

advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. In light of the on-going developments in Congress and pending resolution of the petitions for reconsideration and clarification of the Commission's facsimile advertising rules, we believe the public interest would best be served by delaying the effective date of the written consent requirement. This delay will provide the Commission requisite time to address the petitions for reconsideration filed on these issues. For these same reasons, until January 9, 2006, the 18-month limitation on the duration of the established business relationship based on purchases and transactions and the three-month limitation on applications and inquiries will not apply to the transmission of facsimile advertisements.

#### Ordering Clauses

Pursuant to Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227, and 303(r), the *Order* in CG Docket No. 02–278 is adopted and that the *Report and Order*, FCC 03–153, is modified as set forth herein.

The Fax Ban Coalition's Petition for Further Extension of Stay is granted to the extent discussed herein.

The effective date for: (1) The Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements; (2) the 18-month and three month limitations on the duration of the established business relationship as applied to the sending of facsimile advertisements as described above; and (3) the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), IS January 9, 2006, and that the *Order* is effective upon publication in the **Federal Register**.

The Commission will not send a copy of the *Order* pursuant to Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

#### List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

[FR Doc. 05–13025 Filed 6–29–05; 8:45 am]

BILLING CODE 6712–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9904

#### Capitalization of Tangible Assets; Correction

**AGENCY:** Cost Accounting Standards Board; Office of Federal Procurement Policy, OMB.

**ACTION:** Correction to final rule.

**SUMMARY:** This document contains technical corrections to the Illustrations in CAS 9904.404, "Capitalization of Tangible Assets." An amendment to this Standard was published on February 13, 1996 (61 FR 5520). However, while the contractor's minimum cost criteria for capitalization was increased from \$1,500 to \$5,000 in the body of the Standard, this change was not reflected in the Illustrations part of the Standard. This technical correction brings the figures in the relevant Illustrations into line with the \$5,000 minimum cost criteria for capitalization currently incorporated in the body of the Standard.

**DATES:** This rule is effective June 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rein Abel, Director of Research Cost Accounting Standards Board (telephone 202–395–3254).

**SUPPLEMENTARY INFORMATION:** When the Standard was amended in February 1996 (61 FR 5520) only the fundamental requirement at 9904–40 (b)(1) was changed to reflect the increase in the capitalization criteria from \$1,500 to \$5,000. However, corresponding changes were not made to the Illustrations in the Standard. This document makes the necessary technical corrections to Illustrations at 9904–60.

#### List of Subjects in 48 CFR 9904

Government procurement, Cost accounting standards.

■ Accordingly, for the reasons set forth above, it is proposed to correct 48 CFR part 9904 as follows:

#### PART 9904—COST ACCOUNTING STANDARDS

■ 1. Authority. The authority citation for part 9904 continues to read as follows:

**Authority:** Public Law 100–679 Stat. 4056, 41 U.S.C. 422.

#### 9904.404–60 [Corrected]

■ 2. In 9904.404–60 (a) (1), first sentence, remove "\$2,000" and insert "\$6,000" in

its place; and in the second sentence remove "\$1,500" and insert "\$5,000" in its place; and in paragraph (a) (1) (i) revise the first sentence to read as follows: "Contractor acquires a tangible capital asset with a life of 18 months at a cost of \$6,500."

**David H. Safavian**,

Chair, Cost Accounting Standards Board.

[FR Doc. 05–12857 Filed 6–29–05; 8:45 am]

BILLING CODE 3110–01–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–05–21400]

RIN 2127–AI47

#### Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Federal motor vehicle safety standard on hydraulic and electric brake systems to extend the current minimum performance requirements and associated test procedures for parking brake systems to all multipurpose passenger vehicles (MPVs), buses and trucks with gross vehicle weight ratings (GVWR) greater than 10,000 pounds (4,536 kilograms) equipped with hydraulic or electric brake systems. Currently, the only vehicles with GVWRs greater than 10,000 pounds to which the standard's parking brake requirements apply are school buses. The agency concludes that it is in the interest of safety to require all MPVs, buses and trucks with GVWRs over 10,000 pounds to have parking brakes that meet the performance requirements currently applicable to heavy school buses.

