



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2020-0109]

RIN 2127-AM04

Federal Motor Vehicle Safety Standards: Test Procedures

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

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: NHTSA is issuing this ANPRM to seek public comment on whether any test procedures for any Federal Motor Vehicle Safety Standards (FMVSS) may be a candidate for replacement, repeal, or modification, for reasons other than for considerations relevant only to automated driving systems (ADS). This document is a continuation of the Agency's efforts to improve the FMVSS and minimize burdens. The Agency takes this action in response to its review of the FMVSS and to public comments solicited by DOT in a 2017 notice on its regulatory reform efforts. The commenters requested that NHTSA amend test procedures for air brakes and occupant crash protection. NHTSA has also identified some possible additional test procedure issues and discusses them in this Notice. In addition, this ANPRM also seeks comments and supporting information relating to any other test procedures which may be a candidate for replacement, repeal or modification, not just those specifically discussed in this Notice.

DATES: Comments must be received no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. See the Public Participation heading of

the Supplementary Information section of this document for more information about written comments.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001
- Hand Delivery or Courier: 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any docket 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).

Confidential Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel of NHTSA,

at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in the confidential business information regulation. (49 CFR Part 512.)

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary Versailles, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Telephone: (202) 366-2057.

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- I. BACKGROUND**

On October 2, 2017, the Department of Transportation (DOT) published a Notice in the Federal Register inviting “the public to provide input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification.”¹ DOT received almost 3,000 comments in response to this Notice, of which approximately twenty-three addressed rules and agency actions under the scope of the National Highway Traffic Safety Administration (NHTSA). In response to these public comments, and on the Agency’s own initiative, the agency is planning to issue a series of advance notices of proposed rulemaking (ANPRMs) on various regulatory reform topics.

This ANPRM specifically discusses test procedures² that may be candidates for replacement, repeal, or modification. This Notice does not address the performance requirements within the standards, but only the test procedures specified in the standards for NHTSA to use to verify compliance. Additionally, this Notice does not address issues related to test procedures relevant only to technologies for automated driving systems (ADS), commonly referred to as automated or self-driving vehicles. Comments on test procedures that may be candidates for repeal, replacement, or modification to permit the introduction and certification of ADS would be more appropriate for the ANPRM for RIN 2127-AM00³ or one of the topic-specific ANPRMs. NHTSA also notes that the specific test procedures discussed in the remainder of this Notice are not meant to be an exclusive listing of the test procedures that may be suitable candidates for replacement, repeal, or modification. Rather, these tests procedures are intended to serve as examples for why a test procedure might be a candidate.

II. EXAMPLE TEST PROCEDURES

As discussed in this section, NHTSA, partially in response to comments, has identified possible examples of test procedures that might be candidates for replacement, repeal, or

¹ 82 FR 45750.

² As used in this notice, “test procedures” includes test conditions, test procedures, and test devices (e.g., dummies and crash barriers).

³ 84 FR 24433, May 29, 2019.

modification. These are discussed below to illustrate the kinds of test procedures for which the Agency would like to seek comment for this Notice. DOT received a few comments from trade associations that addressed test procedure changes. The Truck and Engine Manufacturers Association (“EMA”; DOT-OST-2017-0069-2786) commented on the test procedures of FMVSS No. 121, but, as discussed below, NHTSA would like more information on the request to understand better EMA’s suggestion. The Alliance of Automobile Manufacturers (“Alliance”; DOT-OST-2017-0069-2700), raised issues relating to FMVSS Nos. 208 and 209. The Association of Global Automakers (“Global”; DOT-OST-2017-0069-2772) raised the same issue as the Alliance relating to FMVSS No. 208, but did not address FMVSS No. 209. Both the Alliance and Global suggested changes to FMVSS Nos. 208 and 209 that appear to go beyond test procedure changes. Because these comments require consideration of both performance requirements and test procedures, the comments are discussed in the ANPRM for RIN 2127-AM05, which deals with regulatory barriers in the performance requirements for non-ADS vehicles.

A. FMVSS No. 103

Compliance with the performance requirements of FMVSS No. 103, Windshield defrosting and defogging systems (49 CFR 571.103), is determined by the Agency using a test procedure incorporated from SAE Recommended Practice J902 (August 1964 or March 1967), which is predicated on a vehicle’s having a conventional internal combustion engine (ICE). The Agency is considering whether these procedures should be revised or modified for vehicles with other types of propulsion and requests comment on this issue.

B. FMVSS 104

Determination of compliance with the performance requirements of FMVSS 104, Windshield wiping and washing systems (49 CFR 571.104), has the same test procedure issue as FMVSS 103 since it is also predicated on the vehicle’s having an ICE. In addition, should the test procedure be updated for newer systems with rain sensor technology?

