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## **National Highway Traffic Safety Administration**

### **49 CFR Part 571**

**[Docket No. NHTSA-2020-0110]**

**RIN 2127-AL48**

## **Federal Motor Vehicle Safety Standards; Motorcycle Brake Systems; Motorcycle Controls and Displays**

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

**ACTION:** Final rule; technical corrections.

**SUMMARY:** This document amends Federal Motor Vehicle Safety Standards (FMVSS) Nos. 122 and 123 to allow the use of an internationally recognized symbol. It also relocates the telltale specifications for anti-lock braking system (ABS) malfunction from FMVSS No. 101 to the appropriate table in FMVSS No. 123 since the latter applies to motorcycles. In addition, this final rule makes two technical corrections: it corrects motorcycle category references in S6.3.2 of FMVSS No. 122 and an outdated table reference found in FMVSS No. 135.

**DATES:** This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**Petitions for reconsideration:** Petitions for reconsideration of this final rule must be received by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

**FOR FURTHER INFORMATION, CONTACT:** Michael Pyne, Office of Crash Avoidance Standards, by telephone at 202-366-4171 or Callie Roach, Office of the Chief Counsel, by

telephone at 202-366-2992. You may send mail to both officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of the November 2014 Notice of Proposed Rulemaking**

On August 24, 2012, the agency published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 122, Motorcycle brake systems.<sup>1</sup> The final rule updated provisions of FMVSS No. 122 to reflect the performance of modern motorcycle brake systems. The final rule adopted requirements and test procedures derived from Global Technical Regulation (GTR) No. 3 for motorcycle brakes. Adopted in 2006, GTR No. 3 combined the best practices from requirements and test procedures available internationally, drawn primarily from FMVSS No. 122, United Nations Economic Commission for Europe (UNECE) Regulation No. 78, and Japanese Safety Standard JSS12-61.<sup>2</sup>

The revised FMVSS No. 122 adopted performance requirements for antilock brake system (ABS) performance. Although FMVSS No. 122 as amended in 2012 does not require motorcycles to be equipped with ABS, it includes performance requirements for motorcycles that are equipped with ABS. These requirements apply to motorcycles manufactured on or after September 1, 2014.

Both the GTR and the 2008 notice of proposed rulemaking (NPRM) for FMVSS No. 122<sup>3</sup> specified that all motorcycles equipped with ABS must also be fitted with a yellow warning lamp that illuminates whenever there is a malfunction that affects the generation or transmission of signals in the motorcycle's ABS system. The prior version of FMVSS No. 122 did not include any requirements for an ABS malfunction telltale.

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<sup>1</sup> 77 FR 51649.

<sup>2</sup> A copy of GTR No. 3 was placed in the docket for the NPRM associated with the final rule revising FMVSS No. 122. See Docket No. NHTSA-2008-0150-0002.

<sup>3</sup> 73 FR 54020 (Sept. 17, 2008).

The final rule, consistent with other FMVSS addressing ABS system failure,<sup>4</sup> and with FMVSS No. 101, Controls and displays,<sup>5</sup> required that motorcycle ABS system failure be indicated to the operator with a telltale identified by the words “Antilock” or “Anti-lock” or “ABS.”<sup>6</sup> The final rule also added a specification that the telltale be labeled in letters at least 3/32 inch (2.4 mm) high.<sup>7</sup> This minimum letter height specification is consistent with the existing requirement for a brake failure telltale identifier for motorcycles.<sup>8</sup>

Several months after the agency published the final rule in August 2012, the American Honda Motor Company (Honda), manufacturer of Honda motorcycles, contacted the agency to inform NHTSA that the ABS-equipped motorcycles it and other manufacturers produce already are equipped with ABS malfunction warning lamps and told the agency that the current practice is to use the International Organization for Standardization (ISO) symbol for ABS malfunction. The ISO symbol is pictured in Figure 1. The ISO symbol incorporates the letters “ABS” consistent with the requirement in FMVSS No. 122. However, GTR No. 12, the global technical regulation concerning the location, identification, and operation of motorcycle controls, telltales, and indicators, does not specify a size for the ISO symbol, nor is there a specification regarding the size of the lettering within the symbol.