**DATES:** This final rule takes effect June 30, 2006, except for the revision of the heading of 49 CFR 571.135, which takes effect June 30, 2005. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 30, 2006.

Any petitions for reconsideration of today's final rule must be received by NHTSA not later than August 15, 2005.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number for

this action and be submitted to:  
Administrator, National Highway  
Traffic Safety Administration, 400  
Seventh Street, SW., Washington, DC  
20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, Mr. Samuel Daniel, Vehicle Dynamics Division, Office of Crash Avoidance Standards (Telephone: 202-366-4921) (Fax: 202-366-7002).

For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

Both can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
  - II. Notice of Proposed Rulemaking
    - A. The Safety Need
    - B. Costs and Benefits
    - C. Additional Issues
  - III. Public Comments and NHTSA's Response
    - A. Applicability of the NPRM to Trailers
    - B. Engagement Effort Threshold of Hand and Foot-Operated Parking Brakes
    - C. Retrofitting of Parking Brakes
    - D. Issues Raised by ArvinMeritor
    - E. Leadtime
  - IV. Final Rule
  - V. Statutory Bases for the Final Rule
  - VI. Regulatory Analyses and Notices
    - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
    - B. Regulatory Flexibility Act
    - C. National Environmental Policy Act
    - D. Executive Order 13132 (Federalism)
    - E. Executive Order 12988 (Civil Justice Reform)
    - F. Paperwork Reduction Act
    - G. National Technology Transfer and Advancement Act
    - H. Unfunded Mandates Reform Act of 1995
    - I. Plain Language
    - J. Regulation Identifier Number (RIN)
- Final Regulatory Text

## I. Background

Federal Motor Vehicle Safety Standard No. 105, *Hydraulic and electric brake systems*, sets forth minimum performance requirements for a vehicle's service and parking brake systems. Originally, the standard applied exclusively to passenger cars with hydraulic brake systems.<sup>1</sup> Over the years, the agency has published several rulemaking actions on FMVSS No. 105.<sup>2</sup> Among other actions, on January 16, 1976, the agency extended the standard's service and parking brake requirements to school buses with

hydraulic service brake systems (41 FR 2391). On January 2, 1981 (46 FR 55), NHTSA published a final rule extending Standard No. 105's parking brake requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. Among other things, the January 2, 1981 final rule required parking brakes on multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less to hold the vehicle stationary, in both forward and reverse directions, for five minutes on a 30 percent grade. In response to three petitions for reconsideration, the agency decided to change the gradient requirement for parking brakes on these vehicles from 30 percent to 20 percent (46 FR 61887, Dec. 21, 1981). Later, the agency established FMVSS No. 135, which originally applied to passenger cars only. In a final rule of September 30, 1997 (62 FR 51064), NHTSA extended the applicability of FMVSS No. 135 to multipurpose passenger vehicles, trucks, and buses with gross vehicle weight ratings (GVWR) of 3,500 kilograms (7,716 pounds) or less. These vehicles were previously regulated under FMVSS No. 105.

## II. Notice of Proposed Rulemaking

On October 30, 2002 (67 FR 66098), NHTSA published a notice of proposed rulemaking to amend FMVSS No. 105 to extend the current minimum performance requirements and associated test procedures for parking brake systems to all vehicles with gross vehicle weight ratings (GVWR) greater than 4,536 kilograms (10,000 pounds). In the NPRM, NHTSA explained the safety need for the rule, and discussed the costs and safety benefits that would result from the rule.

### A. The Safety Need

In explaining the safety need for the rule, the agency stated its belief that parking brakes are an important operational safety feature and tentatively concluded that it is in the interest of safety to require that all vehicles be equipped with parking brakes that comply with Federal requirements. When properly engaged, parking brakes can prevent driverless roll-away events, which can result in collisions, injuries, and fatalities. A review of the agency's Fatality Analysis Reporting System (FARS) database indicated that a total of three to five fatal vehicle roll-away events involving large, hydraulically-braked, non-school bus vehicles occurred between 1991 and 1999. Additionally, during that same period, there were annually about 574

crashes with 82 injured people resulting from roll-away, heavy duty trucks, according to data from the General Estimates System (GES). The GES data are not sufficiently detailed to determine which of the vehicles were hydraulically-braked and which were air-braked, nor could the data be used to determine if the vehicles were parked prior to the roll-away incident. Therefore, these figures likely represented the upper bound of the number of crashes and injuries caused by the rolling away, due to parking brake problems, of parked, heavy duty trucks and buses equipped with hydraulic brakes.