C. FMVSS 105/135

FMVSS 105, Hydraulic and electric brake systems (49 CFR 571.105), is applicable to multi-purpose passenger vehicles (MPVs), trucks, and buses with a gross vehicle weight rating (GVWR) of 3,500 kilograms (kg; 7,716 pounds (lbs)) or more equipped with hydraulically or electrically actuated brakes. The standard has not been updated since 1976. NHTSA has a similar brake standard, FMVSS No. 135, Light vehicle brake systems (49 CFR 571.135), which went into effect in 1995 and applies to hydraulically braked vehicles, but with a GVWR less than 3,500 kg. Should the Agency revise the test procedures in either of these brake standards to improve clarity or efficiency for compliance?

For example, the FMVSS Nos. 105/135 braking tests could be revised consistent with FMVSS No. 122, Motorcycle brake systems (49 CFR 571.122), as it relates to the number of stopping attempts for each specified test condition. FMVSS Nos. 105/135 specifies, in most test conditions, the completion of no fewer than six stops regardless of which of the stops, or how many of them, meet the stopping distance performance requirement. FMVSS No. 122, on the other hand, permits the skipping of the remaining stops (if any) for that test and allowing the next test to be performed once a passing stop is obtained, even if that occurs before the specified number of stops are made. Should FMVSS Nos. 105/135 be updated and would this change reduce testing time and cost without compromising the safety evaluation of the braking system?

D. FMVSS No. 121

EMA commented that, despite a number of revisions in the past, FMVSS No. 121, Air brake systems (49 CFR 571.121), has not kept pace with advances in heavy-duty air brake components and systems. While indicating that a number of modifications would be appropriate to address this issue, EMA did not elaborate on them. The Agency requests more information about the modifications that would update the standard to keep pace with advances in heavy-duty air brake components and systems, and why, specifically, they are needed.

E. FMVSS No. 126

Section 6.3.4 of FMVSS No. 126, Electronic stability control systems (49 CFR 571.126), specifies the use of outriggers⁴ when testing MPVs, trucks, and buses, but not when testing passenger cars. Today's vehicle market includes crossover vehicles which are classified as MPVs but which are typically based on passenger car platforms, unlike traditional MPVs, which are based on light truck platforms. What evidence is there that crossover vehicles perform more like passenger cars than traditional MPVs, and how would updating the test procedure to remove the outriggers be justified? If the Agency was to specify the use of outriggers based on criteria other than just vehicle classification, what would commenters recommend for criteria? Would modifying the criteria improve efficiency and reduce the need for these devices in some testing, thereby reducing costs?

IV. QUESTIONS REQUESTING FURTHER INFORMATION FROM THE PUBLIC

In order to inform the Agency as it works toward possible rulemaking proposals, NHTSA invites comments on any other test procedures that are potential candidates for replacement, repeal, or modification. NHTSA again emphasizes that the test procedures discussed in Sections II and III of this notice are just examples of test procedures that might be a candidate for replacement, repeal, or modification, and thus illustrate the types of reasons why such a change may be necessary. NHTSA requests comments on the specific test procedure issues discussed above, other issues related to the test procedures for the FMVSSs discussed above, and issues related to the test procedures for any other FMVSS. For example, a test procedure may specify testing that is no longer necessary, or may not be clear about how to test vehicles with newer technology, or may even have the effect of prohibiting the introduction of such vehicles. The Agency requests that commenters provide as much research, evidence, or data as possible to

⁴ An outrigger is a stabilizing device attached to the vehicle to protect the vehicle and/or driver from rollover during test maneuvers.

support their comments, as that information will be of great assistance to the Agency as it considers whether to develop a proposal to revise the procedure.

In addition, commenters should consider the following general questions when considering potential test procedure improvements:

1. Do any test procedures specify the use of equipment that is obsolete or no longer available at a reasonable cost? If so, what options are available as replacements?
2. Do any test procedures specify the use of equipment in a manner that is more specific than necessary to ensure that the test procedure be repeatable and reproducible?
3. Are there test procedures in regulations from standards organizations or other countries that evaluate compliance with the same requirement as one in an FMVSS? If so, what evidence is there that the test procedure provides an evaluation of compliance with the requirement in a manner and to an extent equivalent to the current test procedure in the FMVSS?
4. What specific problems and challenges have testing laboratories, researchers, or other entities encountered when trying to follow existing test procedures in an FMVSS? For each problem or challenge, please explain how it is currently addressed and any suggested solutions for how it should be addressed in the future.
5. Are there any test procedures that do not accurately reflect real-world scenarios? If so, what evidence is there to show that a test procedure needs to be updated to reflect real-world scenarios being tested more accurately? Similarly, how can test procedures be updated to represent a real-world scenario more accurately?
6. Are there any loopholes in test procedures that could lead to a passing test result without meeting the intent of a standard or regulation? If so, how can such loopholes be closed by updating the test procedure?

