

resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the ordering activity, will be resolved in accordance with paragraph (d) (*Disputes*) of this clause; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges*. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment*. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under paragraph (b) of this clause.

(xii) *Confidential information*. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with paragraph (w)(1) of this clause, the language, provisions, or clause of paragraph (w)(1) of this clause shall prevail to the extent of such inconsistency.

(End of clause)

#### **1552.332–39 Unenforceability of unauthorized obligations (FAR deviation).**

As prescribed in 1513.507(b) and 1532.1070, use clause 1552.332–39 (FAR DEVIATION) instead of the nondeviated version for purchase orders, modifications and contracts that include commercial supplier agreements.

#### **Unenforceability of Unauthorized Obligations (Far Deviation) (Date)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 1502.100) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or

liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such language, provision, or clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such language, provision, or clause by virtue of it appearing in the commercial supplier agreement. If the commercial supplier agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

[FR Doc. 2019-19575 Filed 9-16-19; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Parts 571 and 585**

[Docket No. NHTSA-2019-0085]

RIN 2127-AL93

#### **Federal Motor Vehicle Safety Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 141, *Minimum Sound Requirements for Hybrid and Electric Vehicles*, to allow manufacturers of hybrid and electric vehicles (HEVs) to install a number of driver-selectable pedestrian alert sounds in each HEV they manufacture. This proposal responds to a petition for reconsideration of the FMVSS No. 141 final rule published December 14, 2016. NHTSA is proposing to remove the limit to the number of compliant sounds that a manufacturer may choose to install in a vehicle. Drivers would be able to select the sound they prefer from the set of sounds installed in the vehicle. NHTSA is also seeking comment on whether interested parties believe that the agency should establish a limit to

the number of compliant sounds from which a driver may select that a manufacturer may choose to install in a vehicle.

This document also makes technical changes.

**DATES:** Comments on this proposal must be received no later than November 1, 2019.

**ADDRESSES:** All comments and other information relating to this notice should refer to the docket number in the heading of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** You may contact Mr. Thomas Healy, NHTSA Office of the Chief Counsel, at 202-366-2992 (FAX: 202-366-3820) or Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, at 202-366-4171 (FAX: 202-493-2990).

**SUPPLEMENTARY INFORMATION:** NHTSA is proposing to amend FMVSS No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (the "Quiet Vehicles" final rule) to remove the current limitation of one sound per vehicle model. Under the proposal, there would not be a limit to the number of compliant sounds a manufacturer could install in a vehicle. NHTSA is also requesting comment on whether there should be a limit to the number of compliant sounds that a manufacturer can install in a vehicle and what that limit should be.

Under FMVSS No. 141 currently, the HEV pedestrian alert sounds are allowed to vary with vehicle operating condition (stationary, reverse, 10 km/h, 20 km/h, and 30 km/h), but only one sound per operating condition is allowed for all vehicles of the same model, model year, body type and trim level. This proposal responds to a petition for reconsideration of the FMVSS No. 141 final rule published on December 14, 2016.<sup>1</sup> In a joint petition<sup>2</sup> submitted to NHTSA in January 2017, the Alliance of Automobile Manufacturers (Alliance) and Global Automakers (Global), the two main automotive industry groups in the U.S. representing most light vehicle manufacturers, requested several amendments.<sup>3</sup> One of the requested

<sup>1</sup> Final Rule, Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles [81 FR 90416], effective September 5, 2017; docket No. NHTSA-2016-0125.

<sup>2</sup> Docket item no. NHTSA-2018-0018-0004.

<sup>3</sup> NHTSA issued a final rule on February 26, 2018, to address the other requested actions in the

amendments, addressed in this proposed rule, was that NHTSA modify section S5.5 of FMVSS No. 141 so that each HEV can be equipped with a suite of several pedestrian alert sounds for the driver to choose from rather than one sound. According to Alliance/Global, providing this choice is important for consumer acceptance of future HEVs that will have pedestrian alert sounds in compliance with FMVSS No. 141.

