§ 15.120 Program blocking technology requirements for television receivers.

* * * * *

(b) All TV broadcast receivers as defined in § 15.3(w), including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger, measured diagonally, or with displays in the 16:9 aspect ratio that are 19.8 cm (7.8 in) or greater in height and digital television receivers without an associated display device shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

* * * * *

(d) * * *

(2) Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Digital television receivers will receive program rating descriptors transmitted pursuant to industry standard EIA/CEA–766–A ''U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65–A Program and System Information Protocol (PSIP),'' 2001 (incorporated by reference, *see* § 15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to changes in the content advisory rating system.

* * * * *

■ 10. Section 15.123 is amended by revising paragraph (b)(6) to read as follows:

§ 15.123 Labeling of digital cable ready products.

* * * * *

(b) * * *

(6) In addition to the requirements of paragraphs (b)(1) through (5) of this section, a unidirectional digital cable television may not be labeled or marketed as digital cable ready or with other terminology as described in paragraph (b) of this section, unless it includes a DTV broadcast tuner as set forth in § 15.117(i) and employs at least one interface specified in paragraphs (b)(6)(i) and (ii) of this section:

(i) For 480p grade unidirectional digital cable televisions, either a DVI/HDCP, HDMI/HDCP, or 480p Y,Pb,Pr interface.

(ii) For 720p/1080i grade unidirectional digital cable televisions, either a DVI/HDCP or HDMI/HDCP interface.

* * * * *

§ 15.124 [Removed]

■ 11. Remove § 15.124.

§ 15.249 [Amended]

■ 12. Section 15.249 is amended by removing paragraph (f).

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 13. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

§ 18.123 [Removed]

■ 14. Remove § 18.123.

[FR Doc. 2012–2061 Filed 1–31–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA 2011–0005]

RIN 2127–AK06

Consumer Information Regulations; Fees for Use of Traction Skid Pads

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

ACTION: Final rule.

SUMMARY: This document amends NHTSA's consumer information regulations on uniform tire quality grading standards by updating the fees currently charged for use of the traction skid pads at NHTSA's San Angelo Test Facility, formerly called the Uniform Tire Quality Grading Test Facility, in San Angelo, Texas, and by eliminating fees for course monitoring tires, which are no longer supplied by NHTSA. This rule updates the fees in accordance with Office of Management and Budget Circular A–25, which governs fees assessed for Government services and use of Government goods or resources.

DATES: Today's final rule is effective April 2, 2012.

Petitions for reconsideration must be received by March 19, 2012.

FOR FURTHER INFORMATION CONTACT:

For program issues: Mr. George Gillespie, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5299.

For legal issues: Ms. Carrie Gage, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–6051.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203 of the National Traffic and Motor Vehicle Safety Act of 1966 directs the Secretary of Transportation to prescribe standards establishing ''a uniform quality grading system for motor vehicle tires.'' 49 U.S.C. 30123. Those standards are found at 49 CFR 575.104. To aid consumers in making an informed choice in the purchase of passenger car tires, the standards require motor vehicle and tire manufacturers and tire brand owners to label such tires with information indicating their relative performance in the areas of treadwear, traction and temperature resistance. *See* 49 CFR 575.104(a).

The Uniform Tire Quality Grading Standards (UTQGS), 49 CFR 575.104, state that tire traction is ''evaluated on skid pads that are established, and whose severity is monitored, by the NHTSA both for its compliance testing and for that of regulated persons.'' 49 CFR 575.104(f)(1). As further described in the standards, the test pads are paved with asphalt and concrete surfaces that have specified locked wheel traction coefficients when evaluated in a manner prescribed in the standards. The traction skid pads are located at NHTSA's San Angelo Test Facility. 49 CFR 575.104, App. B. Several commercial facilities also have traction skid pads.

The current fees charged for use of the traction skid pads at the San Angelo Test Facility, as well as fees charged for course monitoring tires, were established by final rule published in the **Federal Register** on August 2, 1995. *See* 60 FR 39269 (Aug. 2, 1995).[1] Pursuant to Appendix D to 49 CFR 575.104, the fees charged to manufacturers for use of the Government traction skid pads continue in effect until adjusted by the Administrator of NHTSA.