Figure 1 – ISO Symbol Indicating ABS Malfunction

Honda informed NHTSA that the typical height of the symbol on a production motorcycle equipped with ABS is 7 millimeters, and the letters “ABS” are approximately 2 millimeters high, though the dimensions may vary. NHTSA lacks any other information on the

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<sup>4</sup> 49 CFR 571.121, S5.1.6.2.

<sup>5</sup> We referenced FMVSS No. 101, notwithstanding the fact that it does not apply to motorcycles, because it had an existing labeling requirement for ABS malfunction in Table 1.

<sup>6</sup> 49 CFR 571.122, S5.1.10.2(c).

<sup>7</sup> 49 CFR 571.122, S5.1.10.2(c).

<sup>8</sup> 49 CFR 571.122a, S5.1.3.1(d).

range of symbol or letter sizes among various makes and models, and is unaware of a standardized symbol size or letter size to which manufacturers adhere.

According to the information provided by Honda and conversations that the agency had with the Motorcycle Industry Council, Inc. (MIC) and Harley-Davidson Motor Company (Harley-Davidson), to comply with the letter height requirement for the ABS malfunction telltale identifier in FMVSS No. 122, manufacturers would have to enlarge the telltale considerably so that the letters “ABS” contained within the ISO symbol are at least 3/32 inch (2.4 millimeters) in height. Alternatively, they would have to add a separate label using “ABS” or “Antilock” or “Anti-lock” displayed at the specified minimum height in place of, or in addition to, the ISO symbol. Motorcycle manufacturers stated that this would constitute a costly redesign of the telltale or instrument panel on many ABS-equipped motorcycles without any discernible safety benefit from the redesign.

Upon consideration of the concerns raised by the MIC, Honda, and Harley-Davidson, the agency issued an NPRM on November 26, 2014 (79 FR 70491). The agency proposed removing the letter height specification for the ABS malfunction telltale if manufacturers use the ISO symbol for ABS malfunction. However, if only text is used for the ABS malfunction telltale, the minimum letter height requirement would still apply. We also proposed removing the reference to the specifications for ABS malfunction telltales in Table 1 of FMVSS No. 101 because that standard does not apply to motorcycles. Instead, we proposed adding both the FMVSS No. 101 telltale specifications and the ISO ABS malfunction symbol to Table 3 of FMVSS No. 123, Motorcycle controls and displays, which is the relevant FMVSS applicable to motorcycles.<sup>9</sup>

The agency sought comments on whether there should be a minimum height requirement for an ABS malfunction telltale that uses the ISO symbol and, if so, how large the symbol should

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<sup>9</sup> The inclusion of the ISO symbol for ABS malfunction in FMVSS No. 123 is also consistent with the recently adopted GTR No. 12, related to the location, identification, and operation of motorcycle controls, telltales, and indicators. See <http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29wgs/wp29gen/wp29registry/ECE-TRANS-180a12e.pdf>. However, this rulemaking is not intended to implement provisions of GTR No. 12.

be. Specifically, we asked whether the 7-millimeter height suggested by Honda as a minimum height (or a different height) would ensure readability without requiring a redesign of the telltale or instrument panel on many ABS-equipped motorcycles.

Furthermore, in light of the proposed changes, the agency announced in the NPRM that it was adopting a policy not to enforce the minimum height requirement for the ABS malfunction telltale for any motorcycle that uses the ISO symbol for ABS malfunction until a final rule implementing the proposal became effective. This non-enforcement policy provided relief to motorcycle manufacturers that use the ISO symbol for ABS malfunction but that could not meet the September 1, 2014, deadline for compliance without redesigning the telltale or instrument panel. Again, we have no information indicating that adverse safety consequences would result from allowing motorcycle manufacturers to use the ISO symbol for the ABS malfunction telltale as an alternative to the currently permissible ABS malfunction telltales.

We also proposed correction of an error in FMVSS No. 122. In paragraph S6.3.2(d), which contains the test procedure for the dry stop test with a single brake control actuated, the brake actuation force specified for motorcycles in categories 3-1, 3-2, 3-3, and 3-5 is specified as  $\leq 350$  N and, for category 3-4 motorcycles,  $\leq 500$  N. However, the higher actuation force was intended for category 3-5 motorcycles rather than category 3-4 motorcycles. We proposed this correction in the NPRM to be consistent with GTR No. 3 and with NHTSA's intention in the August 2012 final rule.