NHTSA promulgated FMVSS No. 141 pursuant to the Pedestrian Safety Enhancement Act (PSEA) of 2010.<sup>4</sup> The PSEA included language that placed constraints on the multitude of different HEV pedestrian alert sounds that are possible. The PSEA stated NHTSA should allow manufacturers to provide each vehicle with one or more sounds at the time of manufacture. The PSEA further stated that NHTSA must require that vehicles of the same make and model produce the same sound or set of sounds, which would result in all similar vehicles having a similar sound in a given operating condition (forward, reverse, etc.). The PSEA did not, however, establish a specific limitation on the number of sounds emitted by vehicles subject to the final rule.

NHTSA implemented this PSEA limitation in the FMVSS No. 141 final rule<sup>5</sup> under section S5.5 titled "Sameness." This section states that vehicles of the same make, model, model year, and trim level must have the same pedestrian alert sound. The agency interpreted the PSEA "sameness" language to allow vehicles to have different sounds for different operating modes, such as forward, reverse and stationary. The requirements as published in FMVSS No. 141 do not permit a vehicle to have multiple sounds from which the driver can choose. The agency discussed this in the preamble of the final rule.<sup>6</sup>

The automotive industry groups' petition showed they had a different view of the language of the PSEA regarding multiple sounds per vehicle. Because the original Notice of Proposed Rulemaking (NPRM) for FMVSS No. 141 did not contemplate allowing driver-selectable sounds, the agency is opening this issue for public comment before proceeding with an amendment of FMVSS No. 141.

Alliance/Global petition for reconsideration. In that petition response, the agency announced that it was planning to publish a notice proposing to allow driver-selectable sounds.

<sup>4</sup> Public Law 111-373, 124 Stat. 4086 (January 4, 2011).

<sup>5</sup> The PSEA also included a restriction on disabling or altering of factory-equipped alert sounds. NHTSA implemented that PSEA restriction separately in paragraph S8 of FMVSS No. 141.

<sup>6</sup> See Final Rule, 81 FR 90416, at p. 90472.

This notice also makes a technical change to section S6.7 of FMVSS No. 141 relating to ambient noise correction procedures. NHTSA has received several requests to clarify the procedural step in S6.7.3 for evaluation of ambient one-third octave bands in compliance tests. NHTSA is issuing a reworded paragraph S6.7.3 to specify more clearly the point at which the one-third octave bands should be computed during measurements of ambient noise.

Lastly, in this notice NHTSA is correcting two dates in the FMVSS No. 141 phase-in reporting requirements in 49 CFR 585, Subpart N.

This proposed rule is deregulatory in nature and is expected to generate benefits and cost savings in excess of costs. The proposed rule provides manufacturers with more flexibility and options in developing and installing sounds for their hybrid and electric vehicles. NHTSA believes it is reasonable to assume that manufacturers would not utilize the flexibilities provided by the proposal to develop and install additional selectable sound options unless the benefits exceed the costs to them. Likewise, NHTSA believes it is reasonable to assume that consumers would not pay more for vehicles with additional sound options unless the benefits to them exceed any additional cost of the vehicle.

### Background

The PSEA was enacted in January 2011 and mandated that NHTSA must establish a new motor vehicle safety standard applying to HEVs. The PSEA stated the new standard must "establish performance requirements for an alert sound that allows blind and other pedestrians to reasonably detect a nearby electric or hybrid vehicle operating below the cross-over speed . . . ." In section 3(2) of the PSEA, there is a provision addressing "sameness" of the required vehicle alert sounds. Section 3(2) states that HEVs must have "within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model . . . ."

Pursuant to the PSEA, NHTSA issued an NPRM<sup>7</sup> in January 2013 and a final rule in December 2016, to create a new FMVSS setting minimum sound level requirements for the operation of HEVs at speeds up to 30 km/h. The requirements in the final rule respond to the PSEA mandate by providing a level of vehicle sound that the blind and sighted pedestrians, as well as bicyclists, can use to detect the presence of these so-called "quiet vehicles,"

thereby reducing the risk of low-speed pedestrian and bicyclist crashes involving HEVs. The FMVSS applies to electric and hybrid-electric passenger cars, multi-purpose vehicles, light trucks, and buses with a GVWR of 10,000 pounds or less that can be operated in electric mode without an internal combustion engine (ICE). To comply with the standard, light vehicle manufacturers in most cases will equip vehicles with pedestrian alert systems that meet the minimum sound levels specified in the standard. These systems typically consist of one or more audio speakers, amplifiers, a control module, and software capable of generating the required sound. It is possible for a vehicle to meet some or all the minimum sound levels without added hardware if there is sufficient noise from other sources within the vehicle. For example, the sound emitted by a battery cooling system or a vehicle's tires at 30 km/h might satisfy the minimum specifications without added noise from an alert system.

