

The Acting Deputy Administrator signed the following document on November 5, 2009, and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at: www.gpoaccess.gov/fr/index.html.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

Docket No. NHTSA-2007-28322; Notice 3

RIN: 2127-AK66

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule; delay of effective date.

SUMMARY: This final rule delays the effective date of a final rule that reorganized and improved the structure and clarity of the Federal motor vehicle safety standard on lamps, reflective devices, and associated equipment. The final rule reorganizing the lighting standard was published on December 4, 2007 with an effective date of September 1, 2008.¹ The effective date was extended to December 1, 2009 in a final rule published on August 28, 2008.² The agency received fourteen petitions for reconsideration of the 2007 final rule, including two that requested a delay in the effective date of the rule, and others that raised concerns that the reorganization of FMVSS No. 108 imposed new requirements. This rule delays the effective date further, from December 1, 2009 to December 1, 2012, to enable the agency to fully resolve

¹ See 72 FR 68234.

² See 73 FR 50730.

all of the issues raised in the petitions well before manufacturers are required to certify to the new requirements.

DATES: The effective date of the final rule amending 49 CFR Parts 564 and 571 published at 72 FR 68234, December 4, 2007, and delayed at 73 FR 50730, August 28, 2008, is further delayed until December 1, 2012. The incorporation by reference of certain publications listed in the rule is approved by the director of the Federal Register as of December 1, 2012. Optional early compliance continues to be permitted. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Docket Room W12-140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. David Hines, Office of Crash Avoidance Standards (Phone: 202-493-0245; 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:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108, Lamps reflective devices, and associated equipment, specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The purpose of FMVSS No. 108 is to reduce traffic

accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility.

On December 4, 2007, NHTSA published a final rule amending FMVSS No. 108 to reorganize the standard and provide a more straightforward and logical presentation of the applicable regulatory requirements (see 72 FR 68234). Related amendments were made to 49 CFR Part 564, Replacement Light Source Information. While the final rule greatly reduced the number of third-party standards incorporated by reference, it did not impose any new substantive requirements on manufacturers. Along with the changes made, the final rule specified an effective date of September 1, 2008 for these amendments and permitted voluntary early compliance immediately upon publication.

II. Petitions for Reconsideration

In response to the December 2007 final rule, the agency received fourteen petitions for reconsideration.³ Petitions for reconsideration were submitted by Grote Industries, LLC, Alliance of Automobile Manufacturers (Alliance), Motor and Equipment Manufacturers Association (MEMA)⁴, Nissan North America, Inc., Valeo Sylvania, Calcoast Industrial Testing Laboratory, Harley-Davidson Motor Company, Koito Manufacturing Co, Ltd., Ford Motor Company, Toyota Motor North America, Inc., GE Consumer & Industrial Automotive Lighting, SABIC Innovative Plastics, Valeo Lighting Systems, and Vehicle Services Consulting, Inc. The

³ We note that the American Association for Justice (AAJ) submitted a document objecting to the agency's discussion of implied preemption. The agency does not consider this to be a petition for reconsideration, as NHTSA's preemption discussion is not a rule. For a further discussion of this, in a different context, see 73 FR 54536; September 22, 2008.

⁴ MEMA submitted a petition for reconsideration collectively with the Transportation Safety Equipment Institute and the Motor Vehicle Lighting Council.

petitions addressed a wide range of FMVSS No. 108 subjects, including technical amendments to the rule, concern that the reorganization imposed new requirements, and requests to change the effective date of the final rule. On August 28, 2008, NHTSA published a subsequent final rule changing the effective date to December 1, 2009 (see 73 FR 50730). This was done in order to allow for more time for the agency to analyze the petitions prior to the rule taking effect.

III. Agency Response to Petitions

When the agency issued the 2008 final rule extending the effective date to December 1, 2009, it believed that the additional time was sufficient to allow NHTSA time to consider and respond fully to all aspects of the numerous petitions for reconsideration. However, NHTSA's consideration of the petitions has taken longer than expected and is not yet concluded. Given the imminence of the December 1, 2009 effective date, the agency has determined that more time is needed to fully respond to petitions concerning the technical and substantive issues of the December 2007 final rule.

We are extending the mandatory effective date of the rewrite of Standard No. 108 for three years to allow sufficient time for the agency to analyze the issues raised by the petitioners in relationship to the version of the SAE standards that are referenced. In many cases, the referenced version of the SAE standard is not the most current. The agency would also like to carefully review issues the petitioners have raised in the context of past interpretations.

This additional delay in the effective date will enable the agency to fully resolve all of the issues raised in the petitions well before manufacturers are required to certify to the new requirements. The various technical and substantive issues in the petitions for reconsideration will be addressed by the agency in separate documents.

We note that, as indicated above, some petitioners have argued that the reorganization imposed new requirements. We will specifically address the arguments and specific requirements at issue in separate documents, and why we are accepting or not accepting each of the petitioners' arguments and requests. We recognize, however, that one consequence of a major rewriting of a regulation as complex as Standard No. 108 is that some regulated parties may discover that they have been interpreting some provisions of the earlier version of the standard incorrectly. One of the reasons we are extending the effective date of the new standard for three years is so that manufacturers will have a period of time after the agency has responded to the petitions for reconsideration in which they can continue to certify their products to the earlier version of the standard.

IV. Effective Date of This Document

Because December 1, 2009 (the effective date for the amendments to FMVSS No. 108, set in the August 2008 final rule) is fast approaching, NHTSA finds for good cause that this action delaying the effective date should take effect immediately. Today's final rule makes no substantive changes to FMVSS No. 108, but further delays the effective date of the December 4, 2007 final rule until December 1, 2012.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action delays the effective date of an administrative rewrite of FMVSS No. 108. It 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 final rule delays the effective date of a December 4, 2007 final rule (which, pursuant to the August 28, 2008 final rule, was scheduled to become effective December 1, 2009), to December 1, 2012. Neither that rule nor today's action will have any measurable effect on costs or benefits since the rule merely reorganizes and clarifies existing requirements.

B. 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://docketsinfo.dot.gov/>.

C. Other Rulemaking Analyses and Notices

In the December 2007 final rule, the agency discussed relevant requirements related to the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Reform Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, the Paperwork Reduction Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). Since that final rule was an administrative rewrite of existing requirements and since today's action simply delays the effective date of that final rule, today's rule does not affect the agency's analyses in those areas.

Authority: 49 U.S.C 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 501.8

Issued:

Ronald L. Medford
Acting Deputy Administrator

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