

adopted a Tribal Priority under Section 307(b) of the Communications Act of 1934, as amended, to assist federally recognized Native American Tribes and Alaska Native Villages ("Tribes") and entities primarily owned or controlled by Tribes in obtaining broadcast radio construction permits designed primarily to serve Tribal Lands (the "Tribal Priority"). Tribal affiliated applicants that meet certain conditions regarding Tribal membership and signal coverage qualify for the Tribal Priority, which in most cases will enable the qualifying applicants to obtain radio construction permits without proceeding to competitive bidding, in the case of commercial stations, or to a point system evaluation, in the case of noncommercial educational ("NCE") stations. On March 3, 2011, the Commission adopted a Second Report and Order ("Rural Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09–52, FCC 11–28, 26 FCC Rcd 2556 (2011). On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09–52, FCC 11–190, 26 FCC Rcd 17642 (2011) ("Rural Third R&O"). In the Rural Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM radio context, specifically adopting a "Threshold Qualifications" approach to commercial FM application processing.

Furthermore, under the Commission's Tribal Priority procedures, entities obtaining:

(a) An AM authorization for which the applicant claimed and received a dispositive Section 307(b) priority because it qualified for the Tribal Priority; or

(b) An FM commercial non-reserved band station awarded:

(1) To the applicant as a singleton Threshold Qualifications Window applicant,

(2) To the applicant after a settlement among Threshold Qualifications Window applicants, or

(3) To the applicant after an auction among a closed group of bidders composed only of threshold qualified Tribal applicants; or

(c) A reserved-band NCE FM station for which the applicant claimed and received the Tribal Priority in a fair distribution analysis as set forth in 47 CFR 73.7002(b)(1), may not assign or transfer the authorization during the period beginning with issuance of the construction permit, until the station has completed four years of on-air operations, unless the assignee or transferee also qualifies for the Tribal Priority. Pursuant to procedures set

forth in the Rural Third R&O, 26 FCC Rcd at 17645–50, the Tribal Priority Holding Period is now applied in the context of authorizations obtained using Tribal Priority Threshold Qualifications.

Consistent with actions taken by the Commission in the Rural Third R&O, the following changes are made to Forms 314 and 315: Section I of each form includes a question asking applicants to indicate whether any of the authorizations involved in the subject transaction were obtained: after award of a dispositive Section 307(b) preference using the Tribal Priority; through Threshold Qualification procedures; or through the Tribal Priority as applied before the NCE fair distribution analysis. A subsequent question then asks whether both the assignor/transferee and assignee/transferee qualify for the Tribal Priority in all respects. Applicants not meeting the Tribal Priority qualifications and proposing an assignment or transfer during the Holding Period must provide an exhibit demonstrating that the transaction is consistent with the Tribal Priority policies or that a waiver is warranted. The instructions for Section I of Forms 314 and 315 have been revised to assist applicants with completing the questions.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–2012–0093 Notice 2]

RIN 2127–AL18

Final Rule

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

ACTION: Final rule.

SUMMARY: This document amends regulations that prescribe the format and contents labels that manufacturers are required to affix to motor vehicles manufactured for sale in the United States to certify the compliance of those vehicles with U.S. safety standards. The amendment will require specified certification language to be included on the labels affixed to certain types of vehicles.

DATES: This rule is effective January 3, 2013. Petitions for reconsideration must be received by NHTSA not later than January 18, 2013.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received not later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. Chapter 301.

The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT:

Coleman Sachs, Office of Vehicle Safety Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–3151.

SUPPLEMENTARY INFORMATION: NHTSA

published a final rule on February 14, 2005 (70 FR 7414) that amended certain provisions of title 49, Code of Federal Regulations, that pertain to the certification of motor vehicles to standards administered by NHTSA. In amending the provisions that establish the format and content requirements for certification labels, the agency inadvertently omitted from 49 CFR 576.4(g)(5) the requirement for manufacturers to include a specific certification statement in the labels they affix to certain types of motor vehicles. This rule corrects that inadvertent omission.

Background and Amendments

This rule was preceded by a notice of proposed rulemaking that NHTSA published on August 6, 2012 (77 FR 46677). There were no comments in response to the notice of proposed rulemaking.

