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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:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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).

SABIC Innovative Plastics US LLC (SABIC-IP) sent a letter to NHTSA on August 11, 2008, after the final rule comment period was over. In this letter, SABIC-IP stated that the agency did not allow for public comment when it made the decision to remove the blue and green color boundaries from the standard. SABIC-IP further stated that in removing the blue and green color boundaries from paragraph S14.4.1.3.2, the agency substantively changed the requirements of FMVSS No. 108 during the rewrite process. On July 13, 2011, NHTSA published a NPRM² initiating this rulemaking to replace the color boundaries that were removed during the administrative rewrite of the standard.

In the NPRM, the agency explained that while neither blue nor green are directly permitted by the standard, it is possible to use these color boundaries to certify a material to the outdoor exposure test. Once individually certified to the three year outdoor exposure test, the blue and clear material could be mixed to produce a clear material with a blue tint, which could then be used in a lamp lens provided the lamp itself emits light within the white color boundary. Under the standard, the mixed material can be certified to the outdoor exposure test without an additional three years of testing. The pre-rewrite version of the standard contained two tests for determining compliance with the color requirements in the standard, the Visual Method or the Tristimulus Method. The blue and green color boundary definitions that were removed are part of the color requirements of the Tristimulus method procedure. The NPRM proposed to amend FMVSS No. 108 to restore the color boundary definitions for green, restricted blue and signal blue so that the requirements of the rewrite coincide with those of the old standard.

II. Public Comments on NPRM

² 76 FR 41181, (July 13, 2011).

NHTSA received four public comments in response to the Notice of Proposed Rulemaking for this rulemaking.³ All of the comments supported reinstating the color boundary definitions for green, restricted blue and signal blue to FMVSS No. 108.

The Alliance of Automobile Manufacturers (the “Alliance”) supported the rulemaking but stated that the agency omitted the color requirements for green and blue when tested according to the visual method. The Alliance claimed that these requirements from SAE J578c Color Specification for Electric Signal Lighting Devices, (FEB 1977) (the third party standard from which the color boundaries were derived) were incorporated into the NPRM proposing the reorganization of the standard but were not incorporated into the December 4, 2007 Final Rule. The Alliance recommended that these requirements be reinstated into the standard as sections 14.4.1.3.2.4 and 14.4.1.3.2.5.

SABIC-IP submitted a comment urging the agency to restore the green and blue color boundaries to FMVSS No. 108. SABIC-IP also requested that the agency clarify that polymers and additives would not have to be retested to the three year outdoor exposure test after the effective date of the administrative rewrite before being combined to create new materials. SABIC-IP stated that the rewrite of the standard creates ambiguity as to whether combinations of individually certified materials can continue to be mixed to create new material and then certified to the outdoor exposure test without an additional three years of testing as was permitted under the pre-write version of the standard. SABIC-IP requested that NHTSA amend paragraph S14.4.2.2.2 to state that materials and additives used in plastics could be changed without outdoor exposure testing if the materials had previously been tested to FMVSS No. 108 and found to meet the requirements. Paragraph S14.4.2.2.2 currently states that materials and

³ The Alliance of Automobile Manufacturers, SABIC-IP and two private individuals submitted comments in response to the NPRM.

additives used in plastics can be changed without outdoor exposure testing if the materials have previously been tested to “this section” and found to meet the requirements. SABIC-IP believes that it is possible to interpret the use of the words “this section” in paragraph S14.4.2.2.2 to require that materials be retested to the outdoor exposure test in the new paragraph S14.4.2.2.2, published in December 2007, before they can be used to create new materials. SABIC-IP stated that this interpretation would go against the stated goal of the rewrite of the standard to refrain from making any substantive change to the requirements.

SABIC-IP also asked the agency to clarify that the lower concentration of additive of previously tested materials used to create a new material according to S14.4.2.2.2 paragraph can be represented by a composition of zero.

III. Agency Decision

Since it was not the agency’s intention to create any substantive modifications to the standard, we have decided to amend FMVSS No. 108 to add the color boundary definitions for green, restricted blue and signal blue to the Tristimulus method procedure as proposed in the NPRM and to include the two missing color requirements from the visual method procedure so that the requirements of the rewrite coincide with those of the old standard.