## **II. Summary of Comments**

NHTSA received 39 comments on the proposal; the MIC, Harley-Davidson, Honda, and 36 individuals provided comments.<sup>10</sup> The MIC, Harley-Davidson, Honda, and six individuals supported allowing the ISO symbol. Two commenters opposed allowing the ISO symbol to be used, stating that it is either not easily recognizable or is ambiguous.

## **III. Response to Comments**

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<sup>10</sup> The comments may be viewed at <http://www.regulations.gov> in Docket No. NHTSA-2014-0117.

*A. Use of the ISO Symbol for an ABS Malfunction as an Alternative to the Required Text*

In general, the commenters agreed with the proposal. However, two commenters opposed the use of the symbol, stating that the symbol is not easily recognizable. The agency does not agree that the ISO symbol is less recognizable than the currently permissible ABS malfunction telltales because the acronym “ABS,” which is a permissible telltale under the current regulation if it meets the height requirement, is contained in the ISO symbol. Therefore, allowing the ISO symbol to be used as the ABS malfunction telltale does not make the telltale less recognizable than is currently permissible.

Furthermore, the agency believes that unfamiliarity with the ISO telltale symbol does not pose an undue immediate safety risk for the rider because an ABS malfunction warning only indicates that the anti-lock functionality is compromised while the overall brake system functionality is maintained. Motorcycle operators who are unfamiliar with the symbol may then look up its meaning in the instruction manual when they are able after seeing the notification on the display. Concerns about whether an ABS-related telltale is instantly recognizable might be of more concern in the context of telltales that illuminate because the ABS is activated, but the malfunction telltale, as explained, serves a different purpose. Currently, there is no requirement for motorcycles to have telltales that indicate when ABS is activated, and drivers are usually notified of an ABS activation by the haptic feedback (vibration or pulsing) caused by the ABS cycling.

As stated in the NPRM, the agency has no reason to believe that using the ISO symbol in lieu of text labeling at a minimum height would affect the safety of motorcycles or the public. The types of failure indicated by the ABS malfunction telltale are electronic failures that result in the loss of ABS functionality, but do not cause loss of foundation braking ability. FMVSS No. 122 contains a performance requirement to ensure minimum braking capability in the event of an ABS system malfunction. Moreover, the agency has minimum performance requirements to ensure that a minimum level of braking capability is maintained even if there is a more severe

system failure such as a brake fluid leak. Therefore, NHTSA is adopting the proposal in the NPRM to allow the ISO symbol as an alternative to the text “ABS,” “Anti-lock,” or “Antilock.”

#### *B. Height Requirements of the ISO Symbol or Letters within the Symbol*

NHTSA solicited comments regarding whether there should be a minimum height for the ISO symbol or for the letters “ABS” that appear within the symbol. NHTSA received comments from the MIC, Harley-Davidson, Honda, and 10 individuals opposed to setting a minimum height requirement for the ISO symbol. The MIC, Harley-Davidson, and Honda opposed adding a height requirement for the letters within the ISO symbol, stating that there is no corresponding minimum height requirement in GTR No. 12 and emphasizing their desire for harmonization.

The agency agrees with the commenters that mandating a minimum height is unnecessary because NHTSA does not believe that, in the absence of a minimum height requirement, original equipment manufacturers (OEMs) will create illegible ABS telltales. As Harley-Davidson’s comment noted, GTR No. 12 has a qualitative visibility requirement for ABS telltales, specifying that the symbol must be located so that it is “visible to the driver when seated in the driving position.” Although NHTSA is not specifying such a requirement in FMVSS No. 123, NHTSA believes manufacturers will ensure that ABS ISO symbols are large enough to be read by drivers. Additionally, OEMs have been using the symbol for years and, as far as NHTSA is aware, have done so without negative consequences. Moving forward with the proposal, the agency will not implement a height requirement for the ISO symbol which will ensure harmonization with GTR No. 3 and to some extent with GTR No. 12.