After the final rule was published, NHTSA received timely petitions for reconsideration from three sources: The Auto Alliance in conjunction with Global Automakers (Alliance/Global), Nissan North America, Inc. (Nissan), and American Honda Motor Company, Inc. (Honda). Each of these petitioners requested changes to various aspects of the final rule. The requested changes included the phase-in schedule and compliance lead-time as well as other requirements of the new safety standard such as how much alert sound variation is allowed between vehicles of the same make and model. The petitions also asked for clarification of some technical aspects of the acoustic performance requirements and test procedures.

Alliance/Global included in its petition a request for NHTSA to amend S5.5 of the new safety standard to explicitly allow automakers to equip their HEVs with multiple different sounds, rather than just one sound, for each operating condition as specified in the FMVSS No. 141 final rule. NHTSA is responding to that petition request by proposing to amend FMVSS No. 141 to accommodate driver-selectable sounds. NHTSA is issuing this NPRM to solicit public comment on the proposed change.

Specifically, NHTSA proposes amending Paragraph S5.5.1 to remove any limit on the number of sounds per vehicle make/model. NHTSA is also requesting comment from any interested parties on whether there should be a limit to the number of driver selectable sounds and what that limit should be.

<sup>7</sup> 78 FR 2798.

## Discussion

### *Sameness Requirement*

The “Sameness” provision appears in section 3(2) of the PSEA and states that the federal regulation created pursuant to the PSEA “shall allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture.” Section 3(2) further states that the regulation “shall require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model.”

NHTSA interpreted this section of the PSEA to mean that a manufacturer may choose to equip a vehicle with different sounds for different operating modes, including stationary, reverse, and forward at 10 km/h, 20 km/h, and 30 km/h.<sup>8</sup> However, in the December 2016 final rule, NHTSA did not interpret this language to mean vehicles can be equipped with more than one alert sound for a given operating condition and speed.

Consequently, NHTSA did not include any provision in either the NPRM or final rule allowing for more than a single alert sound per operating mode. Instead, FMVSS No. 141 requires that any two vehicles of the same make and model to which the standard applies must have the same alert sound when operating under the same test conditions and the same speed.<sup>9</sup>

### *Alliance/Global Petition*

In their January 2017 petition, Alliance/Global stated that NHTSA adopted an inflexible approach to ensuring sameness and did not account for specific statutory language in the PSEA that permits multiple alert sounds per vehicle. Specifically, Alliance/Global believe the words “one or more sounds” in Section 3(2) of the PSEA provide this flexibility and that NHTSA’s final rule was inconsistent with this. Alliance/Global stated that providing a selection of sounds is essential for customer acceptance of HEVs: “Satisfying our customers is a primary concern for OEMs [Original Equipment Manufacturers]. Since ‘one size does not fit all’ neither will one alert sound for a given make, model, trim level and model year satisfy all

those consumers purchasing all these same vehicles.” The petition also discussed comments submitted to the agency in February 2014 jointly by the Alliance, Global, the American Council of the Blind (ACB), and the National Federation of the Blind (NFB), in which the commenters, including the two advocate organizations, recognized the need to provide consumers with a reasonable number of driver-selectable sound choices for customer acceptance reasons.

Alliance/Global submitted a follow-up letter<sup>10</sup> dated March 1, 2017, to supplement their petition. One aspect of the letter addressed the fact that the variety of alert sounds that manufacturers can create that comply with the safety standard is virtually unlimited due to the acoustic flexibility provided by the requirements in FMVSS No. 141. To address this concern, Alliance/Global stated that, in the event NHTSA amended FMVSS No. 141 to allow selectable sounds, they recommend a limit of five sounds per vehicle. They provided the following explanation: “Because every additional driver-selectable choice of sound requires a separate certification test as well as a compliance test, the number of driver-selectable choices provided by manufacturers would naturally be limited for practical reasons. However, to address potential concerns that manufacturers might provide too many optional sounds, we recommend that the number of permitted driver-selectable sounds be limited to no more than five driver-selectable alert sounds for any make, model, trim level, model year vehicle.”