Many of the driverless roll-away events may have been caused by misapplication or non-use of the parking brake. Requiring all heavy vehicles to meet the same parking brake performance requirements would not affect the non-use problem; however, it might increase the likelihood that operators of these vehicles (particularly fleet drivers who must operate a large number of different heavy vehicles) would be better able to engage their vehicle's parking brake fully because the force required to apply the parking brake would be standardized. This might reduce the incidence of parking brake misapplication. In addition, NHTSA stated its belief that requiring that all heavy vehicles remain stationary with the parking brake fully engaged, in both forward and reverse directions, when parked on a 20 percent grade, should prevent the occurrence of driverless roll-away events due to parking brake failure on most roads in the United States because most U.S. roads have less than a 20 percent grade. NHTSA tentatively concluded that requiring all vehicles to which Standard No. 105 applies to have parking brakes meeting the standard's effort limit and gradient requirements should decrease the likelihood of driverless roll-away events and, therefore, lead to modest collision, injury, and fatality reduction benefits.

As explained more fully below, in the section on costs and benefits, NHTSA stated its belief that most, if not all, heavy vehicles are already manufactured with parking brakes designed to meet Standard No. 105's requirements. However, requiring manufacturers to certify the performance of the parking brakes on these heavy vehicles would provide added assurance that they actually meet the standard's requirements. It would also guard against the possibility of a decrease in performance of these parking brakes due to future truck chassis design changes.

<sup>1</sup> The agency extended Standard No. 105 to brake systems on electric vehicles in a final rule published on September 5, 1997 (62 FR 46907).

<sup>2</sup> A full description of these rulemaking actions is provided in the notice of proposed rulemaking to amend FMVSS No. 105 of October 30, 2002 (67 FR 66098, at 66098).

NHTSA noted that Paragraph S5.2 of the standard currently requires that all heavy school buses be manufactured with a parking brake of a friction type with a solely mechanical means to retain engagement. Such parking brakes are required to meet the standard's effort limit and gradient requirements, found in paragraphs S5.2(b) and S5.2.3, respectively. Paragraph S5.2(b) requires that the parking brake be capable of being engaged fully with a force applied to the control of not more than 150 pounds for a foot-operated system and not more than 125 pounds for a hand-operated system. Paragraph S5.2.3 requires that the parking brake system be capable of holding the vehicle stationary for five minutes, in both forward and reverse directions, on a 20 percent grade.

NHTSA believes that it is reasonable to assume that operators of heavy school buses and other heavy vehicles are of similar size and strength. In addition, the agency stated its belief that heavy school buses and other heavy vehicles are parked in similar environments. Therefore, the agency tentatively concluded that it is appropriate to apply the same effort limit and gradient requirements (and associated test procedures) to these vehicles as are currently applied to heavy school buses.

#### *B. Costs and Benefits*

In late 2002, several heavy vehicle manufacturers informed NHTSA that, among other things, parking brake systems for trucks and buses with GVWRs greater than 4,536 kilograms (10,000 pounds) are already designed to meet the FMVSS No. 105 requirements for school buses over 4,536 kilograms. Based on the manufacturer's views, NHTSA estimated that the cost of requiring all manufacturers of non-school buses and trucks with GVWRs greater than 4,536 kilograms (10,000 pounds) to meet the standard's parking brake requirements would be minimal (less than \$10 per vehicle) because few, if any, modifications to the already existing parking brakes would be necessary to bring those brakes into compliance with the standard. NHTSA further stated that the cost of conducting the parking brake compliance test should not be significant when compared to the total cost of FMVSS No. 105 compliance testing. The agency stated its belief that most test facilities already have the 20 percent grade slope that was proposed in the NPRM, and that the proposed test procedure is straightforward and not time consuming. Accordingly, the agency stated that it did not anticipate that the cost of certifying compliance to the

proposed requirements would be large, and solicited comments.

