

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2009-0038]

RIN: 2127-AK44

**Federal Motor Vehicle Safety Standard;
Air Brake Systems**

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to extend by 18 months a requirement that trailers with antilock brake systems be equipped with an external antilock malfunction indicator lamp. It also considers making the requirement permanent. The indicator lamp requirement, which is included in the Federal motor vehicle safety standard that governs vehicles equipped with air brakes, was originally scheduled to sunset on March 1, 2009, but has been extended to September 1, 2009 in an interim final rule published in today's **Federal Register**. Under our proposal, the sunset date would be extended until March 1, 2011. This rulemaking is in response to a petition from the Commercial Vehicle Safety Alliance (CVSA), which has asked that this requirement be made permanent. Extending the sunset date for an additional 18 months would enable the agency to fully analyze CVSA's request that the requirement be made permanent, and avoid a potential confusing time gap in the vehicles subject to the requirement.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments may be combined with ones on the accompanying interim final rule, which is being published today using the same docket number.

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 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) or you may visit <http://DocketInfo.dot.gov> .

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: For non-legal issues, you may call Mr. George Soodoo, Office of Crash Avoidance Standards (Phone: 202-366-4931; FAX: 202-366-7002). For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202-366-2992; FAX: 202-366-3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

The final rule requiring antilock brake systems (ABS) on truck tractors, other air-braked heavy vehicles including trailers, and hydraulic-braked trucks was published in the **Federal Register** (60 FR 13216) on March 10, 1995. As amended by that final rule, FMVSS No. 121,

Air Brake Systems, required two separate in-cab ABS malfunction indicator lamps for each truck tractor, one for the tractor's ABS (effective March 1, 1997) and the other for the trailer's ABS (effective March 1, 2001). The final rule also required air-braked trailers to be equipped with an externally mounted ABS malfunction lamp (effective March 1, 1998) so that the driver of a non-ABS equipped tractor or a pre-2001 ABS-equipped tractor towing an ABS-equipped trailer would be alerted in the event of a malfunction in the trailer ABS.

The requirement for the trailer-mounted ABS malfunction indicator lamp was originally scheduled to expire on March 1, 2009. The agency established this sunset date in light of the fact that, after this eight-year period, many of the pre-2001 tractors without the dedicated trailer ABS malfunction indicator lamp would no longer be in long-haul service. The agency based its decision on the belief that the typical tractor life was five to seven years, and therefore decided on an eight-year period for the external ABS malfunction indicator lamp requirement. We further stated our belief that there would be no need for a redundant ABS malfunction lamp mounted on the trailer after the vast majority of tractors were equipped with an in-cab ABS malfunction indicator lamp for the trailer.

II. Summary of the CVSA Petitions

CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. The CVSA promotes commercial vehicle safety and sponsors vehicle inspections by partnering with the Federal Motor Carrier Safety Administration (FMCSA), Pipeline and Hazardous Materials Safety Administration, Canadian Council of Motor Transport Administrators, Transport Canada, and the Secretariat of Communications and Transportation (Mexico).

On October 22, 2007, CVSA petitioned the National Highway Traffic safety Administration (NHTSA) to amend FMVSS No. 121, Air Brake Systems, to make the requirement for the external antilock malfunction indicator lamp permanent instead of allowing it to expire, as originally intended, on March 1, 2009 (and is subsequently being modified to September 1, 2009, by an accompanying interim final rule). CVSA included in its petition suggested regulatory text along with its rationale for why the extension should be permanent. Since receiving the petition, the agency has received letters of support for the CVSA petition from the Truck Trailer Manufacturers Association, the Owner Operator Independent Drivers Association, and the Heavy Duty Brake Manufacturers Council.

On October 15, 2008 CVSA again petitioned NHTSA to amend FMVSS No. 121, requesting that the agency issue a “stay” of the sunset date of March 1, 2009 for the external ABS warning lamp. CVSA stated that a “stay” would prevent a time gap in the regulation, while NHTSA continues to evaluate its 2007 petition. CVSA stated that the vehicle inspection process has already been complicated by the phased-in ABS and ABS malfunction indicator lamp requirements and a gap would further complicate the inspection process and cause additional confusion for drivers and maintenance personnel.

III. Agency Analysis and Proposal

The CVSA petitions raise two main issues that the agency will address. The first issue relates to ensuring that a driver or inspector can determine the operational status of a trailer ABS, if the trailer is not equipped with an external ABS lamp or the tractor is a pre-2001 tractor without the trailer in-cab ABS warning lamp. The second issue relates to the use of the external trailer ABS warning lamp for diagnostic purposes. We note that CVSA did not provide data indicating the number of pre-2001 truck tractors it believed to still be in long haul service.

