

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571****[Docket No. 03-15712; Notice 2]****RIN No. 2127-AJ25****Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles**

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

ACTION: Final rule, partial response to petitions for reconsideration.

SUMMARY: This final rule delays the effective date for compliance with the amended requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. The final rule amending FMVSS No. 205 was published on July 25, 2003.¹

This final rule delays the date on which manufacturers must meet the amended requirements of FMVSS No. 205, from January 22, 2004, until September 1, 2004. The agency received six petitions for reconsideration, requesting that NHTSA consider modifying certain requirements of the amended FMVSS No. 205. Specifically, petitioners are asking that the agency reconsider: (a) The up-angle value of the windshield shade band; (b) the definition of the term "most difficult part or pattern" and the term "day light opening;" (c) the fracture testing procedure with respect to soldered terminals; (d) the effective date of the final rule; and (e) the applicability of the amended requirements to aftermarket parts. Petitioners have indicated that compliance with the amended requirements of FMVSS No. 205, prior to resolution of petitions for reconsideration, would cause substantial economic hardship to vehicle and glazing manufacturers. This rulemaking partially responds to the petitions for reconsideration by delaying the date on which the manufacturers must meet the amended requirements of FMVSS No. 205.

DATES: This final rule becomes effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call John Lee, Office of Crashworthiness Standards, at (202) 366-2264, facsimile (202) 366-4329 or Patrick Boyd, Office of Crash Avoidance Standards, at (202) 366-6346, facsimile (202) 493-2739.

For legal issues, you may call George Feygin, Office of the Chief Counsel, at (202) 366-2992, facsimile (202) 366-3820.

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I. Background

FMVSS No. 205 specifies performance requirements for glazing installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. On July 25, 2003, NHTSA issued a final rule (July 25 final rule) updating FMVSS No. 205 so that it incorporates by reference the 1996 version of the American Standards Institute (ANSI) standard on motor vehicle glazing. Prior to the July 25 final rule, FMVSS No. 205 referenced the 1977 version of ANSI Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," and the 1980 supplement to that standard.² Since 1977, the ANSI Standard Z26.1 has been periodically revised, however the newer versions of the standard were not incorporated into the FMVSS No. 205.

The July 25 final rule has simplified and amended the glazing performance requirements. Amendments to the standard over the past 20 years have resulted in a patchwork of requirements that must be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of FMVSS No. 205. By incorporating by reference the 1996 version of the ANSI standard, the agency is now able to delete most of the existing text in FMVSS No. 205.

In addition to incorporating the 1996 ANSI standard, the final rule addressed several issues not covered by that standard. For example, the final rule limited the size of the shade band located at the top of the windshield and clarified the meaning of the term "the most difficult part or pattern" for the fracture test in the 1996 ANSI standard. The final rule also made minor conforming amendments to the standard on low speed vehicles. The July 25 final rule was to become effective on January 22, 2004.³ For further details on the

² The most recent revision we incorporated into FMVSS No. 205 was ANSI Z26.1a-1980, which supplemented the 1977 version. It was incorporated by a final rule published in February 23, 1984 (49 FR 6732).

³ The effective date for the July 25 final rule was originally incorrectly stated as September 23, 2003.

subject final rule, please see 68 FR 43964 (July 25, 2003).

II. Petitions For Reconsideration

In response to the July 25 final rule, the agency received six petitions for reconsideration. Petitions were submitted by DaimlerChrysler, General Motors (GM), Alliance for Automobile Manufacturers (Alliance), PPG Industries (PPG), Pilkington North America (PNA), and Visteon. Petitioners have asked the agency to reconsider the following issues.

1. The Up-Angle of the Windshield Shade Band

DaimlerChrysler, GM, PPG, PNA, and Visteon have asked that the agency reconsider its decision to change the visibility up-angle from 5 degrees to 7 degrees. Specifically, petitioners note that NHTSA has not demonstrated a safety need for this technical modification, and that the up-angle change was not discussed in the NPRM. DaimlerChrysler estimates that 25% of vehicles currently in production would not comply with the 7-degree up-angle requirement. Accordingly, petitioners contend that the change in the up-angle would place a significant burden on the manufacturers. Additionally, Visteon commented that the change in up-angle would necessitate a costly redesign of aftermarket replacement glazing.

2. The Terms "Most Difficult Part or Pattern" and "Day Light Opening"

GM, DaimlerChrysler, PPG and PNA have asked the agency to clarify or reconsider the meaning of the phrase "most difficult part or pattern" in the context of the fracture test provisions of ANSI Z26. Specifically, petitioners contend that the preamble to the final rule, S5.2 of the regulatory text, and NHTSA's previous interpretations on the issue, are inconsistent as to the use of the phrase.

DaimlerChrysler and PPG have also asked the agency to formally define the term "Day Light Opening" and rescind a previously issued interpretation letter on the subject.

