

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 7, 1995; Released: July 10, 1995

In the Matter of: Amendment of Sections 1.2001 and 1.2002 of the Commission's Rules.

By the Managing director:

1. By this Order, we amend Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001 and 1.2002 to reflect the correct citation to the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. The citation to this act was changed subsequent to the time our rules were written.

2. Accordingly, pursuant to Section 0.231(b) of the Commission's rules 47 CFR 0.231(b), It is ordered that Sections 1.2001 and 1.2002 of the Commission's Rules, 47 CFR 1.2001, 1.2002 are amended as set forth below effective upon publication in the **Federal Register**.

Federal Communications Commission
Andrew S. Fishel,
Managing Director.

Rule Changes

PART 1—PRACTICE AND PROCEDURE

Part 1 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.2001 is revised to read as follows:

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 862.

3. Section 1.2002 is amended by revising paragraph (a) to read as follows:

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the

applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

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[FR Doc. 95-18949 Filed 8-1-95; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 95-19; Notice 2]

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: Final rule.

SUMMARY: This rule amends 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: The amendment established by this final rule will become effective on September 1, 1995.

Any petitions for reconsideration must be received by NHTSA not later than September 1, 1995.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 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: This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on March 24, 1995 (60 FR 15529). The NPRM noted that under uniform tire quality grading (UTQG) standards at 49 CFR 575.104, tires must be labelled with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance. For the purpose of evaluating treadwear performance, NHTSA established a 400 mile roadway course near San Angelo, Texas, which is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. Under the UTQG standards, the projected mileage obtained for tested tires must be corrected 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 run in the same convoy. The course monitoring tires are specially manufactured under controlled conditions so that they can be used as a grading standard, and are made available by NHTSA for purchase at the San Angelo test facility.

The NPRM noted that the UTQG standards also require that tire traction be evaluated on skid pads that have specified locked-wheel traction coefficients. Two of these traction skid pads have been constructed at NHTSA's facility in San Angelo, as well as at several commercial facilities that may also be used by tire manufacturers.

The NPRM stated that an audit conducted by the Department of Transportation's Office of Inspector General (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, which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. To address these deficiencies, the NPRM proposed to establish \$379.00 as the fee for each course monitoring tire that NHTSA sells, and to assess a user charge of \$288 per day for the use of the traction skid pads at San Angelo. The NPRM included calculations showing these amounts to be the minimum necessary for NHTSA to recover the direct and indirect costs that it incurs in furnishing these goods and services.

Two comments were submitted in response to the NPRM. The first of these was from Standards Testing Labs (STL) of Massillon, Ohio. STL challenged the statement in the NPRM that manufacturers are not restricted to the use of the traction skid pads at NHTSA's facility in San Angelo, and may instead use those at any commercial facility. STL contended that the list of commercial facilities provided in the NPRM included ones that were abandoned and others that are ill suited to meet the grade testing criteria of the UTQG standards. STL further contended that the statement regarding the availability of commercial facilities is undermined by the fact that these facilities were already in existence when NHTSA constructed traction skid pads at San Angelo, and that the agency has since replaced the pads at least once in their original location, and then relocated the pads to an oval track with all new asphalt and concrete surfaces. In STL's opinion, these actions were taken so that a facility meeting the requirements of the UTQG standards would be available.

STL further contended that because NHTSA built and must maintain traction skid pads at San Angelo in order to test assigned grades for traction compliance purposes, the agency incurs little if any additional costs in making the facility available for grade assignment purposes. STL estimated that the proposed fee for the traction skid pads will increase user costs by 70%, and will produce a decrease in the volume of testing. If costs are to be shared, STL stated it would be more equitable for the user fee to be imposed on a "per set" rather than a "daily" basis, since testing for any given day is sometimes aborted through no fault of the tester, due primarily to changes in the weather or to pad instability.

In response to the first issue raised by STL, NHTSA notes that it identified commercial facilities with traction skid pads in the NPRM to support the agency's position that the government is

not acting in a sovereign capacity in making the San Angelo facility available for traction tests, and that it may accordingly charge a market rate for those services, as provided in OMB Circular A-25. This listing was not intended to suggest that all of the named facilities are well suited to meet the grade testing criteria of the UTQG standards. The capability of any of these facilities to meet those criteria is a matter of objective analysis that does not turn on whether the facility predated NHTSA's construction of traction skid pads at San Angelo.