The Alliance and Global’s January 2017 petition also discussed possible implications of paragraph S8 of FMVSS No. 141 regarding a selectable-sounds provision. Paragraph S8 implements part of Section 3(2) of the PSEA by prohibiting alteration of a factory-installed sound except in case of a vehicle repair or recall.<sup>11</sup> The Alliance/Global petition states, “The ability to permit customers to select different compliant sounds from a set of driver-selectable compliant sounds does not violate the PSEA restrictions against disabling, altering, replacing, or modifying the sound or set of sounds.

Specifically, as long as the customer is selecting a sound that is among the ‘set of sounds’ provided by the manufacturer when the car is new, then the driver is not modifying the ‘set’ by selecting sounds provided within the ‘set.’”

### *NHTSA Proposal and Request for Comments*

After considering the Alliance/Global petition, and recognizing that the language of the PSEA regarding sameness of sounds among vehicles of the same make and model is subject to more than one interpretation, and also that consumer preferences for vehicle alert sounds will depend on subjective factors, NHTSA has decided to propose amending FMVSS No. 141 to allow an unlimited number of pedestrian alert sounds per vehicle for any operating condition. (As previously stated, the different operating conditions are when the vehicle is stationary, in reverse, or moving forward at speeds up to 30 km/h.)

This proposal would also improve international harmonization by aligning FMVSS No. 141 more closely with international regulations, particularly United Nations ECE Regulation No. 138 for Audible Vehicle Alerting Systems, which states “a vehicle manufacturer may define alternative sounds which can be selected by the driver.” The ECE regulation does not specify a particular limit on the number of alternative sounds that may be provided.

The agency believes that allowing for an additional number of sounds will have no effect on safety, since all sounds would still need to comply with the standard. NHTSA notes that the Alliance/Global petition recommended up to five sounds per operating condition. The agency requests comment on this suggestion and any other appropriate limit.

In summary, NHTSA is seeking comment from all interested parties on amending the “Sameness” requirement, section S5.5.1 of FMVSS No. 141, which currently allows only one sound, to allow multiple sounds per operating condition for each model, model year, trim, and body style of HEV. Specifically, NHTSA requests comment and supporting information on any safety implications, compliance issues, consumer-acceptance factors, cost issues, or other possible alternatives that would accompany allowing an unlimited number of compliant driver-selectable sounds in FMVSS No. 141.

In particular, NHTSA seeks comment on the potential safety issues related to HEV recognition by pedestrians if a multitude of new compliant driver-

<sup>10</sup> Docket No. NHTSA–2016–0125–0016.

<sup>11</sup> The Alliance/Global petition requested a small change to paragraph S8 of FMVSS No. 141 so that vehicle repairs to a module that controls both the pedestrian alert system and other vehicle systems would not violate the prohibition on alterations to the alert system. NHTSA granted their request on this point in the agency’s February 2018 petition response by adopting minor edits to paragraph S8 as suggested by Alliance/Global.

<sup>8</sup> See NHTSA NPRM [78 FR 2798], p. 2804.

<sup>9</sup> Section S5.5.1 of FMVSS No. 141, as published in December 2016, allowed the alert sound to vary by model year as well as make and model (see 81 FR 90472). This was further amended on February 26, 2018, to allow alert sounds to vary by trim level and body style within a make/model/model year (see 83 FR 8189).

selectable sounds are available, and the extent to which having an unlimited number of sounds would lead to the potential for a pedestrian's inability to identify the sounds as a motor vehicle.

As to the remaining aspects of the Alliance/Global petition, NHTSA is not proposing any change to paragraph S8 of FMVSS No. 141 and believes amending S5.5.1 as proposed in this notice will fully address the Alliance/Global petition on driver-selectable sounds. The requirements in S8 still would apply to the set of selectable sounds provided by the OEM, *i.e.*, aftermarket modification of the set of sounds would not be permitted except in allowable circumstances specified in section S8, such as vehicle repairs and recalls.

