proposals. Some commenters expressed disappointment that the agency had not raised the issue of harmonizing Standards No. 103 and 104 with the counterpart requirements in the European and Japanese standards. NHTSA wants to make clear that the agency is committed to exploring the possibilities of harmonizing its regulatory requirements with the regulatory requirements of other nations, provided that such harmonization does not reduce the safety protection afforded to the American public. As evidence of that commitment, the agency has held a public meeting on July 10 and July 11, 1996 and a public workshop on January 16, 1997 on the subject of harmonizing the requirements of the Federal motor vehicle safety standards with the counterpart requirements in other countries' safety standards. The agency used the meeting and workshop to explain to the public what factors the agency would consider in deciding whether the U.S. safety standard and some other nation's safety standard are ''functionally equivalent,'' and to get public comments on the process the agency proposes to use to make functional equivalence determinations.

NHTSA believes it is more appropriate for the agency to establish a comprehensive approach and process for considering functional equivalence of the Federal motor vehicle safety standards and other nations' standards before the agency considers the functional equivalence of any standard or group of standards. Once the agency's comprehensive approach and process are in place for functional equivalence decisions, NHTSA will consider any requests for functional equivalence determinations of Standards No. 103 and 104 that are made according to the established process. Thus, the absence of a proposal for harmonization of Standards No. 103 and 104 with other national standards should be understood as an agency desire to avoid dealing with ''functional equivalence'' harmonization issues on an ad hoc, case by case basis, not as an absence of agency interest in pursuing international harmonization of motor vehicle safety standards.

For these reasons, the proposed rulemaking to change Standards No. 103 and 104 is hereby terminated.

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

Issued on: June 10, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–15747 Filed 6–13–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–56, Notice 02]

RIN 2127–AF77

Federal Motor Vehicle Safety Standards; Warning Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Termination of rulemaking.

SUMMARY: In this document, NHTSA terminates rulemaking to rescind the Federal Motor Vehicle Safety Standard on triangular warning devices intended to be placed on the roadway behind disabled buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. Terminating this rulemaking relieves the Federal Highway Administration (FHWA) of the necessity for conducting a rulemaking proceeding to adopt its own requirements on triangular warning devices. Further, terminating this rulemaking will give the Department more effective enforcement authority regarding the performance of those devices. This rulemaking (61 FR 29337, June 10, 1996) was initiated as part of the agency's efforts to implement the President's Regulatory Reinvention Initiative.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, NPS–21, telephone (202) 366–5280, FAX (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

Both may be reached at NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified regulations that it could propose to rescind as unnecessary or to amend to improve their comprehensibility, application, or appropriateness. Among the regulations identified for potential rescission is Federal Motor Vehicle Safety Standard No. 125, *Warning devices* (49 CFR § 571.125).

Background of Standard No. 125

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning devices,* specifies requirements for warning devices that do not have self-contained energy sources (unpowered warning devices) and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. The unpowered warning devices are intended to be placed on the roadway behind a disabled vehicle to warn approaching traffic of the vehicle's presence. The Standard does not apply to unpowered warning devices designed to be permanently affixed to the vehicle. The purpose of the Standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and stopped vehicles.

The standard requires that the unpowered warning devices be triangular, covered with orange fluorescent and red reflex reflective material, and open in the center. These characteristics are intended to assure that the warning device has a standardized shape for quick message recognition, can be readily observed during both daytime and nighttime, and provides limited wind resistance so that it does not blow over when deployed.

NHTSA has never required that any new vehicle be equipped with the Standard No. 125 warning device or any other warning device. However, as explained below, FHWA, which has authority to regulate interstate commercial vehicles-in-use, mandates that operators of those vehicles carry and use unpowered warning devices meeting Standard No. 125, fusees or flares.

Previous Changes to Standard No. 125

Before 1994, Standard No. 125 applied to unpowered warning devices that are designed to be carried in any type of motor vehicle. On May 10, 1993 (58 FR 27314), NHTSA issued a notice of proposed rulemaking (NPRM) to amend Standard No. 125 so that the Standard applied only to warning devices that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs.

NHTSA proposed to narrow the scope of Standard No. 125 in order to provide manufacturers of unpowered warning devices with greater design freedom and to relieve an unnecessary regulatory burden on industry. At the specific request of FHWA, the agency proposed to retain the requirements for warning devices for buses and trucks with a GVWR greater than 10,000 lbs. This aspect of NHTSA's proposal supported FHWA's regulation of commercial motor vehicles under the Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 350–399). Section 393.95 of the FMCSR requires either that three Standard No. 125 warning devices or specified numbers of fusees or flares be carried on all trucks and buses used in interstate commerce.