Given the likelihood that most vehicles with a GVWR over 4,536 kilograms (10,000 pounds) are already equipped with a parking brake system that meets the performance requirements of S5.2 and S5.2.3, NHTSA stated that it anticipated only marginal safety benefits from formally extending these requirements. Nevertheless, to the extent that any vehicles with a GVWR over 10,000 pounds do not already comply with these requirements, the agency does expect that the extension of the parking brake effort limit and gradient requirements to such vehicles would reduce the number of collisions, injuries, and fatalities due to driverless roll-away events.

NHTSA stated that while the proposed changes are not likely to have any effect on the non-use problem, the standardization of parking brake effort limit requirements for all heavy vehicles may reduce the incidence of misapplication by making it easier for operators of these vehicles to fully engage the parking brake. In addition, requiring all hydraulically-braked heavy vehicles to have parking brakes that meet the gradient requirement should decrease the likelihood of parking brake failure on most U.S. roads. For these reasons, the agency stated that it anticipated modest collision, injury, and fatality reduction benefits from extending Standard No. 105's parking brake requirements to all hydraulically-braked vehicles with GVWRs greater than 4,536 kilograms (10,000 pounds).

#### *C. Additional Issues*

In the NPRM, NHTSA also addressed several other Standard No. 105 issues. NHTSA proposed to change the language in the application paragraph of the standard (S3. *Application*) to reflect the inapplicability of the standard's requirements to hydraulically-braked vehicles with a GVWR of 3,500 kilograms (7,716 pounds) or less. Standard No. 105 used to apply to these vehicles. However, Standard No. 135 now applies instead.

In addition, on June 10, 2002, the agency received a petition for rulemaking from Mr. James E. Stocke of Ann Arbor, Michigan, requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972). A portion of an older (November 1966) version of SAE J972 is referenced in Standard No. 105, paragraph S7.19, as part of the parking brake test procedures for passenger cars and school buses with

a GVWR of 4,536 kilograms (10,000 pounds) or less. Although there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, the "Barrier" paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3, its designation in the November 1966 version of the document.

NHTSA noted that the information in the updated reference is substantively identical to the information in the original reference. Accordingly, NHTSA granted Mr. Stocke's petition and proposed to amend paragraph S7.19 to update the reference to the May 2000 version of SAE J972.

### **III. Public Comments and NHTSA's Response**

In response to the NPRM, NHTSA received comments from the following: Advocates for Highway and Auto Safety; ArvinMeritor; Heavy Duty Brake Manufacturers Council (HDBMC); Richard H. Klein, P.E.; National Association of Trailer Manufacturers (NATM); Recreational Vehicle Industry Association (RVIA); and Truck Manufacturers Association (TMA).

While commenters raised a number of issues, those commenting on the basic question of whether FMVSS No. 105's parking brake requirements should be extended to all multipurpose passenger vehicles (MPVs), buses and trucks with gross vehicle weight ratings (GVWR) greater than 10,000 pounds (4,536 kilograms) (equipped with hydraulic or electric brakes), supported the extension. TMA, indicating that it represents all of the major North American manufacturers of medium and heavy duty trucks, stated that, in general, its member companies support the agency's proposal. ArvinMeritor, which manufactures foundation brakes for both heavy and medium duty commercial vehicles, stated that, in general, it supports the proposed rule and that the rule will promote improvements of motor vehicles to provide safer vehicles on the highways.

A number of commenters sought clarification of the vehicle types to which the rule would apply (i.e., would the proposed rule apply only to MPVs, buses, and trucks over 4,536 kilograms (10,000 pounds GVWR) or also to trailers and motorcycles. One commenter questioned NHTSA's discussion of "Costs and Benefits," based on NHTSA's belief that change would be minimal. Advocates for Highway and Auto Safety, and ArvinMeritor raised unique issues.

In the sections which follow, NHTSA identifies and discusses the specific issues raised by the commenters.