The agency wants to ensure that drivers and inspectors can determine if a ABS trailer system is functioning, and we also want to avoid imposing unnecessary burdens on trailer manufacturers. Moreover, NHTSA is also concerned about the complications and confusion that could arise for drivers and inspectors, if the ABS warning lamp requirement sunsets and then NHTSA decides to extend it, either permanently or for some fixed period of time.

While we are continuing to evaluate whether a permanent or long-term extension would be appropriate, we have tentatively concluded that a two-year extension is in the interests of motor vehicle safety. This extension would prevent a potential gap in the regulation and allow the agency additional time to evaluate all the arguments raised in the CVSA petitions.

Given the imminence of the March 1, 2009 sunset, it is not possible for us to complete notice and comment rulemaking prior to that time. We are therefore publishing two related documents in today's **Federal Register**. We are publishing an interim final rule that extends the sunset date for six months, to September 1, 2009, as well as this proposed rule which would extend the sunset date for an additional 18 months, to March 1, 2011. The interim final rule will prevent the lamp requirement from sunsetting prior to our making a decision on the NPRM.

Accordingly, NHTSA is granting the petitions in part and is proposing to extend the sunset date by an additional 18 months, from September 1, 2009 to March 1, 2011. NHTSA expects to be able to fully analyze the issues raised by the petitions within this time frame and further address the issues raised by the CVSA petitions prior to March 1, 2011. Furthermore, depending on the comments received in response to this document, if the agency is able to fully resolve the outstanding issues, the agency may in a final rule based on this NPRM decide to remove the sunset provision entirely and make the requirement for the indicator lamp permanent.

IV. Shortened Comment Period

Given the short time before the sunset of the lamp requirement, even with the six-month extension provided in the interim final rule, we are providing a 30-day comment period. Because the full duration of the extension is only six months, we believe this shortened comment period is appropriate. We also note that the subject of the proposal is the extension of a longstanding existing requirement. Therefore, there has been considerable experience with the requirement at issue.

V. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dms.dot.gov>.

How can I be sure that my comments were received?

If you 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.

How do I submit confidential business 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, NHTSA, at the address given above 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 our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming

that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under ADDRESSES. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

VI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them.

This document proposes to delay the sunset date of the antilock malfunction indicator lamp requirement from September 1, 2009 to March 1, 2011. Since trailers manufactured after March 1, 1998 have already been complying with the requirement and the agency is merely proposing to extend the requirement for an additional two years, the impact on costs is not significant. Not supplying a lamp could result in a trailer that could be made for a few dollars less. We estimate the costs to be so minimal that preparation of a full regulatory evaluation is

not required.

Regulatory Flexibility Act

Pursuant to 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 proposed rule would not have a significant impact on a substantial number of small entities. This proposal would merely extend a sunset provision in FMVSS No. 121. No other changes are being proposed in this document. Small organizations and small government units would not be significantly affected since this proposed action would not affect the price of new motor vehicles. Trailer manufacturers would not be required to install new systems but rather continue to install the systems they are already installing for two additional years.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed 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 proposed rule does not have federalism implications because it 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."

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. NHTSA's safety standards can have preemptive effect in at least 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 that unavoidably preempts State legislative and administrative law, not today’s rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See Geier v. American Honda Motor Co., 529 U.S. 861 (2000). NHTSA has considered today’s proposed rule and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

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, 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 (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 Order, NHTSA notes as follows. The preemptive effect of this proposed 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.

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 proposed rule is not expected to affect children and it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

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 NPRM.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this NPRM.

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 NPRM 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.

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 will not have any significant impact on the quality of the human environment.

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.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. 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 rule clearly stated?
- Does the rule contain technical language or jargon that isn't 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?
- What else could we do to make the rule easier to understand?

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

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.

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 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

List of Subjects in 49 CFR Part 571

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

In consideration of the foregoing, NHTSA proposes to amend 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 571.121 is amended by revising S5.2.3.3(a) to read as follows:

§ 571.121; Standard No. 121; Air brake systems.

* * * * *

S5.2.3.3 Antilock malfunction indicator.

(a) In addition to the requirements of S5.2.3.2, each trailer and trailer converter dolly manufactured on or after March 1, 1998, and before March 1, 2011, shall be equipped with an external antilock malfunction indicator lamp that meets the requirements of S5.2.3.3 (b) through (d).

* * * * *

Issued:

Stephen R. Kratzke
Associate Administrator
for Rulemaking

Billing Code: 4910-59 P

[Signature page for Notice of Proposed Rulemaking, Air Brake Systems]