NHTSA limited the applicability of Standard No. 125, as proposed, in a final rule published on September 29, 1994 (59 FR 49586). In the final rule, NHTSA stated that it was retaining Standard No. 125 in its narrowed form largely to ensure the continued availability of standardized unpowered warning devices which FHWA could specify as a means of complying with its warning device requirements for commercial vehicle operators.

Proposed Rescission of Standard No. 125

After reviewing Standard No. 125 in light of the President's Regulatory Review Initiative, NHTSA tentatively determined that retaining Standard No. 125 is not necessary to ensure the continued availability of unpowered warning devices. Accordingly, the agency developed a rescission proposal which reflected written and oral comments from FHWA staff. It published the NPRM on June 10, 1996 (61 FR 29337).

In the NPRM, NHTSA suggested that if Standard No. 125 were rescinded, FHWA would have two options. First, instead of specifying warning devices meeting NHTSA's Standard No. 125, FHWA could specify devices meeting criteria adopted by FHWA and placed in its own regulations. More specifically, FHWA could adopt the current manufacturing standards for the warning devices, i.e., those in Standard No. 125, as an appendix to the Federal Motor Carrier Safety Regulations. Section 393.95 would be revised to reference the newly created appendix as opposed to Section 571.125.

Second, FHWA could work with an industry voluntary standards setting organization such as the Society of Automotive Engineers (SAE) to develop an industry standard on unpowered warning devices containing requirements similar to those in Standard No. 125. Once those requirements were developed, FHWA could incorporate them by reference in Section 393.95.

Public Comments on Proposed Rescission

NHTSA received mixed comments in response to its proposal to rescind Standard No. 125. Two commenters, Chrysler and Ford, supported NHTSA's proposal to rescind the Standard. Chrysler stated its agreement with NHTSA that Standard No. 125 is unnecessary ''since devices meeting these requirements are already stipulated by the FHWA for commercial carriers.'' Ford suggested that Standard No. 125's provisions could be transferred to FHWA's Federal Motor Carrier Safety Regulations (FMCSR).

Other commenters, including 3M Company, Advocates for Highway and Auto Safety (Advocates), Dr. Merrill J. Allen, American Highway Users Alliance (AHUA), American Trucking Associations (ATA), Automotive Parts and Accessories Association (APAA), Center for Auto Safety (CAS), Cortina Tool and Molding and James King Company (in one submission) (Cortina/King), National Private Truck Council (NPTC), Sate-Lite Manufacturing Company, Transportation Safety Equipment Institute (TSEI), Truck Manufacturers Association (TMA) and several members of the U.S. House of Representatives opposed the proposed rescission of Standard No. 125. The commenters offered the following reasons for their opposition:

1. Standard No. 125 Has Value

The commenters opposed to rescinding Standard No. 125 generally stated that the Standard has value, and expressed various reasons for their belief. Sate-Lite, a triangular warning device manufacturer, stated that it did not consider the Standard's performance requirements unnecessary or a burden. 3M, which operates a fleet of over 5200 vehicles, stated that: ''Each of the criteria in the standard represent items of value to the users of those devices.'' 3M stated that deviations from these criteria would reduce and possibly eliminate this value.

Other commenters stated that Standard No. 125 is needed simply because it ensures uniformity in the triangular warning devices. Erosion of uniformity would impair the ability of those devices designed to meet the current standard to communicate hazards effectively. 3M and APAA stated that with the recent increases in the nation's speed limits, there is a greater need for motorists to have advance, distinctive warning of a disabled vehicle ahead, and the triangular warning device meets that need. Cortina/King commented that Standard No. 125 devices are the only safe warning devices for deployment in conjunction with a stopped vehicle carrying flammable materials.

TSEI commented that NHTSA appears ready to adopt an ''anything goes'' approach that would confuse motorists and violate the agency's longstanding policy of maintaining consistency in visual signals to motorists. TSEI contrasted the present rulemaking with NHTSA's past interpretations of Standard No. 108, *Lamps, reflective devices, and associated equipment.* Those interpretations emphasized the safety importance of avoiding even momentary confusion of motorists as to the meaning of the supplemental lighting signals.

2. State Regulation and International Harmonization Issues

Related to the lack of uniformity issue, Advocates, ATA, and TSEI expressed concern that the States would regulate in the absence of Standard No. 125. Advocates, AHUA, and TSEI also suggested that rescinding Standard No. 125 would conflict with NHTSA's recently announced efforts (see 61 FR 30657, June 17, 1996) to harmonize the FMVSSs with international standards.