#### *A. Applicability of the NPRM to Trailers*

Several of the manufacturers asked for clarification of whether the new parking brake requirements apply to all vehicles over 4,536 kilograms (10,000 pounds) gross vehicle weight rating (GVWR) or only to multipurpose passenger vehicles (MPVs), buses and trucks over 4,536 kilograms GVWR. Several commenters including Mr. Klein stated their beliefs that although not explicitly stated in the NPRM, the intent of the proposal was to apply the new requirements to MPVs, non-school buses and trucks over 4,536 kg, but not to trailers over 4,536 kg (or to motorcycles). The NATM and RVIA expressed their beliefs that the NPRM was not intended to apply to trailers.

NHTSA agrees that it was the intent of the agency to apply the NPRM only to MPVs, non-school buses, and trucks over 4,536 kg. We note that the agency has never intended to apply FMVSS No. 105 to trailers, including light trailers, or to motorcycles.

In reviewing this issue, we found that the existing application section of FMVSS No. 105 states that the standard "applies to hydraulically-braked vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds)." The reference to "hydraulically braked vehicles" is overbroad and is in error.

This particular language was included in the standard in a final rule published in the **Federal Register** (62 FR 51064) on September 30, 1997. This rule extended the requirements of FMVSS No. 135, which applied at that time only to passenger cars, to trucks, buses, and MPVs with a GVWR of 3,500 kilograms (7,716 pounds) or less. The amendment to FMVSS No. 105 was a conforming amendment to remove these vehicles from its coverage once they were covered by FMVSS No. 135, and was not intended to extend the coverage of FMVSS No. 105 to trailers. The revised application section should have referred to multipurpose passenger vehicles, trucks and buses instead of "vehicles," as it had before the amendment. Unfortunately this overbroad language was reflected in the NPRM for this rulemaking. We are using the correct language for today's final rule (see S3 of the amended standard).

We note that Advocates supported extending the parking brake requirements to trailers. It expressed concern, however, that NHTSA did not collect any information or data for the administrative record on semitrailer/trailer rollaways. It also stated that NHTSA cannot ignore the security

implications of the need to ensure the safety of trailers by impeding their illegal use in transportation by a requirement for parking brakes.

For the reasons discussed earlier, we did not intend to include the extension of parking brake or other requirements of FMVSS No. 105 to hydraulically braked trailers. If the agency were to propose to include trailers in the standard, we would provide appropriate supporting analysis and provide an opportunity for comment. However, the agency has no such plans at this time.

#### *B. Engagement Effort Threshold of Hand and Foot-Operated Parking Brakes*

Advocates stated its continuing disagreement with the engagement effort threshold of both hand and foot operated parking brakes as "excessively high." Advocates did not provide suggested forces that it believes are acceptable. Advocates stated its view that "there is no information of record anywhere in the history of rulemaking on FMVSS No. 105 demonstrating that 125 pounds of force for hand engagement and 150 pounds of force for foot engagement is acceptable for all licensed operators of affected vehicles." Advocates also stated that NHTSA did not take into consideration the capabilities of operators with certain disabilities to engage parking brakes with the minimum forces required by the standard.

In response, NHTSA notes that Advocates did not provide information on the practicability, including costs, or benefits of providing systems that would operate with lower force levels. The agency believes that such systems would likely need to utilize electrical activation, which would be costly. NHTSA observes that FMVSS No. 105 allows for electrical activation of the parking brake (see S7.7.1.3(c)) with no requirement for application force levels. Electrical activation can be considered for drivers who may not otherwise be able to exert the energy required to actuate the hand or foot controls. Aftermarket parking brake supplemental control systems are also available for those drivers who may benefit from them.

#### *C. Retrofitting of Parking Brakes*

Advocates also supported extending the new rule to retrofitting parking brakes on vehicles over 4,536 kg (10,000 pounds), stating that the safety benefits would be "considerable." Advocates is referring to a delegation of authority to NHTSA from the Secretary of Transportation under Chapter 301 of Title 49 U.S.C. The delegation of

authority is at 49 CFR 1.50(n) and states as follows:

(n) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 and section 31502 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 4.