STL's contention that NHTSA incurs little if any additional costs in making the traction skid pads at San Angelo available for commercial use is erroneous. Any use of the facility contributes to the deterioration of the skid pad surfaces, and reduces the service life of monitoring and maintenance support equipment. Even if this were not the case, NHTSA would still be obligated to impose a user fee for the use of the traction skid pads. As noted in the NPRM, OMB Circular A-25 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." The OIG cited this policy in its audit report findings that NHTSA's failure to assess a fee for the use of the traction skid pads was contrary to the requirements of OMB Circular A-25. The agency proposed a user fee for the traction skid pads at San Angelo in order to correct this deficiency.

As noted in the NPRM, NHTSA proposed a fee of \$288.00 per day for the use of the traction skid pads at San Angelo by performing the following calculation, 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.

Since NHTSA recognizes that some users may not need a full day to conduct traction testing, and that some tests may have to be aborted for reasons beyond the user's control, such as weather conditions or pad instability, the agency agrees with STL's contention that it would be more equitable for the user fee to be imposed on something other than

a "daily" basis. STL recommended that the fee instead be imposed on a "per set" basis. Because inefficiencies may result in some users taking longer than others in performing each "set," NHTSA has concluded that it would be more reasonable for the fee to be calculated at an hourly rate. The UTQG facility at San Angelo is open each day for eight and one-half hours, from 7:30 am to 4:00 pm. Based on a daily rate of \$288.00, the hourly rate would be \$34.00. NHTSA is adopting this hourly rate as the user fee for the traction skid pads at San Angelo. Fees will be assessed at this hourly rate for each hour and for each fraction of a hour that the traction skid pads are used.

A second comment was submitted in response to the NPRM, by the Rubber Manufacturers Association (RMA), on behalf of U.S. tire manufacturers. The RMA took exception to the proposed charge of \$379.00 for each course monitoring tire that NHTSA sells, on the basis that manufacturers are obliged to purchase these tires from a single source—the Federal government—and that such a circumstance can lead to what the RMA characterized as excessive "monopoly-type" pricing. The RMA acknowledged that the government must cover its costs in setting the purchase price for course monitoring tires, but requested that NHTSA devise a plan for controlling and reducing overhead costs to keep the program efficient for tire manufacturers and effective for U.S. taxpayers.

NHTSA proposed a charge of \$379.00 for each course monitoring tire, which was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by the agency:

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.

Two-thirds of the \$379.00 proposed charge is attributable to NHTSA's acquisition cost of \$250.00 for each tire. That price, which is set by the tire's manufacturer, is a matter beyond the government's control. An additional \$45.00 is attributable to the testing that NHTSA must perform to establish the base course wear rate for these tires. Warehousing expenses result in an

additional charge of \$34.00 for each tire. The only component of the proposed charge attributable to overhead expenses is the \$50.00 that covers general facility costs and salaries relating to the testing, maintenance, and sale of the tires. In order to control these costs, NHTSA uses a minimal staff and relies extensively on electronic mail in processing orders for course monitoring tires. The \$50.00 overhead expense represents thirteen percent of the sale price of each tire, an amount that appears quite reasonable, particularly when compared to overhead charges in the range of 110 to 150 percent that are applied within the tire industry. Although it recognizes that it is the only source for the purchase of these tires, as a government agency, NHTSA is in no position to take advantage of this situation by charging what the RMA characterizes as "monopoly" rates. If it recovered more than its actual costs in the sale of course monitoring tires, NHTSA would be in violation of a law that prohibits government agencies from augmenting the funds that they are appropriated by Congress. In view of these circumstances, NHTSA is adopting the proposed charge of \$379.00 as the fee for the course monitoring tires that it sells.

Rulemaking Analyses and Notices

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

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action 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 amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that motor vehicle and tire manufacturers and tire brand owners typically do not qualify as small entities. This amendment may affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires. However, because the user fees established through this amendment can be spread

across a manufacturer's entire production, the amendment should 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 should not be significantly affected by these user fees.

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 this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. 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 it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96-511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does 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.

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, § 575.104, *Uniform tire quality grading standards*, in 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 will 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 is 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, Texas. 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 \$34.00 will be assessed for each hour, or fraction thereof, that the traction skid pads at Goodfellow Air Force Base, San Angelo, Texas 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 general facility costs 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: July 27, 1995.

Ricardo Martinez,
Administrator.

[FR Doc. 95-19018 Filed 8-1-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 210, 216, 250, 270, and 604

[Docket No. 950718182-5182-01;
I.D. 070695B]

RIN 0648-A108

Removal of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.