

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. NHTSA–2018–0103]

RIN 2127–AL97

Temporary Exemption from Motor Vehicle Safety and Bumper Standards

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

ACTION: Final rule.

SUMMARY: This document amends NHTSA’s regulation on temporary exemption from the Federal motor vehicle safety standards (FMVSS) and bumper standards to expedite the publishing of notices soliciting public comment on exemption petitions. It does so by eliminating the provision calling for the Agency to determine that a petition is complete before the Agency publishes a notice summarizing the petition and soliciting public comments on it. As amended, the regulation continues to provide that the Agency will, as it does now, determine whether a petition contains adequate justification in deciding whether to grant or deny the petition. The intended effect of these changes is to enable the Agency to solicit public comments more quickly.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION]. Petitions for reconsideration of this final rule must be received not later than [INSERT DATE 45 DAYS AFTER PUBLICATION].

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

FOR FURTHER INFORMATION CONTACT: For questions concerning this final rule, contact Stephen Wood, NCC-200, Assistant Chief Counsel for Vehicle Rulemaking and Harmonization, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590; telephone (202) 366-5240; email Steve.Wood@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Traffic and Motor Vehicle Safety Act, as amended, authorizes the Secretary of Transportation to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary deems appropriate, motor vehicles from a FMVSS or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.¹

The exercise of NHTSA's authority to grant, in whole or in part, a temporary exemption to a vehicle manufacturer is conditioned upon the Agency's making specified findings. The Agency must comprehensively evaluate the request for exemption and find that the exemption is consistent with the public interest and with the objectives of the Vehicle Safety Act.² In addition, the Agency must make one of the following more focused findings:

- (i) compliance with the standard[s] [from which exemption is sought] would cause substantial economic hardship to a manufacturer that has tried to comply with the standard[s] in good faith;

¹ 49 C.F.R. § 1.94.

² 49 U.S.C. § 30113(b)(3)(A).

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.³

To provide procedures for implementing these statutory provisions concerning temporary exemptions, NHTSA established 49 C.F.R. Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards. The requirements in 49 C.F.R. 555.5 state that a petitioner must set forth the basis of its petition by providing the information required under 49 C.F.R. 555.6, and explaining why the exemption would be in the public interest and consistent with the objectives of the Safety Act. In addition, the petitioner must submit data and analysis supporting the making of one of the four findings specified above.

Section 555.7 describes the steps that NHTSA is to take after it receives an exemption petition. If the Agency determines that a petition is complete, it publishes a notice in the Federal Register summarizing the petition and inviting public comment on whether it should be granted or denied.⁴ However, if NHTSA finds that a petition does not contain some of types of the information required by part 555, it so informs the applicant, pointing out the areas of insufficiency and stating that the petition will not receive further consideration until the required information is submitted.⁵ If the petitioner submits sufficient additional information and analysis

³ 49 U.S.C. § 30113(b)(3)(B).

⁴ 49 CFR § 555.7(a).

⁵ Ibid.

to eliminate the “areas of insufficiency,” the Agency publishes the notice requesting public comment.

If, after considering the petition and the public comments, NHTSA determines that the petition does not contain “adequate justification,” the Administrator denies it and notifies the petitioner in writing.⁶ The Administrator also publishes in the Federal Register a notice of the denial and the reasons for it. Alternatively, if the Administrator determines that the petition contains adequate justification, the Administrator grants it, and notifies the petitioner in writing.⁷ The Administrator also publishes in the Federal Register a notice of the grant and the reasons for it.⁸

II. Discussion of the Final Rule

This document amends NHTSA’s regulation on temporary exemption from Federal motor vehicle safety standards (FMVSS) and bumper standards to expedite the publishing of notices soliciting public comment on exemption petitions. It does so by eliminating the provision calling for the Agency to determine that a petition is complete before publishing a notice soliciting public comments on the petition. Especially in the context of complex petitions, the difficulty in neatly separating “areas of insufficiency” from failures to provide “adequate justification” leads to delays in processing petitions. Further, while areas of insufficiency would be considered in deciding whether to grant or deny petitions, the Vehicle Safety Act does not require that determinations of insufficiency be made by the Agency before publishing notices of receipt. As amended, the regulation continues to provide that the Agency will, as it does now,

⁶ 49 CFR § 555.7(d).

⁷ 49 CFR § 555.7(e).

⁸ Ibid.

determine whether a petition contains adequate justification in deciding whether to grant or deny the petition.

III. Rulemaking Requirements

A. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866.

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

Executive Order 13771 titled “Reducing Regulation and Controlling Regulatory Costs,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” are subject to these requirements.

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

As noted above, NHTSA is not required to publish an NPRM in this rulemaking. Further, the change made by this final rule will not have not result in a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, “Federalism.” The Agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

E. Congressional Review Act

This rule is not a “rule” as defined in 5 U.S.C. 804(3), because it falls within the exclusion of “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.”

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

G. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions involving the use of technical standards.

Good Cause for Immediate Adoption

Section 553(b)(3)(A) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules of agency organization, procedure, or practice, except when notice or hearing is required by statute. Under this section, an agency may issue a final rule without seeking comment prior to the rulemaking. Additionally, section 553(b)(3)(B) of the APA authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

NHTSA finds that notice and public comment to this immediately adopted final rule are unnecessary because this rule meets the exception of section 553(b)(3)(A). The sole purpose of this rule is to eliminate the provision calling for the Agency to determine that a petition is complete before the Agency publishes a notice summarizing the petition and soliciting public comments on it. This rule does not impose any additional requirements on exemption applicants or the public. Therefore, NHTSA has determined that notice and public comment are unnecessary.

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

List of Subjects in 49 CFR Part 555

Motor vehicle safety, motor vehicles.

**PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY AND
BUMPER STANDARDS**

1. The authority citation for part 555 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30113, 32505, Pub. L. 105-277; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 555.7 is amended to read as follows:

49 CFR § 555.7

§ 555.7 Processing of applications.

(a) The agency publishes a notice of the application in the Federal Register, affording opportunity for comment.

Issued in Washington, DC, on _____ 2018, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi Renate King,
Deputy Administrator

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