#### Technical Clarification and Correction

NHTSA recently became aware that the procedure in FMVSS No. 141 for evaluating ambient noise during compliance tests is unclear. The Alliance and Global raised this issue in an April 2018 letter along with several other FMVSS No. 141 technical concerns.<sup>12</sup> The ambient noise correction procedure at issue is in section S6.7.3.

This paragraph indicates that the one-third octave band levels of the ambient noise recording that are used for correction of vehicle measurements are the individual minimum levels in each one-third octave at any point in time over the 60-seconds of recorded ambient noise. This incorrectly implies that the levels of different one-third octave bands may be evaluated at different times. This was not NHTSA's intention. The correct method intended by the agency is to evaluate ambient levels of all 13 one-third octave bands at the same point in time. The point in time at which ambient one-third octave bands are supposed to be evaluated is the unique point during the 60 seconds when the overall sound pressure level of the ambient is at a minimum, as identified in S6.7.2, the preceding step in the ambient correction procedure.

To resolve this, NHTSA is proposing to amend paragraph S6.7.3 to more clearly state the intended method of evaluating one-third octave bands for ambient correction. A proposed rewording of section S6.7.3 that would implement this change is included at the end of this document. The agency invites all interested parties to comment on this change.

Additionally, NHTSA has become aware of a minor correction that is needed in the phase-in reporting

requirements of FMVSS No. 141. The FMVSS No. 141 final rule published in December 2016 required vehicle manufacturers to report on their production of compliant HEVs during a one-year phase-in period. (This kind of reporting requirement is standard practice for NHTSA rules that include a phase-in period.) The reporting requirements and associated due dates for phase in of compliance with FMVSS No. 141 are contained in 49 CFR 585, Subpart N. NHTSA has determined that the December 2016 rule amending Part 585, Subpart N, states in two places, "the production year ending August 31, 2018" instead of "the production year ending August 31, 2019." When NHTSA granted a petition to extend the FMVSS No. 141 phase-in and compliance deadlines by one year,<sup>13</sup> the reporting dates in Part 585, Subpart N, were all adjusted by adding one year. However, because those two dates were stated incorrectly in the original final rule, the adjusted dates also were off by one year. In this notice, NHTSA is making the necessary changes to 49 CFR 585, Subpart N, to specify that phase-in reporting applies to the production year ending August 31, 2020. The corrected regulatory text, is included at the end of this document.

#### Rulemaking Analyses and Notices

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation Order 2100.6, "Policies and Procedures for Rulemakings." This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." Given the minimal impact of the rule, in accordance with the Department's regulatory policies and procedures, we have not prepared a full regulatory evaluation.<sup>14</sup> The agency has further determined that the impact of this proposed rule is so minimal that the preparation of a full regulatory evaluation is not required.

This proposed rule responding to a petition for reconsideration does not add any cost, as it would afford manufacturers additional flexibility in designing their vehicles to meet customer acceptance goals. It would not add new requirements or increase

design or production burden for vehicle manufacturers.

This proposal, if adopted, would remove a final-rule restriction on vehicle design that auto manufacturers in the U.S. have sought to remove. This amendment also would give manufacturers of hybrid and electric vehicles greater flexibility in marketing those vehicles to consumers and make vehicles potentially more appealing to consumers by providing customer choice in selecting vehicle sounds.

The benefits and cost savings of this proposed rule are expected to exceed any increase in costs to manufacturers if they choose to create additional sounds. The proposal would allow manufacturers to equip vehicles with additional sounds but would not require it. If this proposal is finalized, a manufacturer would still be able to comply with FMVSS No. 141 by equipping a vehicle with a single sound.

The proposed rule provides manufacturers with more flexibility and options in developing and installing sounds for their hybrid and electric vehicles. NHTSA believes it is reasonable to assume that manufacturers would not utilize the flexibilities provided by the proposal to develop and install additional selectable sounds unless the benefits to them exceed the costs to them. Likewise, NHTSA believes it is reasonable to assume that consumers would not purchase vehicles with additional sounds unless the benefits to them exceed any additional cost of the vehicle. At the same time, the proposal would not have any effect on safety, as all sounds would still need to comply with the standard.

##### B. 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). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). 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

<sup>13</sup> 83 FR 8182, published Feb. 26, 2018.