Under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, (49 U.S.C. 30112(a), 30115), a motor vehicle manufactured for sale in the United States must be manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) and bear a label certifying such compliance that is permanently affixed by the vehicle's original manufacturer. The label constitutes the manufacturer's certification that the vehicle complies with the applicable standards. Under 49 CFR 567.4, the label, among other things, must identify the vehicle's manufacturer, its date of manufacture, its gross vehicle weight rating or GVWR, the gross axle weight rating or GAWR of each axle, the vehicle type classification (e.g., passenger car, multipurpose passenger vehicle, truck, bus, motorcycle, trailer, low-speed vehicle), and the vehicle's Vehicle Identification Number or "VIN." The certification label must also contain a variant of the statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." For example, passenger cars are subject to safety, bumper, and theft prevention standards; therefore, a passenger car certification label must contain the statement: "This vehicle conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture shown above." The expression "U.S." or "U.S.A." may be inserted before the word "Federal" as it appears in this statement.

In the final rule published on February 14, 2005 (70 FR 7414), 49 CFR 567.4(g)(5) was amended by replacing the statement "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above" with the language, "One of the following statements, as appropriate" followed by subparagraphs i, ii, and iii, which pertain, respectively, to passenger cars, multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less, and multipurpose passenger vehicles and trucks with a GVWR of over 6,000 pounds. Manufacturers of other types of motor vehicles remained subject to the statutory duty to certify those vehicles to the applicable FMVSS. And the

logical certification language for these manufacturers to use was: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above." But due to an inadvertent omission in the course of amendments to the regulations, the regulations did not specifically state that manufacturers of trailers, buses, motorcycles, and low-speed vehicles (those vehicle types not identified by subparagraphs i, ii, and iii) were required to use this specific language. To address this lack of specificity, the agency is amending section 567.4(g) to add a new subparagraph (iv) that covers these vehicle types. Subparagraphs i, ii, and iii remain unchanged.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Manufacturers are required by statute (49 U.S.C. 30115(a)) to permanently affix a tag or label to a

vehicle certifying the vehicle's compliance with applicable safety standards. The agency is not aware of any manufacturer that has discontinued inserting the certification language on the certification labels affixed to trailers, buses, motorcycles, and low-speed vehicles manufactured since the regulations were revised in 2005. Based on this, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a regulatory evaluation. The action does not involve any substantial public interest or controversy. The rule would have no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that no regulatory flexibility analysis is required if the head of an agency certifies the rule will 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 will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the rule being adopted will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis for this rulemaking. NHTSA makes these statements on the basis that covered entities have been and are subject to a statutory obligation to certify vehicles they manufacture, this rulemaking merely restores text that was part of the regulation before it was last amended in 2005, and manufacturers have continued to affix labels that include the appropriate certification language on trailers, buses, motorcycles, and low-speed vehicles manufactured since then. As a consequence, this rulemaking will not impose any significant costs on anyone. Therefore, it has not been necessary for NHTSA to conduct a regulatory evaluation or Regulatory Flexibility Analysis for this rulemaking.

The costs of the 2005 amendments were analyzed at the time they were issued as a final rule. At that time, we explained that the rule did not impose

any significant economic impact on a substantial number of small businesses. The agency explained that the rule would, in fact, reduce burdens on final-stage manufacturers, many of which are small businesses.

The agency is not aware that any vehicle manufacturers have stopped including the certification language that is the subject of this rule on the labels they affix to trailers, buses, motorcycles, or low-speed vehicles. For this reason, we view this rulemaking as merely restoring to the regulation text that was inadvertently omitted in the 2005 amendment and find that there is no change in the meaning or application of the rule as explained in the preamble at 70 FR 7414.

C. Executive Order 13132 (Federalism)

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

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

D. Executive Order 12988 (Civil Justice Reform)

Executive Order 12988 requires that agencies review proposed regulations and legislation and adhere to the following general requirements: (1) The agency’s proposed legislation and regulations shall be reviewed by the

agency to eliminate drafting errors and ambiguity; (2) The agency’s proposed legislation and regulations shall be written to minimize litigation; and (3) The agency’s proposed legislation and regulations shall provide a clear legal standard for affected conduct rather than a general standard, and shall promote simplification and burden reduction.