V. PUBLIC PARTICIPATION

a. How can I influence NHTSA's thinking on this subject?

Your comments will help NHTSA improve its consideration of issues raised by this ANPRM. NHTSA invites you to provide different views on options NHTSA discusses, new approaches the agency has not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information.

NHTSA welcomes public review on all aspects of this ANPRM. NHTSA will consider the comments and information received in developing a potential proposal for updating test procedures for motor vehicles and motor vehicle equipment. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid evidence and data to support your views.
- If you estimate potential costs, explain how you arrived at that estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to the specific sections of (or questions listed in) the ANPRM.

b. How do I prepare and submit comments?

Your primary comments should be written in English. To ensure that your comments are filed in the correct docket, please include the docket number of this document in your comments.

Your primary comments should not be more than 15 pages long (49 CFR 553.21), however, you may attach additional documents, such as supporting data or research, to your primary comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given in the **ADDRESSES section at the beginning of this document**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned

using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submission.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines.

c. How can I be sure that my comments were received?

If you submit comments by hard copy and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit comments electronically, your comments should appear automatically in the docket on www.regulations.gov. If they do not appear within two weeks of posting, NHTSA suggests that you call the Docket Management Facility at 202-366-9826.

d. How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you must submit three copies of your complete submission, including the information that you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

In addition, you should submit a copy (two copies if submitting by mail or hand delivery) from which you have deleted the claimed confidential business information to the docket by one of the methods given above under **ADDRESSES**. When you submit a comment containing information claimed to be confidential business information, you should include a cover letter

setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

e. Will the Agency consider late comments?

NHTSA will consider all comments that the docket receives before the close of business on the comment closing date indicated in the **DATES** section. To the extent possible, NHTSA will also consider comments that the docket receives after that date.

f. How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given in the **ADDRESSES** section. The hours of the docket are indicated above in the same location. You may also read the comments on the internet, identified by the docket number at the heading of this notice, at www.regulations.gov. Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

VI. RULEMAKING NOTICES AND ANALYSES

a. Executive Orders 12866, 13563, 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 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.

Executive Order 13563, "Improving Regulation and Regulatory Review" (76 Fed. Reg. 3821, January 21, 2011), supplements and reaffirms the principles established by Executive Order 12866 by encouraging harmonization of regulations across agencies and requiring agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice. Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Accordingly, we have asked commenters to answer a variety of questions to elicit practical information about alternative approaches and relevant technical data on whether and how best to update test procedures throughout 49 CFR Part 571. These comments will help the Department evaluate whether a proposed rulemaking is needed and appropriate.

NHTSA has considered the impact of this ANPRM under Executive Order 12866, Executive Order 13563, and the DOT's regulatory policies and procedures. As discussed in this notice, the Agency lacks the necessary information to develop a proposal at this time due to a number of unanswered questions and unresolved considerations. However, NHTSA anticipates that any proposal that was to result from this Notice could have minor economic impact by clarifying how newer technology is tested, or could result in cost-savings by eliminating unnecessary aspects of test procedures. Therefore, this rulemaking has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

b. Executive Order 13771(Reducing Regulation and Controlling Regulatory Costs)

This action is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is an advance notice of proposed rulemaking.

c. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, no analysis is required for an ANPRM. However, small entities, including small vehicle manufacturers and equipment manufacturers, are encouraged to comment if they identify any aspects of a potential rulemaking that may apply to them.

d. Executive Order 13132 (Federalism)

NHTSA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment. The purpose of this rulemaking is not to adopt new safety performance requirements which would preempt non-identical State requirements, but merely to revise test procedures for existing safety performance requirements that would not affect their stringency.

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 Fed. Reg. 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.

f. 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 are no information collection requirements associated with this ANPRM.

Any information collection requirements and the associated burdens will be discussed in detail once a proposal has been issued.

g. 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 (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. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. As NHTSA has not yet developed specific regulatory provisions, the NTTAA does not apply for purposes of this ANPRM.

h. 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 of 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). NHTSA has determined that this ANPRM 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.

i. National Environmental Policy Act

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

j. Plain Language

The Plain Language Writing Act of 2010 (Pub. L. 111-274) requires that Federal agencies write documents in a clear, concise, and well-organized manner. While the Act does not cover regulations, Executive Orders 12866 and 13563 require each agency to write all notices in plain language that is simple and easy to understand. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the notice clearly stated?
- Does the notice contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?

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

k. Regulatory 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.

Issued in Washington, D.C.

Under authority delegated in 49 CFR part 1.95 and 501.5.

James C. Owens
Deputy Administrator

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