

governments to provide comments if they believe there will be an impact.

D. *Regulatory Flexibility Act*. Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities.

“Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If you believe that revisions to the HMR relative to air packaging integrity could have a significant economic impact on small entities, please provide information on such impacts.

E. *Paperwork Reduction Act*

It is possible that a rulemaking action could impose new or revised information collection requirements.

V. Regulatory Notices

A. *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This ANPRM is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This ANPRM is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

B. *Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned 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. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on July 1, 2008 under authority delegated in 49 CFR part 106.

Edward T. Mazzullo,

Acting Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2008-0124]

RIN 2127-AK13

Federal Motor Vehicle Safety Standards; Windshield Zone Intrusion

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to rescind Federal Motor Vehicle Safety Standard (FMVSS) No. 219, “Windshield zone intrusion.” This proposed action results from NHTSA’s periodic review of its regulations to determine whether a continuing safety need exists for the standard under review. NHTSA tentatively concludes that the windshield zone intrusion standard is no longer necessary because other FMVSSs are now in place to meet the safety need that the standard had addressed.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than September 5, 2008.

ADDRESSES: You may submit comments to the docket identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* DOT Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2551.

Regardless of how you submit your comments, you should use the docket number of this document.

You may call the Docket Management Facility at 202-366-9826.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section

of this document. Note that all comments received will be posted without change to: <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. David Sutula, Office of Crashworthiness Standards, Light Duty Vehicle Division at (202) 366-3273. His fax number is (202) 493-2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366-2992. Her Fax number is (202) 366-3820.

You may send mail to both of these officials at the following address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Periodic Review of Federal Regulations

NHTSA has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. NHTSA undertakes reviews of its regulations under, *inter alia*, the Department’s 1979 Regulatory Policies and Procedures, under Executive Order 12866 “Regulatory Planning and Review,” and under section 610 of the Regulatory Flexibility Act (5 U.S.C. section 501 *et seq.*). In addition, NHTSA conducts reviews pursuant to internal operating procedures. During a periodic review of its regulations, NHTSA has identified FMVSS No. 219, *Windshield Zone Intrusion*, as a regulation that could possibly be removed as unnecessary.

Background of FMVSS No. 219

The purpose of FMVSS No. 219 is to reduce crash injuries and fatalities that result from occupants contacting vehicle components displaced near or through the windshield. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less, except for forward control vehicles, walk-in van-type vehicles or to open-body-type vehicles with fold-down or removable windshields. The final rule establishing FMVSS No. 219 was published on June 16, 1975 (40 FR 25462), and took effect on September 1, 1976.

FMVSS No. 219 specifies limits on the displacement of vehicle parts from outside the occupant compartment into the windshield area during a 48 kilometer per hour (km/h) (30 mile per hour (mph)) frontal barrier crash test. The standard establishes a protected zone at the daylight opening (DLO)

portion of the vehicle windshield. The protected zone is an area encompassing the width of the windshield and protrudes about 76 mm from the outer surface of the windshield. In the crash test, a protected zone template cut or formed from Styrofoam is affixed to the vehicle so that it delineates the protected zone and remains affixed throughout the crash test. The standard specifies that in a 48 km/h (30 mph) frontal rigid barrier crash test, no part of the vehicle outside the occupant compartment, except windshield molding and other components designed to be normally in contact with the windshield, shall penetrate the protected zone template to a depth of more than 6 mm (0.25 inches) and no such part of a vehicle shall penetrate the inner surface of that portion of the windshield, within the DLO, below the protected zone. The standard was developed to decrease the likelihood of injury resulting from the intrusion of a part of the vehicle, such as the hood, into the occupant compartment through the windshield opening, or into the zone slightly forward of the windshield aperture.

NHTSA's Review of FMVSS No. 219 and Its Proposal to Rescind

The agency has tentatively concluded that the safety need that FMVSS No. 219 addresses is being met by certain other FMVSSs. FMVSS No. 219 was necessary in 1975, when NHTSA had no safety standard in which it specified crash testing to assess any hazards to which occupants were exposed as a result of such intrusion. Manufacturers responded to the standard to ameliorate windshield zone intrusions, and as a result there has not been a compliance issue with FMVSS No. 219 since shortly after its inception. Subsequently, in May 2000, NHTSA issued and substantially enhanced FMVSS No. 208, *Occupant Crash Protection*, to incorporate an unbelted test of 50th percentile male and 5th percentile female dummies at 40 km/h (25 mph) and a belted test of those two dummy sizes at 56 km/h (35 mph). We tentatively conclude that the dummy performance requirements of FMVSS No. 208 frontal crash tests will reflect any blunt impact injuries due to zone intrusions at the windshield. Likewise, we tentatively conclude that the air bag will aid in preventing any lacerative injuries due to zone intrusions at the windshield, and so there is no continuing need for a standard to specifically assess intrusion hazards to occupants from vehicle components external to the vehicle compartment during a frontal crash.