When promulgating a regulation, Executive Order 12988 specifically requires the agency to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA has reviewed this rulemaking according to the general requirements and the specific requirements for regulations set forth in Executive Order 12988. This rulemaking simply restores text that existed before the regulation was amended in 2005 and makes clear the requirement that manufacturers include language in the certification labels that they must affix to vehicles under 49 U.S.C. 30115 and the regulations at 49 CFR part 567. This change does not result in any preemptive effect and does not have a retroactive effect. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a

reasonable number of regulatory alternatives and to 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 NHTSA 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 why that alternative was not adopted. Because this final rule will not require the expenditure of resources beyond \$100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 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 final rule includes a “collection of information,” as that term is defined in 5 CFR part 1320 *Controlling Paperwork Burdens on the Public*, because it requires manufacturers to insert text in the certification labels they affix to trailers, buses, motorcycles, and low-speed vehicles that is not specified in the regulations as they currently exist. There is no burden on the general public.

OMB has approved NHTSA’s collection of information associated with motor vehicle labeling requirements under OMB clearance no. 2127–0512, *Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number)*. NHTSA’s request for the extension of this approval was granted on June 6, 2011, and remains in effect until June 30, 2014. For the following reasons, NHTSA believes that the requirements imposed by this rule will not increase the information collection burden on the public. Manufacturers of all motor vehicles manufactured for sale in the United States are required by statute to certify their vehicles’ compliance with all applicable Federal motor vehicle safety standards. See 49 U.S.C. 30115(a). The statute provides that “[c]ertification of a vehicle must be shown by a label or tag permanently fixed to the vehicle.” *Ibid.* To satisfy this requirement, manufacturers of all motor vehicles, including trailers, buses, motorcycles, and low-speed vehicles, have been affixing certification labels to those vehicles containing the required certification language even though there has been no certification language specified in the regulations since they

were amended in 2005. Reinstating the specific language in the regulations will therefore not increase the paperwork burden on those manufacturers.

H. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

I. 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 NHTSA to use voluntary consensus standards in its 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). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

In this final rule, we are adding to 49 CFR 576.4(g)(5) the requirement that manufacturers include in the certification labels that they affix to certain types of motor vehicles a statement certifying that the vehicle conforms to all applicable FMVSS. This language was inadvertently omitted from the regulation in 2005 and we are adopting no substantive changes to the regulation nor do we propose any technical standards. For these reasons, Section 12(d) of the NTTAA would not apply.

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.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, Part 567, Certification, in Title 49 of the Code of Federal Regulations is amended as follows:

PART 567—CERTIFICATION

■ 1. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 567.4 by adding paragraph (g)(5)(iv) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(iv) For all other vehicles, the statement: “This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above.” The expression “U.S.” or “U.S.A.” may be inserted before the word “Federal”.

* * * * *

Issued on: November 28, 2012.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2012–29132 Filed 12–3–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2012–0171]

RIN 2127–AK99

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule.

SUMMARY: NHTSA is amending the Federal motor vehicle safety standard (FMVSS) on lamps, reflective devices, and associated equipment to restore the

blue and green color boundaries that were removed when the agency published a final rule reorganizing that standard on December 4, 2007.

DATES: *Effective date:* December 4, 2012.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than January 18, 2013.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ms. Marisol Medri, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590 (Telephone: (202) 366–6987) (Fax: (202) 366–7002).

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment*, has been in existence since 1968. The standard had been amended on an *ad hoc* basis over time resulting in a patchwork organization of the standard. NHTSA published a final rule on December 4, 2007,¹ amending FMVSS No. 108 by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements; incorporating important agency interpretations of the existing requirements; and reducing reliance on third-party documents incorporated by reference. The preamble of the final rule stated that the rewrite of FMVSS No. 108 was administrative in nature and would have no impact on the substantive requirements of the standard. The December 4, 2007 final rule made several changes to the proposal contained in the Notice of Proposed Rulemaking for that rule including removing the blue and green color boundary requirements from paragraph S14.4.1.3.2 and eliminating references to three additional SAE documents.

¹ 72 FR 68234, (Dec. 4, 2007). The agency published the Notice of Proposed Rulemaking proposing to reorganize the standard on December 30, 2005. 70 FR 77454, (Dec. 30, 2005).