<sup>14</sup> Department of Transportation, *Adoption of Regulatory Policies and Procedures*, 44 FR 11034 (Feb. 26, 1979).

<sup>12</sup> See Docket item no. NHTSA-2018-0018-0004.

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.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. This proposed rule would directly impact manufacturers of hybrid and electric vehicles. Most manufacturers affected by this proposed rule are not small businesses. To the extent any manufacturers of hybrid or electric vehicles are small businesses, we do not believe this proposed rule would have a significant economic impact on any small businesses as this proposed rule would not impose any costs on manufacturers but would instead increase flexibility for vehicle manufacturers.

### C. 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 rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would 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."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption 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). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e).

Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rulemaking action could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

### D. Executive Order 13771 (Regulatory Reform)

NHTSA has reviewed this proposed rule for compliance with E.O. 13771 ("Reducing Regulation and Controlling

Regulatory Costs"), which requires Federal agencies to offset the number and cost of new regulations through the repeal, revocation, or revision of existing regulations. As provided in OMB Memorandum M-17-21 ("Implementing E.O. 13771"), a "regulatory action" subject to E.O. 13771 is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. For the reasons identified in the previous sections, this proposed rule is not a significant regulatory action under E.O. 12866.

Furthermore, this proposal is a "deregulatory action" under E.O. 13771 because, as discussed above, it would reduce regulatory burden on industry by allowing design flexibility by giving manufacturers the option to use selectable sounds. Also, it would improve international harmonization by aligning more closely with international regulations, particularly United Nations ECE Regulation No. 138 for Audible Vehicle Alerting Systems.

### 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; Feb. 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) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) 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 that the issue of preemption is discussed separately in this notice. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

### F. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1)

Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This notice is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

#### G. Paperwork Reduction Act

Under 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. There is not any new information collection requirement associated with this proposed rule.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA’s vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as “performance-based or design-specific technical specification and related management systems practices.” They pertain to “products and processes, such as size, strength, or technical performance of a product, process or material.” Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the SAE International, and the American National Standards Institute. If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this proposed rule.

#### I. 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 annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This proposed rule would not result in any expenditure by State, local, or tribal governments or the private sector of more than \$100 million, adjusted for inflation.

#### J. National Environmental Policy Act

NHTSA analyzed the original FMVSS No. 141 final rule for the purposes of the National Environmental Policy Act. The agency determined that implementation of that rule would not have any significant impact on the quality of the human environment.<sup>15</sup>

The rulemaking action in this notice would amend the FMVSS No. 141 final rule in a way that would not change the impact for the purposes of the National Environmental Policy Act. Therefore, the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

#### K. 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.

#### L. 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 (65 FR 19477–78).

#### List of Subjects

##### 49 CFR Part 571

Minimum sound requirements for hybrid and electric vehicles; Phase-in reporting requirements.

##### 49 CFR Part 585

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration proposes to amend 49 CFR parts 571 and 585 as follows:

#### 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 1.95.

■ 2. Amend § 571.141 by revising paragraph S5.5.1 and S6.7.3 to read as follows:

#### § 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles

\* \* \* \* \*

##### S5.5 Sameness Requirement

S5.5.1 Any two vehicles of the same make, model, model year, body type, and trim level (as those terms are defined in 49 CFR 565.12 or in section S4 of this safety standard) to which this standard applies shall be designed to have the same pedestrian alert sound or set of sounds, when operating under the same test conditions and at the same speed within the range of test conditions and speeds for which an alert sound is required in Section S5 of this safety standard.

\* \* \* \* \*

S6.7.3 For each microphone, compute an ambient level for each of the 13 one-third octave bands using the time that is associated with the

<sup>15</sup> Docket item no. NHTSA–2016–0125–0009, <https://www.regulations.gov/document?D=NHTSA-2016-0125-0009>.

minimum A-weighted overall ambient identified in S6.7.2.

\* \* \* \* \*

## PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for part 585 continues to read/is revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 4. Revise § 585.132 to read as follows:

### § 585.132 Response to Inquiries.

At any time during the production year ending August 31, 2020, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141). The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

■ 5. Amend § 585.133 by revising paragraph (a) to read as follows:

### § 585.133 Reporting requirements.

(a) Phase-in reporting requirements. Within 60 days after the end of the production year ending August 31, 2020, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 141 Minimum Sound Requirements for Hybrid and Electric Vehicles (49 CFR 571.141) for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2 of this part.