3. NHTSA Administration and Enforcement of Triangular Warning Devices is Preferred

Many commenters expressed the view that NHTSA has more effective statutory authority to administer and enforce a unpowered triangular warning device standard than FHWA. Some commenters raised the possibility that there could be a period after NHTSA rescinds the Standard and before FHWA enacts it, when there would be no triangular warning device regulation at all. Some commenters incorrectly speculated that there had not been any consultation between NHTSA and FHWA during NHTSA's development of its proposal.

4. Rescinding the Standard Would Be ''Arbitrary and Capricious

Some commenters stated that in its proposed rescission of Standard No. 125, NHTSA did not show that there is no safety need for the Standard, and in absence of showing no safety need, NHTSA has no legal authority to rescind the standard.

Agency Decision

In response to the President's Regulatory Reinvention Initiative, NHTSA carefully examined Standard No. 125. Although NHTSA has a safety standard for warning triangles, FHWA is the part of the Department that has the greatest program responsibilities for warning triangles. It is FHWA that requires vehicle operators to carry warning triangles or other warning devices in vehicles and it is FHWA that requires vehicle operators to use warning triangles or other warning devices to alert other motorists of the presence of a disabled vehicle. In issuing its proposal, NHTSA believed it would make the government program for warning triangles more effective and more efficient if the FHWA were also responsible for establishing the performance requirements for these warning devices.

After reviewing the public comments on this proposal and after further consultation with FHWA, NHTSA believes that the current division of program responsibilities and regulatory requirements has served the public well. In fact, the current division of responsibilities assures the public the benefits of the joint expertise of NHTSA and FHWA working together on issues that arise in connection with these warning devices. In addition, the proposal would have forced FHWA to expend resources to promulgate a rule that would be identical to the rule NHTSA rescinded. After reconsidering all these factors, NHTSA has concluded that its proposal to rescind the warning triangle standard should be terminated. This notice announces that termination.

Potential rulemaking actions may arise from one or more pending petitions. Because it will retain Standard No. 125, NHTSA will proceed with its consideration of pending petitions for rulemaking to amend Standard No. 125 from the TSEI and Gault Industries.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 10, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960206024–7123–02; I.D. 043097A]

RIN 0648–AG32

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scale Certification Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). This proposed regulatory amendment would implement the requirements for certification and at-sea testing of scales used to weigh groundfish catch at sea. This action is intended to promote the objectives of the FMPs.

DATES: Comments must be received by July 16, 1997.

ADDRESSES: Comments on the proposed rule should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) is managed by NMFS according to the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMPs at subpart H of 50 CFR part 600 and 50 CFR part 679.

In 1990 the Council requested that NMFS analyze a requirement to weigh catch processed at sea. NMFS implemented regulations on May 16, 1994 (59 FR 25346), requiring processor vessels in the pollock Community Development Quota (CDQ) fisheries to either provide certified bins for volumetric estimates of catch or scales to weigh catch. In September 1994, the Council recommended that NMFS require processor vessels participating in the BSAI pollock fisheries to weigh their catch before discard or processing. In response to this request, NMFS published an Advance Notice of Proposed Rulemaking (ANPR), which requested public comment on a three-part scale evaluation and approval process on February 20, 1996 (61 FR 6337). Public comment was invited through March 21, 1996. Comments relevant to this proposed rulemaking are summarized and responded to below in the ''Response to Comments'' section.

The proposed at-sea scale certification program described in this rulemaking is designed in response to comments on the ANPR, NMFS research evaluating the use of scales on processor vessels, further experience using scales on two processor vessels in the CDQ fisheries, and the recommendations of a technical advisor hired by NMFS.

NMFS specifically seeks public comment on the proposed process for determining whether a particular scale is capable of weighing accurately at sea, the performance and technical requirements in the At-Sea Scales Handbook, and the proposed procedures for testing scales at sea.

Specifying Which Processors Must Weigh

This proposed rulemaking does not require specific processors or vessels to use certified scales to weigh catch at sea. NMFS currently is considering proposing requirements for at-sea weighing in the proposed multispecies CDQ fisheries and in the BSAI pollock fisheries as recommended by the Council. However, a program for inspecting and certifying scales for use in weighing at sea must be established before NMFS proceeds with proposed requirements for specific processors or vessels to weigh catch at sea.

Response to Comments

Six letters were received in response to the request for public comment on the ANPR. Many of the comments in these letters related to whether NMFS should require processor vessels in the BSAI pollock fisheries to weigh catch at