NHTSA will not adopt Advocates' suggestion. Retrofitting existing commercial vehicles with parking brakes was not proposed in the NPRM. Thus, to adopt Advocates' suggestion would be outside the scope of this rulemaking. Furthermore, if a vehicle did not already have parking brakes, it would not be practicable (i.e., it would not be cost effective) to retrofit the vehicle with parking brakes.

#### *D. Issues Raised by ArvinMeritor*

In its comments, ArvinMeritor (Arvin) raised the following issues, which are addressed below.

Arvin stated that the costs estimated for compliance with the NPRM (\$10.00 or less per vehicle) may be exceeded for some vehicles because of parking brake system re-design that might be necessary to meet the application force and grade holding requirements. NHTSA notes that the NPRM's cost estimate was based on the comments from several medium and heavy truck manufacturers, including General Motors and Ford, indicating that all hydraulically-braked trucks and buses are equipped with parking brakes. School buses must already meet the parking brake requirements in this final rule, and many school buses are built on chassis from a major truck manufacturer.

NHTSA agrees that some truck and bus manufacturers may incur additional costs to redesign the parking brake actuation mechanisms (levers and pedals) and other vehicle components to meet the performance requirements of the amendment. Also, in order to meet the grade holding requirements, the parking brake friction components (brake drums and linings) may also need to be redesigned. Arvin did not quantify the costs for the modifications but did provide information about existing parking brake designs. Arvin also described some of the design changes that may be implemented to meet the proposed requirements. Despite these additional costs that may be incurred, as it stated in the NPRM (See 67 FR 66098, at 66099, "Costs and Benefits,") NHTSA believes that any modifications required

to meet this final rule can be completed at an average incremental cost of \$10.00 per vehicle or less. Neither Arvin nor any other commenter disputed NHTSA's estimate of the average incremental cost per vehicle, nor did any commenter provide an alternative dollar estimate of the cost of providing the parking brake.

Arvin commented that the parking brake burnishing procedures in S7.7.4 of FMVSS No. 105 are not specific enough to ensure adequate grade-holding performance of the parking brake. While NHTSA has considered this comment, it believes that the parking brake burnishing procedures in S7.7.4 of FMVSS No. 105, which apply to vehicles with parking brake systems that do not use the service brake friction components, are adequate. The test procedures state that burnishing is conducted according to the vehicle manufacturer's published recommendations as furnished to the vehicle purchaser. If the manufacturer does not provide instructions to the vehicle purchaser for burnishing the parking brake friction components, the parking brake test is to be conducted without burnish.

Arvin commented that there may be a wide variety of parking brake performance because the parking brakes on hydraulically braked vehicles are not automatically adjusted and there are a number of different actuation system designs. Arvin asked the agency to consider requiring that parking brake systems continue to meet a specified level of performance while the vehicles are in service.

Based on its review of several parking brake designs for hydraulically-braked vehicles with GVWRs greater than 4,536 kilograms (10,000 pounds), NHTSA believes that adjustment of the friction components appears to be straightforward and inexpensive. NHTSA believes that drivers and operators should maintain the parking brake system with appropriate adjustment and service. Although NHTSA does not have the statutory authority to test vehicles in service for compliance with parking brake performance, we note that the Federal Motor Carrier Safety Administration has jurisdiction over in-service requirements for large commercial vehicles.

Arvin commented that the proposed parking brake systems are not designed to provide emergency brake (vehicle stopping capability) service and would need to be substantially upgraded in order to provide an emergency brake function. In response, NHTSA notes that it is not requiring that the parking brake system provide an emergency brake

function. At 49 CFR Part 571.3, "emergency brake" is defined as: a "mechanism designed to stop a motor vehicle after a failure of the service brake system." The brake performance standards for hydraulic and electric brake vehicles, FMVSS Nos. 105 and 135, do not require vehicles to be equipped with an emergency brake, primarily because the service brake system is required to function with a variety of failed components. The parking brake system on hydraulically-braked vehicles has never been required to provide an emergency brake function.

#### E. Lead Time

TMA stated that the issue of lead time before the new requirements would take effect was not specifically raised in the NPRM. TMA stated its belief that a one-year lead time would be adequate. NHTSA agrees with TMA's comment that a one-year lead time would be adequate. Therefore, this final rule will take effect one year from the date of publication of this final rule in the **Federal Register**.