\* \* \* \* \*

Issued on September 10, 2019 in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

**James Clayton Owens,**

*Acting Administrator.*

[FR Doc. 2019-19874 Filed 9-16-19; 8:45 am]

**BILLING CODE 4910-59-P**

## SURFACE TRANSPORTATION BOARD

### 49 CFR Parts 1002, 1111, 1114, and 1115

[Docket Nos. EP 755; EP 665 (Sub-No. 2)]

### Final Offer Rate Review; Expanding Access to Rate Relief

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Surface Transportation Board (STB or Board) proposes a new procedure for challenging the reasonableness of railroad rates in smaller cases. In this procedure, the Board would decide a case by selecting either the complainant's or the defendant's final offer, subject to an expedited procedural schedule that adheres to firm deadlines.

**DATES:** Comments on the proposed rule are due by November 12, 2019. Reply comments are due by January 10, 2020.

**ADDRESSES:** Comments and replies in either or both dockets may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 755 and/or Docket No. EP 665 (Sub-No. 2), 395 E Street SW, Washington, DC 20423-0001. Comments and replies will be posted to the Board's website at [www.stb.gov](http://www.stb.gov).

### FOR FURTHER INFORMATION CONTACT:

Amy Ziehm at (202) 245-0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** In January 2018,<sup>1</sup> the Board established its Rate Reform Task Force (RRTF), with the objectives of developing recommendations to reform and streamline the Board's rate review processes for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).<sup>2</sup> Among other recommendations, the RRTF included a proposal for a final offer procedure, which it described as "an administrative approach that would take advantage of procedural limitations, rather than substantive limitations, to constrain the cost and complexity of a rate reasonableness case." RRTF Report 12. Versions of a final offer process for rate review have also been recommended by the U.S. Department of Agriculture (USDA) and a committee of the Transportation Research Board (TRB). The Board now proposes to build on the RRTF recommendation and establish a new rate case procedure for smaller cases, the Final Offer Rate Review (FORR) procedure.

<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative convenience.

<sup>2</sup> The RRTF Report was posted on the Board's website on April 29, 2019, and can be accessed at [https://www.stb.gov/stb/rail/Rate\\_Reform\\_Task\\_Force\\_Report.pdf](https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf).

## Background

In the ICC Termination Act of 1995 (ICCTA), Congress directed the Board to "establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost [(SAC)] presentation is too costly, given the value of the case." Public Law 104-88, 109 Stat. 803, 810. In the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law 114-110, 129 Stat. 2228, Congress revised the text of this requirement so that it currently reads: "[t]he Board shall maintain 1 or more simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full [SAC] presentation is too costly, given the value of the case." 49 U.S.C. 10701(d)(3) (emphasis added). In addition, section 11 of the STB Reauthorization Act modified 49 U.S.C. 10704(d) to require that the Board "maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates."<sup>3</sup> More generally, the rail transportation policy states that, in regulating the railroad industry, it is the policy of the United States Government "to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part." 49 U.S.C. 10101(15).

In 1996, the Board adopted a simplified methodology, known as Three-Benchmark, which determines the reasonableness of a challenged rate using three benchmark figures. *Rate Guidelines—Non-Coal Proceedings*, 1 S.T.B. 1004 (1996), *pet. to reopen denied*, 2 S.T.B. 619 (1997), *appeal dismissed sub nom. Ass'n of Am. R.Rs. v. STB*, 146 F.3d 942 (D.C. Cir. 1998). A decade passed without any complainant bringing a case under that methodology. In 2007, the Board modified the Three-Benchmark methodology and also created another simplified methodology, known as Simplified-SAC, which determines whether a captive shipper is being forced to cross-subsidize other parts of the railroad's network. *See Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g*, 584 F.3d 1076 (D.C. Cir. 2009). In 2013, the Board increased the relief available under the

<sup>3</sup> Prior to the enactment of the STB Reauthorization Act, section 10704(d) began with a sentence stating that, "[w]ithin 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates." *See, e.g.*, 49 U.S.C. 10704(d) (2014).