Because we believe that FMVSS No. 219 may be testing similar aspects of safety as FMVSS No. 208, we are concerned that the former may be redundant of the latter standard and may be imposing unnecessary costs or burdens in the manufacture of motor vehicles. Moreover, FMVSS No. 113, *Hood Latch System*, requires a hood latch system for all hoods, and a second position on that system to reduce incidents of inadvertent hood openings and to help limit displacement into the windshield area of motor vehicle components during a crash. Thus, given both the effect of FMVSS No. 208 and FMVSS No. 113 in limiting windshield zone intrusion into the passenger area, we tentatively conclude that a safety need no longer exists to maintain FMVSS No. 219 as a safety standard. We thus propose rescinding the safety standard. NHTSA tentatively concludes that if a final rule is issued rescinding the standard, States would be free to regulate this aspect of performance formerly occupied by FMVSS No. 219. Comments are requested on these issues.

Lead Time

We propose that if the change proposed in this NPRM is made final, that it take effect 180 days after the publication of the final rule in the **Federal Register**. Comment is requested on this proposed lead time.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This rulemaking would rescind FMVSS No. 219 *Windshield Zone Intrusion*, in order to alleviate motor vehicle manufacturers from requirements that may already be addressed by other Federal motor vehicle safety standards, notably FMVSS No. 208, *Occupant Crash Protection*, and FMVSS No. 113, *Hood Latch Systems*.

Any cost savings resulting from the rescission of FMVSS No. 219 would be so minimal that the savings cannot be calculated. FMVSS No. 219 specifies the same crash test conditions as the 30 mph test condition in FMVSS No. 208. When NHTSA crash tests a vehicle to the test conditions of FMVSS No. 208, the agency also assesses the vehicle's

compliance with FMVSS No. 219. NHTSA believes that vehicle manufacturers that conduct FMVSS No. 208 crash testing are also simultaneously testing vehicles to FMVSS No. 219. Because manufacturers will continue to crash test vehicles to FMVSS No. 208, removing FMVSS No. 219 would not result in a marked cost savings to manufacturers. Rescinding FMVSS No. 219 would only result in minimal cost savings for manufacturers as an assessment of the windshield zone intrusion would no longer have to be made.

B. Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposed rule does not have federalism implications because the proposal does 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."

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. As a general matter NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). This proposed rule, if made final, would result in regulatory relief for motor vehicle manufacturers, and would have no effect on the States or local governments. NHTSA tentatively concludes that if the agency rescinds FMVSS No. 219, States would be free to regulate this aspect of motor vehicle performance.

Second, in addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the

Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because this proposed rule, if made final, would rescind FMVSS No. 219. We have tentatively concluded that if NHTSA rescinds FMVSS No. 219, States would be free to regulate this aspect of motor vehicle performance.

C. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an 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.

D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Head of the Agency has considered the effects of this rulemaking action under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that since NHTSA proposes to remove FMVSS No. 219, any small manufacturers of passenger cars, multipurpose passenger vehicles, trucks or buses would be provided regulatory relief. Accordingly, the agency believes that this proposal would at most, have a minimal beneficial cost effect for small business manufacturers of motor vehicles subject to FMVSS No. 219.

E. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

F. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). In this NPRM, we propose to remove FMVSS No. 219, which has no collection of information requirements associated with it. This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). There are no available and applicable voluntary consensus standards that we can use in this notice of proposed rulemaking.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year (adjusted for inflation with base year of 1995). This proposal would not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

I. 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 this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. 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.

Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.¹ We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents

¹ See 49 CFR 553.21.

to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail*: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery or Courier*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- *Fax*: (202) 493-2251.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.²

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

List of Subjects in 49 CFR Part 571

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

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

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

§ 571.219 [Removed]

2. Section 571.219 is removed and reserved.

Issued on: June 30, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-15210 Filed 7-3-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 080227317-8741-01]

RIN 0648-AW44

Papahānaumokuākea Marine National Monument Proclamation Provisions

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Proposed rule; request for public comments.

SUMMARY: NOAA and the USFWS are proposing regulations to establish a ship reporting system for the Papahānaumokuākea Marine National Monument. This action would implement measures adopted by the International Maritime Organization requiring notification by ships passing through the Monument without interruption. A draft environmental assessment has been prepared for this proposed action pursuant to the National Environmental Policy Act. A copy of the draft environmental assessment is available for public review at <http://hawaiireef.noaa.gov/> and comment concurrently with this proposed rule.

DATES: Comments on the proposed rule and the draft environmental assessment will be accepted if received on or before August 6, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal e Rulemaking Portal*: <http://www.regulations.gov>. Submit electronic comments via the Federal e Rulemaking Portal rather than by e-mail;

- *Mail*: T. Aulani Wilhelm, Monument Superintendent (NOAA); 6600 Kalanianaʻole Highway, 300, Honolulu, HI 96825.

Copies of the draft environmental assessment may be viewed and downloaded at <http://hawaiireef.noaa.gov/>.

Paperwork burden: Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this proposed rule by e-

² See 49 CFR 512.