3. Soldered Terminals

DaimlerChrysler, GM, PPG, PNA and Alliance have asked the agency to reconsider its position with respect to soldered terminals. Specifically, petitioners ask that compliance fracture testing be conducted without soldered terminals being attached to glazing. According to petitioners, a prior interpretation letter on the issue,

Subsequently, we published a correction indicating that the July 25 final rule would become effective on January 22, 2004 (68 FR 55544).

¹ See 68 FR 43964.

coupled with the language in the final rule created confusion as to whether fracture testing would be conducted with the terminals attached. Petitioners ask that NHTSA clarify both the new testing procedure and also a distinction between conductors and terminals.

4. Effective Date

Petitioners, including PNA, GM, DaimlerChrysler, PPG and Visteon, have asked the agency to delay the effective date of the updated FMVSS No. 205 by up to 3 years. In support of their request, DaimlerChrysler argued that glazing manufacturers would need to perform extensive testing to demonstrate compliance with the updated requirements of FMVSS No. 205. Further, some glazing manufacturers might need to add additional equipment in order to perform the necessary testing.

Because NHTSA would not be able to respond to the petitions prior to the January 22, 2004 effective date, petitioners requested that NHTSA extend the compliance deadline to a date after NHTSA completes the pending rulemaking.

5. Aftermarket Parts

DaimlerChrysler, PNA, GM and PPG have asked that the agency also consider permitting compliance with the old requirements of FMVSS No. 205 for the manufacture of aftermarket replacement glazing. According to the petitioners, it would not be feasible to redesign replacement glazing such that it would meet the updated requirements of FMVSS No. 205. Similarly, Visteon commented that the final rule necessitates a redesign of aftermarket glazing that may be time-consuming because the necessary vehicle data is not readily available to glazing manufacturers.

III. Final Rule

The agency has set a January 22, 2004, effective date for the July 25 final rule. The petitions filed by DaimlerChrysler, GM, Alliance, PPG, PNA, and Visteon have asked the agency to reconsider several aspects of that rulemaking. NHTSA is currently considering all six petitions. Unfortunately, NHTSA's consideration of the petitions has not yet concluded. The effective date set by our July 25 final rule and subsequent correction (January 22, 2004) is now a month away.

Given the imminence of the January 22, 2004, effective date, the agency has determined that it is appropriate to first partially respond to petitions concerning the effective date of the July 25 final rule. Accordingly, the agency is

delaying the effective date of the July 25 final rule until September 1, 2004, after which the manufacturers will be required to meet the new requirements of FMVSS No. 205. Other issues raised in the petitions for reconsideration will be addressed by the agency in a separate document.

The agency believes that a partial response to the petitions for reconsideration is necessary to insure that glazing and automobile manufacturers do not face substantial economic hardship associated with certain new requirements of the amended FMVSS No. 205. As discussed in the petitions, the updated requirements of FMVSS No. 205 may necessitate extensive testing and retooling by glazing manufacturers. Given the number of issues raised in these petitions, NHTSA has determined that six months was an inadequate period of time to meet the new requirements. The agency also notes that extending the effective date to September 1, 2004, would permit vehicle manufacturers to avoid mid-model year product changes that would otherwise result from the July 25 final rule, coming into effect on January 22, 2004.

NHTSA expects that all other issues raised in the petitions will be fully addressed prior to the new, September 1, 2004, effective date. In the event, however, that these issues have not been resolved, all affected manufacturers will be required to meet the new requirements. Effective dates of agency final rules are not stayed due to outstanding petitions for reconsideration of those rules.

IV. Regulatory Analyses and Notices

A. Economic Impacts

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers and extends the compliance date for existing regulatory requirements for an additional seven and a half months. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action extends the date by which the manufacturers must comply with the newly upgraded requirements of FMVSS No. 205. This rulemaking does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR part 121.601), manufacturers of glazing are considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This Final Rule will not have any significant economic impact on a small business in these industries because it makes no significant substantive change to the requirements specified in FMVSS No. 205. Instead, this rulemaking delays the effective date of the previously published final rule by seven and a half

months. Small organizations and governmental jurisdictions that purchase glazing will not be significantly affected because this rulemaking will not cause price increases. Accordingly, we have not prepared a Regulatory Flexibility Analysis.

D. Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the

expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action, which extends the compliance date by which the manufacturers must meet the upgraded requirements of FMVSS No. 205, will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to George Feygin, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

Certain technical standards developed by the American National Standards Institute (ANSI) and Society of Automotive Engineers (SAE) have been considered and incorporated by reference in the final rule published on July 25, 2003, which upgraded the requirements of FMVSS No. 205. This final rule extends the effective date of that final rule to September 1, 2004.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

Issued on: December 29, 2003.

Otis G. Cox,

Deputy Administrator.

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