II. Notice of Proposed Rulemaking (NPRM)

The NPRM proposed to update, in accordance with Office of Management and Budget (OMB) Circular A–25, the

[1] The August 2, 1995 final rule responded to a Department of Transportation Office of Inspector General (OIG) audit of NHTSA's facility in San Angelo in which the OIG concluded that NHTSA was not charging a user fee for the use of the traction skid pads at the facility and was not recovering the full cost of the course monitoring tires that it sold at San Angelo, contrary to OMB Circular A–25. *See* 60 FR 39269.

fee charged to manufacturers for use of the agency's traction skid pads at the San Angelo Test Facility.[2] It also proposed to remove provisions concerning the fees charged for course monitoring tires, as NHTSA no longer supplies these tires for purchase by manufacturers. Based on NHTSA's assessment using a ''market price'' analysis, the agency proposed to update the fees for use of the facility from $34.00 an hour, established in 1995, to $125.00 an hour, which reflected the agency's assessment of the current market price for use of traction skid pads. NHTSA received no public comments on the proposal.

As NHTSA noted in the NPRM, OMB Circular A–25 establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. The Circular 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.'' According to the Circular, a ''special benefit'' accrues and a user charge is assessed when a Government service ''is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public.'' Manufacturer use of NHTSA's testing facility is a special benefit because use of the facility is beyond the services regularly received by the industry or the general public.[3] Accordingly, NHTSA assesses a user charge for the use of the traction skid pads.

For the purposes of assessing user charges, the Circular requires that, when the Government is acting in its capacity as sovereign, user charges be sufficient to recover the full cost to the Government of providing the good or service. When the Government is not acting as sovereign, however, user charges are to be based on market prices. The Government acts in its capacity as sovereign when it uses powers over which it has a monopoly. *See e.g., U.S.* v. *Reyes,* 87 F.3d 676, 681 (5th Cir. 1996). The Government may act in a sovereign capacity, for example, when it is the only source of a good or service, such as where the Government issues a license. *See National Park Service—Special Park Use Fees,* B–307319, *6 (Aug. 23, 2007).

The agency is not acting in its capacity as sovereign in making the San Angelo Test Facility available for traction testing by manufacturers. That facility serves primarily for NHTSA's own verification testing of manufacturers' tires. As NHTSA recently stated with regard to the UTQGS regulations, manufacturers are not restricted to the use of the traction skid pads at the government facility in San Angelo. Rather, manufacturers may test their tires wherever they choose. *See* 75 FR 15894, 15913 (March 30, 2010). Because NHTSA's own verification tests are conducted at the San Angelo Test Facility, tire manufacturers often choose to do so as well.

Pursuant to Circular A–25, '''Market price' means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.'' Where there is substantial competitive demand for a good, resource, or service, the market price is determined by commercial practice, for example, by competitive bidding, or by reference to the prevailing price of the same or similar good, resources, or services, adjusted to reflect demand, level of service and quality of the good or service.

As NHTSA explained in the NPRM, to determine the appropriate market price for use of the San Angelo Test Facility, the agency surveyed several commercial facilities with traction skid pads available for public use. Prices for the hourly use of traction skid pads ranged from approximately $115 per hour to approximately $200 per hour. From its own experience, NHTSA believes that discounted rates may be available based on volume use or advance planning. As described in the NPRM, NHTSA believes it is appropriate to take the availability of discounts into account in arriving at a determination of market rate. In the NPRM, NHTSA took a conservative approach, proposing to set the rate for use of the traction skid pads at the lower end of this range—$125 per hour. NHTSA specifically sought comments regarding whether our proposed rate for hourly use of the traction skid pads at the San Angelo Test Facility accurately reflects the market price for such services. As noted above, NHTSA received no comments on the proposal.

III. Final Rule

NHTSA continues to believe that a fee of $125.00 per hour for use of the traction skid pads at the San Angelo Test Facility accurately reflects the current market price of such services. Accordingly, in the absence of comments, this document adopts the agency's proposal by updating the fees to $125.00 an hour. As proposed in the NPRM, this document also removes provisions concerning fees charged for course monitoring tires.

V. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this regulatory action under E.O. 12866 and E.O. 13563 and the Department of Transportation's (DOT) regulatory policies and procedures. This rulemaking action was not reviewed by the Office of Management and Budget under E.O. 12866. The rulemaking has also been determined not to be significant under DOT's regulatory policies and procedures (44 FR 11034, February 26, 1979).

Based on the type of fees and the anticipated use of the test track, NHTSA believes that the costs of the final rule will be minimal and do not warrant preparation of a regulatory evaluation. The rule will increase fees charged to private manufacturers for use of a government facility to prevailing market rates. Manufacturers have a choice as to whether to use this government facility or a private commercial facility. As a result, this action does not involve any substantial public interest or controversy. Furthermore, NHTSA anticipates that any impact on the sale price of tires would be minimal, because an increase in testing fees would likely be distributed across a manufacturer's sales volume. NHTSA does not anticipate any substantial effect on State and local governments or on a major transportation safety program.

B. National Environmental Policy Act

NHTSA has evaluated this final rule for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the quality of the human environment.

