

constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming. The extent to which the provision of closed captions is economically burdensome shall be evaluated with regard to the individual outlet.

(4) An original and two (2) copies of a petition requesting an exemption based on the economically burdensome standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

\* \* \* \* \*

(10) The Commission may deny or approve, in whole or in part, a petition for an economically burdensome exemption from the closed captioning requirements.

(11) During the pendency of an economically burdensome determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

\* \* \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2012-0112]

### Federal Motor Vehicle Safety Standards; Motorcycle Helmets

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

**ACTION:** Final rule; grant of petition for reconsideration.

**SUMMARY:** This document responds to a petition for reconsideration of a final rule issued by this agency on May 13, 2011. The final rule amended the Federal Motor Vehicle Safety Standard for motorcycle helmets. Specifically, the final rule amended the helmet labeling requirements and compliance test procedures in order to make it more difficult to misleadingly label novelty helmets and to aid the agency in enforcing the standard. This document addresses issues raised in a petition for reconsideration relating to early compliance with the amended requirements.

**DATES:** *Effective date:* The effective date of the final rule amending 49 CFR part

571 published at 76 FR 28132, May 13, 2011, is May 13, 2013.

**Compliance date:** Voluntary early compliance with the final rule amending 49 CFR part 571 published at 76 FR 28132, May 13, 2011, is permitted as of August 13, 2012 if all of the amended requirements of the final rule are met.

Petitions for reconsideration must be received by September 27, 2012.

**ADDRESSES:** Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

*For policy and technical issues:* Mr. Check Kam, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-7002.

*For legal issues:* Mr. William H. Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-2992.

#### SUPPLEMENTARY INFORMATION:

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##### I. Background

On May 13, 2011, NHTSA published a final rule amending the helmet labeling requirements and compliance test procedures of FMVSS No. 218, *Motorcycle helmets*, in order to make it more difficult to misleadingly label novelty helmets and to aid the agency in enforcing the standard.<sup>1</sup> Specifically, the final rule required a single, enhanced certification label that the agency believes will discourage the production, sale, and attachment of labels that misleadingly resemble legitimate certification labels. The final rule further required that the size label state the helmet size in discrete, numerical terms in order to facilitate compliance testing. Additionally, the final rule amended the retention and impact attenuation test procedures and adopted helmet conditioning tolerances.

Two petitions for reconsideration, each dated June 23, 2011, were received from the Motorcycle Industry Council (MIC), a not-for-profit national trade association representing manufacturers and distributors of motorcycles and motorcycle parts and accessories, as

well as members of allied trades. The first petition requested that the agency include in the preamble a statement permitting voluntary early compliance prior to the effective date of May 13, 2013. This document responds to that petition.

The second petition requested that the definition of “discrete size” in FMVSS No. 218 be amended by adding language requiring that this value reflect the actual size of the helmet. MIC also submitted a clarification of its second petition, which noted various issues regarding the measurement of “discrete size.” The agency will respond to this petition in a separate, forthcoming document.

##### II. Petition for Reconsideration and Agency's Response

MIC requested that the agency include in the preamble a statement permitting voluntary early compliance prior to the effective date of May 13, 2013, stating that such a provision is usually included in final rules with safety benefits. MIC asserted that allowing immediate voluntary compliance would serve to accelerate the goals of the rule and would provide needed flexibility to motorcycle helmet manufacturers seeking to introduce helmets complying with the amended requirements on a gradual basis, rather than having to stockpile inventory until the effective date.

*Agency Response*—NHTSA is granting MIC's petition and is including a provision in the **DATES** section of this document permitting voluntary early compliance with the amended requirements of 49 CFR 571.218 established by the May 13, 2011 final rule. We emphasize that a helmet manufactured to meet the amended requirements of FMVSS No. 218 before the effective date must meet all of the amended labeling and performance requirements.

Issued on: August 6, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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<sup>1</sup> Final Rule, Federal Motor Vehicle Safety Standards; Motorcycle Helmets, 76 FR 28132 (May 13, 2011).