#### *C. Height Requirements for the “ABS,” “Anti-lock,” or “Antilock” Lettering if the ISO Symbol is Not Used*

Although the agency did not request comment on this issue in the NPRM, NHTSA received comments from the MIC and two individuals suggesting that the agency remove the lettering height requirement for “ABS,” “Anti-lock,” or “Antilock” when the ISO symbol is not used. The MIC states that it is unaware of any science that was relied on to establish or support

the use of 3/32-inch letter height for this specific application. The MIC also states that the corresponding GTR does not reference any lettering heights or symbol dimensions.

The agency understands the inconsistency perceived by the MIC in NHTSA not including a lettering height requirement if the ISO symbol is used, but including a lettering height requirement if only text is used. However, the agency is not prepared to implement any changes to the existing height requirement if only text is used and does not believe that there is an inconsistency.

This issue was not included in the NPRM, and there are factors the agency would need to consider and request public comment on should it decide to change or remove this requirement. As stated in the 2012 final rule implementing the requirement, use of a 3/32 inch (2.4 mm) letter height is consistent with other FMVSS.<sup>11</sup> The existing height requirement is also consistent with the requirement for the split service brake failure telltale, which has been present in FMVSS No. 122 for many years.<sup>12</sup> Support for maintaining that particular height requirement also comes from a NHTSA research report, “Specification of Control Illumination Limits” (DOT-HS-4-00864, 1974), which found that letters that were 0.09 inch or 2.3 mm could not be read by older drivers, regardless of letter brightness or background contrast. In addition, any change to the letter height when the ISO symbol is not used would not have any harmonization benefits. That is, the minimum lettering height requirement for this option has no bearing on consistency with GTR No. 12 because the GTR only specifies use of the ISO symbol and does not provide the option of using the text “ABS,” “Anti-lock,” or “Antilock.” Thus, NHTSA is retaining, at this time, the existing height requirement for the text “ABS,” “Anti-lock,” or “Antilock” telltale when the ISO symbol is not used.

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<sup>11</sup> 77 FR 51649. FMVSS No. 122 S5.1.9(d) and S5.1.10.1 require 3/32-inch lettering. FMVSS Nos. 120 and 110 also contain 3/32-inch lettering requirements. As a comparison, under FMVSS No. 135 the warning lamp for ABS in light vehicles must include the words “Antilock,” “Anti-lock” or the abbreviation “ABS” and must be at least 1/8 inch (or 3.2 mm) in height.

<sup>12</sup> The requirement for 3/32 inch letters for the split service brake failure has been in place since FMVSS No. 122 was issued in 1972. 37 FR 5034 (March 9, 1972).

Further, NHTSA does not believe this is inconsistent with NHTSA's conclusion that a height requirement is unnecessary when the ISO symbol is used because recognition of the ISO symbol comes not only from the letters "ABS," but also from shape of the symbol as a whole. The ISO symbol is a graphic representation of a brake drum with letters inside of it, and the entire symbol is illuminated in the event of an ABS failure condition. Also, the symbol as a whole will likely be significantly larger than the 2.4-millimeter-high letters that can be used in lieu of the symbol. For example, as noted above, Honda informed NHTSA that the typical height of the ISO symbol on its production motorcycles equipped with ABS is 7 millimeters, and the letters "ABS" are approximately 2 millimeters high. This suggests that the typical height of the ISO symbol will be appreciably larger than the minimum height requirement for the ABS telltale if the ISO symbol is not used. Accordingly, NHTSA concludes that it is appropriate to view the need for a height requirement for telltales that use the ISO symbol differently from telltales that rely exclusively on lettering to warn of ABS failure.

#### *D. Technical Correction*

NHTSA received two comments that addressed a technical correction included in the NPRM, and those comments supported the correction. The agency is adopting the correction of the error in FMVSS No. 122 S6.3.2(d), which stated that category 3-5 motorcycles are to be tested with a brake actuation force of  $\leq 350$  N and category 3-4 motorcycles are tested with a brake actuation force of  $\leq 500$  N. The agency is amending FMVSS No. 122 S6.3.2(d) such that the category 3-4 motorcycles are tested with a brake actuation force of  $\leq 350$  N and category 3-5 motorcycles are tested with a brake actuation force of  $\leq 500$  N.

