and are thus an unnecessary expense.

2. *Preemption.* Chrysler, GM, Ford, Honda, and Volkswagen were concerned about States or local jurisdictions issuing their own stopping distance information requirements if the Federal regulation was rescinded. Chrysler stated that where a Federal agency has determined that no regulation is appropriate, the United States Supreme Court has recognized a form of negative preemption. This led Chrysler to request that NHTSA "express its intent that all other levels of government be preempted from establishing any related or similar regulation." AIAM also requested that the agency state that other levels of government would be preempted from establishing similar requirements. It stated that such a statement would be consistent with the previous position taken by NHTSA in its revocation of Standard No. 127, *Speedometers and Odometers*, (47 FR 7250, February 18, 1982).

NHTSA believes that the States and local governments should not adopt requirements similar to the current Federal stopping distance information requirement. As noted elsewhere in this notice, the agency has concluded that the current Federal requirement has been ineffective in providing meaningful information to consumers about the stopping performance of passenger vehicles. Similar State and local government requirements would be likewise ineffective.

However, NHTSA lacks the authority to preempt the States from adopting such requirements. The agency reaches this conclusion because there is no express preemption in the area of stopping distance information, as there is in connection with Federal motor vehicle safety standards. See 49 U.S.C. 30103(b). Likewise, there would be no implied preemption of State action in this area. The agency does not "occupy the field." Further, there would be no

conflict between such a State or local government requirement and the Federal motor vehicle safety law.

The commenters appear to have an overly broad view of the potential for negative preemption under the Federal motor vehicle safety law. Contrary to Chrysler's apparent belief, negative preemption will not always be recognized when NHTSA has determined that no Federal standard or regulation on a particular subject is appropriate. A State information regulation addressing the same subject as a rescinded Federal information regulation would be preempted (under the doctrine of implied preemption) only if the State regulation conflicted with or otherwise frustrated the Federal statute or regulatory scheme. Moreover, according to recent judicial decisions, negative preemption will exist only if the Federal agency has affirmatively manifested an intention to shut out State action. See *Toy Manufacturers of America v. Blumenthal*, 986 F.2d 615 (2nd Cir 1992), citing *Hillsborough County v. Automated Medical Labs., Inc.*, 471 U.S. 707, 718, 105 S.Ct 2371, 2377, 85 L.Ed.2d 714 (1985). NHTSA is not taking that step here because the agency believes that there is no basis for asserting that State stopping distance information regulations would conflict with Federal law. Even if one State were to take one approach to informing its citizens about vehicle stopping distance and another State were to take a different approach, the agency does not believe that the differences in the approaches would conflict with any Federal program or have a deleterious effect on motor vehicle safety.

E. Effective Date

Each order is required to take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment eliminates a requirement with which manufacturers currently have to comply and since the public interest is served by not needlessly delaying when this rescission takes place, the agency has determined that there is good cause to adopt an effective date 30 days after publication of the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered 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." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. NHTSA believes that there would be no gain or loss of safety benefits as a result of rescission of the stopping distance information requirements. The main effect of the rulemaking is to relieve manufacturers of passenger cars and motorcycles of an unnecessary regulatory burden associated with providing information that is not meaningful to consumers.

The agency anticipates that the amendment will result in a cost savings because it will no longer be necessary for manufacturers to assemble, print, and distribute the data required under § 575.101. The agency estimates that the costs associated with providing the stopping distance information to prospective customers was approximately \$600,000 in 1991. This estimate is derived from General Motors' estimate made in 1977 adjusted for the intervening inflation between 1977 and 1991. Accordingly, the agency believes that rescinding this provision will relieve the automobile industry of this cost, without depriving consumers of any truly meaningful comparative information.

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 amendment will not have a significant economic impact on a substantial number of small entities. Few vehicle manufacturers qualify as small entities. Further, the small vehicle manufacturers will not be affected since impact of this rule on the cost of new vehicles will be negligible. Accordingly, a regulatory flexibility analysis has not been prepared.

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 rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

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

Civil Justice Reform

This 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,

except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 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 575

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations at part 575 is amended as follows:

PART 575—[AMENDED]

1. The authority citation for part 575 is revised to read as follows:

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

§ 575.101 [Removed and Reserved]

2. Section 575.101 is removed and reserved.

Issued on: June 20, 1995.

Ricardo Martinez,
Administrator.

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