#### IV. Final Rule

For the reasons discussed above, NHTSA has decided to issue a final rule amending FMVSS No. 105 by extending the minimum performance requirements and associated test procedures for parking brake systems to all MPVs, buses and trucks with gross vehicle weight ratings over 4,536 kilograms. NHTSA has concluded that it is in the interest of safety to require all MPVs, trucks and buses with GVWRs over 4,536 kilograms to have parking brakes that meet the performance requirements currently applicable to over 4,536 kilogram school buses.

To remove any ambiguity about the vehicle types to which FMVSS No. 105 applies, this final rule amends the application section (S3.) by stating that the standard applies "to multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

Finally, after granting a petition for rulemaking requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972), NHTSA noted there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, although the "Barrier" paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3 in its designation in the

November 1966 version of the document.

NHTSA noted that the information in the updated reference is substantively identical to the information in the original reference. Therefore, in this final rule, NHTSA amends S7.19 to update the reference to the May 2000 version of SAE J972.

*Corrections*—In a final rule of September 30, 1997 (62 FR 51064), NHTSA, among other changes, amended the title of FMVSS No. 135 from "Passenger Car Brake Systems" to "Light Vehicle Brake Systems." The amended title accurately reflects the fact that when the final rule took effect, FMVSS No. 135 applies not just to passenger cars, but also to trucks, buses, and multipurpose passenger vehicles (MPV) with gross vehicle weight ratings of (GVWR) of 3,500 kilograms (7,716 pounds) or less. Several years later, although FMVSS No. 135 now applies to trucks, buses, and MPVs with GVWRs of 3,500 kilograms or less, the title of FMVSS No. 135 in 49 CFR has not yet been amended. This final rule corrects the title of FMVSS No. 135 to read "Light Vehicle Brake Systems."

This final rule also corrects an error in the description of the conditions that may be indicated by illumination of the brake warning indicator. In the final rule dated September 5, 1997 (62 FR 46907), amending FMVSSs Nos. 105 and 135 to include electric brake systems, the agency incorrectly stated in the first sentence of S5.5.5 *Labeling* (b) that: "Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(d)." (Emphasis added) This final rule corrects the first sentence of S5.5.5(b) to read: "Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(g)."

#### V. Statutory Basis for the Rulemaking

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a

proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 105. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule.

In the NPRM, we proposed to make FMVSS No. 105 parking brake requirements applicable to all "vehicles" over 4,536 kilograms (10,000 pounds). Some commenters questioned whether the term "vehicles" was intended to include motorcycles and trailers. In this final rule, NHTSA stated that it was its intent to make FMVSS No. 105 parking brake requirements applicable only to MPVs, buses and trucks over 4,536 kilograms (10,000 pounds). Thus, we amended S3., the applicability section, to make explicit the standard applies to MPVs, buses and trucks.

As indicated, we have thoroughly reviewed the public comments and amended the final rule to reflect the comments. In the few instances where we did not adopt a comment, we explain why we did not adopt the comment. In most instances, the

comments addressed matters that were not raised in the NPRM, and thus were outside the scope of the rulemaking. We believe that this final rule, which extends minimum performance requirements and associated test procedures for parking brake systems to all MPVs, buses and trucks with GVWRs greater than 4,536 kilograms (10,000 pounds) meets the need for safety.

## VI. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was not reviewed under Executive Order 12866. Further, this notice was determined not to be significant within the meaning of the DOT Regulatory Policies and Procedures.

In this document, NHTSA extends the applicability of already existing parking brake requirements to cover vehicles previously excluded. As explained above, comments from heavy vehicle manufacturers indicate that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than \$10 per vehicle. Considering that the total number of such vehicles that are subject to the requirements is estimated to be about 212,000 annually, the agency

estimates that the total annual effect of this rule is less than \$2,120,000. Accordingly, the agency concludes that this rule has no significant economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since public comments suggest that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency applies in this final rule, the agency concludes that the impacts of this rulemaking are minimal. Thus, it has not prepared a full regulatory evaluation.