#### *E. Removing the Reference to FMVSS No. 101*

FMVSS No. 101, Controls and displays, sets forth standardized symbols, lettering, and colors for various telltales, notifications, and warning lamps in passenger vehicles. In the NPRM, the agency proposed removing the reference to the ABS malfunction telltale specified in FMVSS No. 101 from FMVSS No. 122 S5.1.10.2(c) because FMVSS No. 101 does not apply to

motorcycles. The agency proposed to change FMVSS No. 122 so that it references FMVSS No. 123 instead of FMVSS No. 101 and to insert the ABS telltale specification into Table 3 of FMVSS No. 123.

NHTSA received only one comment, from the MIC, on that proposed change. The comment favored the change because it is consistent with GTR No. 12, the global technical regulation concerning the location, identification and operation of motorcycle controls, telltales, and indicators. The agency is amending FMVSS No. 122 S5.1.10.2(c) by replacing the reference to FMVSS No. 101 with a reference to FMVSS No. 123. The agency is amending FMVSS No. 123 by adding the ISO ABS malfunction telltale into FMVSS No. 123, Table 3.

#### *F. Clarifying the Illumination Requirement for the ABS Telltale*

NHTSA received one comment from Harley-Davidson suggesting that the agency include an illumination requirement in FMVSS No. 123 similar to the requirement in FMVSS No. 101 S5.3.3(a) which provides that telltales must be “visible to the driver under daylight and nighttime driving conditions.” Harley-Davidson stated that inserting such language in FMVSS No. 123 would align with a similar illumination requirement specified in GTR No. 12.

The agency recognizes that there is no illumination requirement that applies to FMVSS No. 123. However, FMVSS No. 122 S1.10.2(a) contains a provision which requires the warning lamp to be illuminated by activation of the ignition switch and extinguished when the diagnostic check has been completed. The warning lamp is also required to remain on while a failure condition exists whenever the ignition switch is in the “on” position. While this illumination requirement in FMVSS No. 122 is not as detailed as the requirement in FMVSS No. 101 that Harley-Davidson suggested using, it applies regardless of external lighting conditions, and it seems likely that manufacturers will continue to equip motorcycles with an ABS malfunction telltale that is visible in both daylight and nighttime driving conditions, as they do in current practice. More critically, adding the suggested language to FMVSS No. 123 would be outside

the scope of this rulemaking. Therefore, the agency is not amending FMVSS No. 123 to add an illumination requirement.

#### **IV. Additional Technical Correction**

On August 17, 2005, (70 FR 48295) NHTSA published a final rule amending FMVSS No. 101, Controls and displays, to modernize the standard. The final rule changed the tables in FMVSS No. 101 by reorganizing the tables and adding additional information. As a result, the table data for antilock brake systems was moved from Table 2 to Table 1. The final rule, however, did not update the cross references located in other standards. FMVSS No. 135, Light vehicle brake systems, contains a reference to Table 2 of FMVSS No. 101, which should now be a reference to Table 1 of FMVSS No. 101. This rulemaking makes the technical correction to update Standard No. 135 to include the correct reference.

#### **V. Effective Date and Administrative Procedure Act Requirements**

A rule ordinarily cannot take effect earlier than 30 days after it is published pursuant to 5 U.S.C. 553(d) unless the rule falls under one of three enumerated exceptions. In addition, 49 U.S.C. 30111(d) provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest.

This rule does not impose any substantive requirements. Instead, it removes a restriction by allowing manufacturers of motorcycles to use the ISO symbol which is specified in GTR No. 12. Since this final rule merely provides motorcycle manufacturers the option of using an ISO symbol for the ABS malfunction telltale and thus greater flexibility in meeting the requirements of FMVSS No. 122, the rule falls under the exception at 5 U.S.C. 553(d)(1) as a rule that relieves a restriction. In addition, NHTSA believes that the public interest would be served by not delaying the effective date. This final rule changes NHTSA's FMVSS to reflect NHTSA's current policy to allow the use of an internationally recognized symbol as the antilock brake system (ABS) malfunction telltale on motorcycles and makes technical corrections.

NHTSA anticipates that the impact of this rule will be small and limited to providing greater flexibility to manufacturers. Therefore, the agency finds that there is good cause under 49 U.S.C. 30111 to make these amendments effective immediately.