We have decided not to amend paragraph S14.4.2.2.2 of FMVSS No. 108 as requested by SABIC-IP over the course of the rewrite rulemaking. We attempted, where ever possible, to avoid changes to the language of the standard. We note that the phrase “this section” refers to the requirements of paragraph S14.4.2.2 in general, not to a specific version of the standard. Thus, so long as the additives and polymers have previously been tested to and found to comply with the same substantive requirements as they appear in FMVSS No. 108, they can be added to create new materials without additional outdoor exposure testing. However, if the requirements

of S14.4.2.2 were changed, previously tested additives and polymers would no longer have been tested to “this section” and would have to be retested to the outdoor exposure test before being used to create new materials under paragraph S14.4.2.2.2.

The agency will respond to SABIC-IP’s comment about the lower concentration of additive used to create new materials being represented by a composition of zero in a letter of interpretation from the NHTSA Office of Chief Counsel.

IV. Effective Date

The National Highway and Motor Vehicle Safety Act states that an FMVSS issued by NHTSA cannot become effective before 180 days after the standard is issued unless the agency makes a good cause finding that a different effective date is in the public interest. Additionally, the Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. We have determined that it is in the public interest for this final rule to have an immediate effective date so that the effective date of this final rule coincides as closely as possible with the effective date of the 2007 rewrite of the standard. An effective date for this final rule that closely coincides with the 2007 rewrite of the standard will ensure that the requirements of FMVSS No. 108 remain consistent so as to avoid unnecessary changes in the requirements of the standard that would force regulated parties to change their compliance strategies, potentially imposing costs on manufacturers while not improving safety.

V. Regulatory Notices and Analyses

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 DOT's regulatory policies and procedures. This final rule was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures.

This Final Rule restores existing requirements to the standard thereby maintaining flexibility in compliance for manufacturers who choose to use these colors to certify materials to the outdoor exposure test. Because this Final Rule merely restores existing requirements it is not expected to have any costs. The agency expects some minor unquantifiable benefits to manufacturers due to the continued availability of the green and blue color boundaries to certify to the outdoor exposure test. Because there are not any costs associated with this rulemaking and only minor unquantifiable benefits, we have not prepared a separate economic analysis for this rulemaking.

B. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA is not aware of any conflicting regulatory approach taken by a foreign government concerning the subject matter of this rulemaking.

C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule would not have a significant impact on a substantial number of small entities. The final rule would affect manufacturers of motor vehicle light equipment, but the entities that qualify as small businesses would not be significantly affected by this rulemaking because the agency is restoring requirements that previously existed in an older version of the regulation. This rulemaking is not expected to affect the cost of manufacturing motor vehicle lighting equipment.

D. Executive Order 13132

NHTSA has examined today's 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 final 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 set forth 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 rule 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 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.

E. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

F. Paperwork Reduction Act

Under the procedures established by 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 would not establish any new information collection requirements.

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." This Final Rule would not adopt or reference any new industry or consensus standards that were not already present in FMVSS No. 108.

H. 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.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 base year of 1995). This final rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a

significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

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 (70 FR 19477-19478).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571 - - FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

2. Section 571.108 is amended by adding paragraphs S14.4.1.3.2.4, S14.4.1.3.2.5, S14.4.1.4.2.4, S14.4.1.4.2.5, and S14.4.1.4.2.6 to read as follows:

§571.108 Standard No.108; Lamps, reflective devices, and associated equipment.

* * * * *

S14.4.1.3.2.4 Green. Green is not acceptable if it is less saturated (paler), yellower, or bluer than the limit standards.

S14.4.1.3.2.5 Blue. Blue is not acceptable if it is less saturated (paler), greener, or redder than the limit standards.

* * * * *

S14.4.1.4.2.4 Green. The color of light emitted must fall within the following boundaries:

$$y = 0.73 - 0.73x \text{ (yellow boundary)}$$

$$x = 0.63y - 0.04 \text{ (white boundary)}$$

$$y = 0.50 - 0.50x \text{ (blue boundary)}$$

S14.4.1.4.2.5 Restricted Blue. The color of light emitted must fall within the following boundaries:

$$y = 0.07 + 0.81x \text{ (green boundary)}$$

$$x = 0.40 - y \text{ (white boundary)}$$

$$x = 0.13 + 0.60y \text{ (violet boundary)}$$

S14.4.1.4.2.6 Signal Blue. The color of light emitted must fall within the following boundaries:

$$y = 0.32 \text{ (green boundary)}$$

$$x = 0.16 \text{ (white boundary)}$$

$$x = 0.40 - y \text{ (white boundary)}$$

$$x = 0.13 + 0.60y \text{ (violet boundary)}$$

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Issued on: November 28, 2012

David L. Strickland
Administrator

Billing Code: 4910-59-P

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