### 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 that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is applying in this final rule. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than \$10 per vehicle. Considering that the total number of such vehicles that are subject

to the requirements is approximately 212,000 vehicles annually, the agency estimates that the total annual effect of this rule to be less than \$2,120,000. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

#### C. 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.

#### D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that 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." Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

#### E. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This final rule does not require any collections of information, or recordkeeping or retention requirements as defined by the OMB in 5 CFR Part 1320.

#### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

For this final rule, there are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

#### H. 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA 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 why that alternative was not adopted.

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than \$100 million annually. The estimated cost of complying with this rule is less than \$10 per vehicle. Considering that the total number of vehicles to which these requirements apply is approximately 212,000 vehicles annually, the estimated aggregate cost of this rule is less than \$2,120,000. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

#### I. Plain Language

Executive Order 12866 requires 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 is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

We have solicited comments on the Plain Language implications of the NPRM in the **Federal Register** document of October 30, 2002 (67 FR 66098) on p. 66101. We received no comments on the Plain Language issue.

*J. 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.

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

Imports, Incorporation by Reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and 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 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.105 is amended by revising S3, S5.2, S5.2.3, S7.7.1, paragraph (b) of S7.7.1.3, and S7.19 to read as follows:

**§ 571.105 Standard No. 105; Hydraulic and electric brake systems.**

\* \* \* \* \*

S3. *Application.* This standard applies to multi-purpose passenger vehicles, trucks, and buses with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

\* \* \* \* \*

S5.2 *Parking Brake System.* Each vehicle shall be manufactured with a parking brake system of a friction type with a solely mechanical means to retain engagement, which shall under the conditions of S6, when tested according to the procedures specified in S7, meet the requirements specified in

S5.2.1, S5.2.2, or S5.2.3 as appropriate, with the system engaged—

(a) In the case of a vehicle with a GVWR of 4,536 kilograms (10,000 pounds) or less, with a force applied to the control not to exceed 125 pounds for a foot-operated system and 90 pounds for a hand-operated system; and

(b) In the case of a vehicle with a GVWR greater than 4,536 kilograms (10,000 pounds), with a force applied to the control not to exceed 150 pounds for a foot-operated system and 125 pounds for a hand-operated system.

\* \* \* \* \*

S5.2.3 (a) The parking brake system on a multipurpose passenger vehicle, truck or bus (other than a school bus) with a GVWR of 4,536 kilograms (10,000 pounds) or less shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

(b) The parking brake system on a multipurpose passenger vehicle, truck, or bus (including a school bus) with a GVWR greater than 4,536 kilograms (10,000 pounds) shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

\* \* \* \* \*

*S7.7.1 Test procedure for requirements of S5.2.1 and S5.2.3.*

\* \* \* \* \*

*S7.7.1.3*

\* \* \* \* \*

(b) In the case of a vehicle with a GVWR greater than 4,536 kilograms (10,000 pounds) not more than 150 pounds for a foot-operated system, and not more than 125 pounds for a hand-operated system.

\* \* \* \* \*

S7.19 *Moving barrier test.* (Only for vehicles that have been tested according to S7.7.2.) Load the vehicle to GVWR, release parking brake, and place the transmission selector control to engage the parking mechanism. With a moving barrier as described in paragraph 4.3 of SAE recommended practice J972

“Moving Barrier Collision Tests,” Nov. 1966 (revised May 2000), impact the vehicle from the front at 2½ mph. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001. Copies may be inspected at the National Highway Traffic Safety Administration, Technical Information Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Keep the longitudinal axis of the barrier parallel with the longitudinal axis of the vehicle. Repeat the test, impacting the vehicle from the rear.

**Note:** The vehicle used for this test need not be the same vehicle that has been used for the braking tests.

\* \* \* \* \*

■ 3. Section 571.135 is amended by revising the section heading, and revising in S5.5.5(b) the first sentence, to read as follows:

**§ 571.135 Standard No. 135; Light vehicle brake systems.**

\* \* \* \* \*

S5.5.5(b) Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a) through S5.5.1(g).

\* \* \* \* \*

Issued: June 24, 2005.  
**Jeffrey W. Runge,**  
*Administrator.*  
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