C. Regulatory Flexibility Act

NHTSA has considered the impact of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996). NHTSA believes

[2] 76 FR 2309 (Jan. 13, 2011).

[3] While there is a public benefit in making available a standardized tire grading facility for manufacturer use, the public benefits are incidental to the special benefits derived by the manufacturers. According to Circular A–25, when the public obtains a benefit as a necessary consequence of an agency's provision of special benefits to an identifiable recipient, an agency should seek to recover the applicable fee from the identifiable recipient.

that this action would not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). Tire manufacturers are not small entities. The amendments will affect businesses that conduct contract traction testing at NHTSA's test facility, some of which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency does not believe that this rulemaking will result in a significant economic impact on these entities. Under the final rule, the fees paid for use of the government facility will be essentially equivalent to those paid to a commercial testing facility—the market rate. The agency believes that small governmental jurisdictions will be only minimally affected by this rulemaking since they are generally not large scale purchasers of vehicles tires. Furthermore, even in the case of substantial purchases, as noted above, costs passed on to consumers are expected to be minimal since testing fees will likely be distributed across a manufacturer's sales volume.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final 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 final rule does not have federalism implications because the rule 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 final rule. NHTSA's safety standards can have preemptive effect in two ways. [4] This final rule amends 49 CFR Part 575 and is not a safety standard. This rulemaking only updates the fees currently charged for use of the traction skid pads at NHTSA's San Angelo Test Facility and does not require anyone to use the facility.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 (adjusted for inflation with the base year of 2005). Adjusting this amount by the implicit gross domestic product price deflator for 2009 results in $135 million (109.770/81.536 = 1.35).

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $135 million annually, and will not result in an expenditure of that magnitude by private entities. Because this final rule will not require expenditures exceeding $135 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule will not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR Part 1320. Accordingly, the PRA is not applicable to this action.

H. 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 that appears in the heading on the first page of this document to find this action in the Unified Agenda.

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 isn't 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 write to us with your suggestions.

J. Privacy Act

Anyone is able to search the electronic form of all submissions 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 organization, 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://www.dot.gov/privacy.html.*

[4] With respect to the safety standards, 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). Second, the Supreme Court has recognized the possibility of implied preemption: 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 exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

List of Subjects in 49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

PART 575—CONSUMER INFORMATION

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

■ 2. Revise Appendix D to § 575.104 to read as follows:

§ 575.104 Uniform tire quality grading standards.

Appendix D—User Fees

1. *Use of Government Traction Skid Pads:* A fee of $125 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 market price of the use of the traction skid pads.

2. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

3. The fee set forth in this Appendix continues in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fee set forth in this Appendix and, if appropriate, adjusts it by rule at least every 2 years.

Issued on: January 25, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–2141 Filed 1–31–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

[Docket No. 111019636–2033–02]

RIN 0648–BB53

Taking and Importing Marine Mammals: U.S. Navy Training in 12 Range Complexes and U.S. Air Force Space Vehicle and Test Flight Activities in California

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

ACTION: Final rule.

SUMMARY: Between January 2009 and May 2011, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued twelve 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities. Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to U.S. Air Force (USAF) space vehicle and test flight activities from Vandenberg Air Force Base (VAFB). These regulations require the issuance of annual ''Letters of Authorization'' (LOAs).

Since the issuance of the rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. NMFS now amends the regulations for the affected Navy training ranges to provide for additional flexibility and allow for LOAs with longer periods of validity. Similarly, NMFS now amends the regulations issued to VAFB in February 2009, to allow for greater flexibility regarding the types and amounts of missile and rocket launches that the USAF conducts.

DATES: Effective on February 1, 2012.

ADDRESSES: Regarding the Navy action, electronic copies of the Navy's LOA applications, NMFS' Records of Decision (RODs), and NMFS' proposed and final rules and subsequent LOAs; and regarding the USAF action, electronic copies of the USAF's LOA application, NMFS' Environmental Assessment and Finding of No Significant Impact, and NMFS' proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, a notice of proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations, and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Between January 2009 and May 2011, pursuant to the MMPA, NMFS issued 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities conducted in the Hawaii Range Complex (HRC), the Southern California (SOCAL) Range Complex, the Atlantic Fleet Active Sonar Training (AFAST) Study Area, the Jacksonville (JAX) Range Complex, the Virginia Capes (VACAPES) Range Complex, the Cherry Point (CHPT) Range Complex, the Naval Surface Warfare Center Panama City Division (NSWC PCD), the Mariana Islands Range Complex (MIRC), the Northwest Training Range Complex (NWTRC), the Naval Under Sea Warfare Center (NUWC) Keyport, the Gulf of Mexico (GOMEX) Range Complex, and the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-