This final rule makes one technical change to the regulatory text that was not proposed in the notice of proposed rulemaking. The final rule merely adjusts an outdated and incorrect cross-reference in a Table in FMVSS No. 135. The technical correction, thus, does not make any substantive change to the standard and the agency has determined that notice and opportunity for public comment pursuant to 5 U.S.C. 553(b) are unnecessary for this technical correction.

## **VI. 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's administrative procedures at 49 CFR part 5. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review." Given the minimal impact of the rule, we have not prepared a full regulatory evaluation. The agency has further determined that the impact of this final rule is so minimal that the preparation of a full regulatory evaluation is not required.

NHTSA believes this final rule to allow the use of the ISO ABS malfunction symbol without a minimum letter height would not impact motorcycle safety since the rule has no effect on ABS effectiveness and adoption rates. Further, the agency does not believe that these minor changes to the telltale will have any effect on a rider's ability to understand the telltale. However, we estimate that it would positively impact manufacturers by eliminating the need to incur costs to redesign ABS telltales.

The availability of ABS either as standard or optional equipment on motorcycles varies among manufacturers. The agency does not have access to a detailed make and model

breakdown of the number of motorcycles produced for sale in the U.S. that are equipped with ABS and that use ISO ABS symbols and do not comply with letter height requirements that were included in NHTSA's 2012 final rule. Based on communications with members of the motorcycle industry, the agency believes that some manufacturers made design changes even after NHTSA announced its non-enforcement policy in 2014. Consequently, some of the motorcycle manufacturers who used ISO ABS symbols that did not comply with the letter height requirement when it went into effect in 2014 now use ISO ABS symbols that meet the letter height requirement.

Based on communication with motorcycle manufacturers, NHTSA is aware of at least one large manufacturer and two small-volume manufacturers that currently use ISO symbols that do not meet the letter height requirement. One of the small-volume manufacturers estimated that it would cost approximately \$150,000 to redesign their ABS telltales on motorcycles for sale in the U.S. to comply with the letter height requirement. This estimated cost includes tooling, engineering resources, and recertification and homologation. This one-time cost for manufacturers would have been allocated over a number of years of production and was expected to have minimal effect on the consumer price of motorcycles. NHTSA estimates that this final rule prevents a cost to motorcycle manufacturers of at least \$450,000 that manufacturers would have had to incur between the publication date of the final rule and its effective date if NHTSA had not announced the non-enforcement policy. This is based on estimated one-time design cost of \$150,000 per manufacturer and information from three manufacturers who use ISO symbols that do not meet the letter height requirement. NHTSA believes the actual cost incurred would likely have been larger had all manufacturers complied with the 2012 rule, but does not have sufficient information to estimate how many more manufacturers would benefit from this final rule and how their behavior would or would not have changed had NHTSA determined to keep the original requirements in effect and withdraw the non-enforcement policy.

## *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 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 final rule under the Regulatory Flexibility Act and certifies that it will not have a significant economic impact on a substantial number of small entities. This final rule will directly impact manufacturers of motorcycles equipped with ABS. Although NHTSA believes many manufacturers affected by this final rule are considered small businesses, we do not believe this rule will have a significant economic impact on those manufacturers. This final rule will not impose any costs upon manufacturers and may prevent costs from being incurred. This final rule will relieve motorcycle manufacturers of the burden and costs associated with changing from using the ISO symbol to using text of a minimum height to indicate an ABS malfunction.

## *C. Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency

has concluded that the rulemaking does 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 does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

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 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 Orders 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.

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

NHTSA has reviewed this final rule for compliance with Executive Order 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 Executive Order 13771 is a significant regulatory action as defined in section 3(f) of Executive Order 12866 that has been finalized and that imposes total costs greater than zero. For the reasons identified in the previous sections, this final rule is not a significant regulatory action under Executive Order 12866 and thus does not require any offsetting deregulatory action. In fact, this rule is a “deregulatory action” under Executive Order

13771 because it reduces regulatory burden on industry by allowing additional compliance flexibility and improving international harmonization.

*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 Executive order, NHTSA notes the issue of preemption is discussed above. 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 information collection requirement associated with this final 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 Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). 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.

This final rule allows the use of a symbol from an international voluntary standard.

#### *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 final 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 has analyzed this rulemaking action 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.

*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 may 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).

*M. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

**List of Subjects in 49 CFR Parts 571**

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

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for part 571 of Title 49 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 § 571.122 by revising S5.1.10.2(c) and S6.3.2(d)(2)(i) and (ii) to read as follows:

**§ 571.122 Standard No. 122; Motorcycle brake systems.**

\* \* \* \* \*

S5.1.10.2 *Antilock brake system warning lamps.*

\* \* \* \* \*

(c) The warning lamp shall be labeled in accordance with the specifications in Table 3 of Standard No. 123 (49 CFR 571.123) for “ABS Malfunction” (Item No. 13).

\* \* \* \* \*

S6.3.2 *Test conditions and procedure.*

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) ≤350 N for motorcycle categories 3-1, 3-2, 3-3, and 3-4.

(ii) ≤500 N for motorcycle category 3-5.

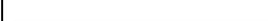
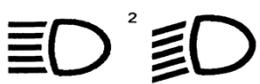
\* \* \* \* \*

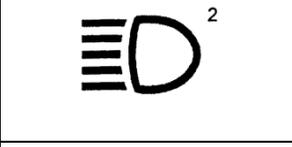
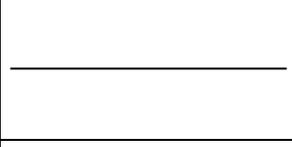
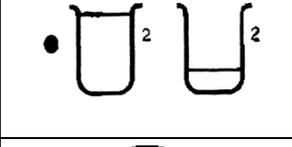
3. Amend § 571.123 by revising Table 3 to read as follows:

**§ 571.123 Standard No. 123; Motorcycle controls and displays.**

\* \* \* \* \*

**Table 3 to § 571.123--Motorcycle Control and Display Identification Requirements**

No.	Column 1 <i>Equipment</i>	Column 2 <i>Control and Display Identification Word</i>	Column 3 <i>Control and Display Identification Symbol</i>	Column 4 <i>Identification at Appropriate Position of Control and Display</i>
1	Ignition	Ignition		Off
2	Supplemental Engine Stop (Off, Run)	Engine Stop		Off, Run
3	Manual Choke or Mixture Enrichment	Choke or Enrichener		
4	Electric Starter			Start <sup>1</sup>
5	Headlamp Upper-Lower Beam Control	Lights		Hi, Lo
6	Horn	Horn		
7	Turn Signal	Turn		L, R

8	Speedometer	MPH OR MPH and km/h <sup>5</sup>		MPH <sup>4</sup>  MPH, km/h <sup>5</sup>
9	Neutral Indicator	Neutral		
10	Upper Beam Indicator	High Beam		
11	Tachometer	R.P.M. or r/min.		
12	Fuel Tank Shutoff Valve (Off, On, Res.)	Fuel		Off, On, Res.
13	ABS Malfunction	ABS or Anti-lock or Antilock <sup>6</sup>		

<sup>1</sup> Required only if electric starter is separate from ignition switch.

<sup>2</sup> Framed areas may be filled.

<sup>3</sup> The pair of arrows is a single symbol. When the indicators for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

<sup>4</sup> MPH increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at 5 mph intervals. (37 F.R. 17474 – August 19, 1972. Effective: 9/1/74)

<sup>5</sup> If the speedometer is graduated in miles per hour (MPH) and in kilometers per hour (km/h), the identifying words or abbreviation shall be “MPH” and “km/h” in any combination of upper or lower case letters.

<sup>6</sup> Letters shall be at least 2.4 mm (3/32 in.) high.

4. Amend § 571.135 by revising S5.5.5(d)(3) to read as follows:

**§ 571.135 Standard No. 135; Light Vehicle Brake Systems.**

\* \* \* \* \*

*S5.5.5. Labeling.*

\* \* \* \* \*

(d) \* \* \*

(3) If a separate indicator is provided for the condition specified in S5.5.1(b), the letters and background shall be of contrasting colors, one of which is yellow. The indicator shall be labeled with the words “Antilock” or “Anti-lock” or “ABS”; or “Brake Proportioning,” in accordance with Table 1 of Standard No. 101.

\* \* \* \* \*

Issued in Washington D.C., under authority delegated in 49 CFR 1.95 and 501.4.

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James C. Owens  
Deputy Administrator

Billing Code: 4910-59-P

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