

Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Cathleen Van Osten (215) 814-2746, or by email at [vanosten.cathleen@epa.gov](mailto:vanosten.cathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: November 6, 2012.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2012-28828 Filed 12-3-12; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2012-0174]

RIN 2127-AI27

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

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** NHTSA is proposing to restore the side marker lamp requirements, for vehicles that are over 80 inches wide, and also less than 30 feet in overall length, to the Federal motor vehicle safety standard (FMVSS) on lamps, reflective devices and associated equipment. These requirements were modified when the agency published a final rule reorganizing the standard on December 4, 2007.

**DATES:** Comments to this proposal must be received on or before January 3, 2013.

**ADDRESSES:** You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on "Help" or "FAQ."

- *Mail:* Docket Management Facility, M-30, U.S. Department of

Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202-366-9826.

*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.

*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://www.dot.gov/privacy.html>.

*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 technical issues:* Mr. Markus Price, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366-0098) (Fax: (202) 366-7002).

*For legal issues:* Mr. Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590 (Telephone: (202) 366-2992) (Fax: (202) 366-3820).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

NHTSA published a notice of proposed rulemaking (NPRM) on December 30, 2005<sup>1</sup> to reorganize FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment*, and improve the clarity of the standard's

requirements thereby increasing its utility for regulated parties. It was the agency's goal during the rewrite process to make no substantive changes to the requirements of the standard.

Based on the comments received in response to the NPRM, NHTSA published a final rule on December 4, 2007,<sup>2</sup> amending FMVSS No. 108 by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements; incorporating important agency interpretations of the existing requirements; and reducing reliance on third-party documents incorporated by reference. The preamble of the final rule again stated that the rewrite of FMVSS No. 108 was administrative in nature and would have no impact on the substantive requirements of the standard.

##### *A. 2005 Administrative Rewrite NPRM*

On December 30, 2005, NHTSA published a NPRM to amend FMVSS No. 108 by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements.<sup>3</sup> NHTSA explained in the 2005 NPRM that reorganizing the regulatory text and importing requirements from applicable SAE International standards incorporated by reference into the regulatory text would assist various stakeholders in easily finding and comprehending the requirements contained in the standard. The agency also explained that this rewrite was administrative in nature and that the proposed requirements were not being increased, decreased, or substantively modified. The proposed text for the photometric requirements for side marker lamps, read as follows:

S7.4.1.1 Inboard photometry. For each motor vehicle less than 30 feet in overall length and less than 2032 mm. in overall width, the minimum photometric intensity requirements for a side marker lamp may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.

The Agency provided an analysis within Appendix B of the NPRM showing that this requirement was derived from both the regulatory text of FMVSS No. 108 S5.1.1.3 and SAE J592e, Jul 1972, Table I, Footnote b.<sup>4</sup>

<sup>2</sup> 72 FR 68234, (Dec. 4, 2007).

<sup>3</sup> 70 FR 77454, (Dec. 30, 2005).

<sup>4</sup> 70 FR at 77582, (Dec. 30, 2005).

<sup>1</sup> 70 FR 77454, (Dec. 30, 2005).

### B. 2007 Administrative Rewrite Final Rule

On December 4, 2007 NHTSA adopted a final rule that amended FMVSS No. 108 based on the 2005 NPRM with modifications that furthered the objectives of the rewrite to make the requirements easier to find and understand. In the final rule NHTSA reiterated that the rewrite of the standard was administrative in nature and the requirements and obligations were not being increased, decreased, or substantively modified.

In the preamble to the final rule, the agency explained that the inboard photometry requirements for side marker lamps (contained in paragraph S7.4.13.2) were based on paragraph S5.1.1.8 of the standard prior to the rewrite which applied to vehicles less than 30 feet in overall length.<sup>5</sup> Additionally, the agency explained that Table 1 of SAE J592e, detailing the photometric requirements of side marker lamps, also contains a footnote 'b' further limiting the vehicles to which reduced photometric requirements could be applied. Footnote 'b' applies to vehicles that are less than 80 inches (2 meters) wide. The agency concluded that this was an example in which the text of an incorporated SAE document applied limitation beyond those contained in the text of FMVSS No. 108. Based on this conclusion, the agency made no revisions to the proposed text for the inboard photometric requirements for side marker lamps.

### C. 1980 Side Marker Final Rule

The agency did not cite within its analysis in the 2007 final rule the 1980 final rule that originally created the regulatory text as it applies to the inboard photometric requirements, with respect to vehicle size.<sup>6</sup> The 1980 final rule was in response to a petition from Chrysler Corporation which wanted to use a common side marker design for its single-wheeled (less than 80 inches wide) and its dual-wheeled (greater than 80 inches wide) pickup trucks. Prior to the 1980 final rule, FMVSS No. 108 required that photometric requirements for side marker lamps be met at test points 45 degrees outboard and inboard of the lateral center line passing through the lamps. However if a vehicle was less than 80 inches in overall width, paragraph S4.1.1.8 allowed photometric measurements of side marker lamps to be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle

and located midway between the front and rear side marker lamps.

The 1980 final rule explained that a reduced photometric angle allowance is more appropriate for vehicles that are short (less than 30 feet) rather than for those that are narrow (less than 80 inches wide), noting that vehicles that are 30 feet or longer are required to have an intermediate side marker lamp located between the front and rear side makers. The 1980 final rule revised FMVSS No. 108 by deleting the words 80 inches in overall width and substituting 30 feet in overall length.

### II. The Agency's Proposal

In July, separately, General Motors Company (GM) and Ford Motor Company, (Ford) met with NHTSA and stated their concern that the 1980 final rule may not have been properly considered in the 2007 rewrite of FMVSS No. 108. Both manufacturers further stated that their current dual-wheeled pickup truck side marker designs would require an extensive redesign in order to meet the requirements of the 2007 final rule when it becomes effective on December 1, 2012.<sup>7</sup> Finally, the agency received a petition for rulemaking from the Alliance of Automotive Manufacturers requesting the restoration of side marker requirements to match those in existence prior to the 2007 rewrite.

Based on a review of the 1980 final rule, NHTSA recognizes that paragraph S5.1.1.8 of the standard prior to the 2007 rewrite was intended to replace the SAE J592e, Table 1, footnote b, and not to supplement it. We are proposing to restore the photometric requirements for side marker lamps on vehicles less than 30 feet in length so that the requirements may be met for all inboard test points at a distance of 15 feet from the vehicle on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps, regardless of the width of the vehicle. We seek comment on our current analysis and the impacts that such a modification to the 2007 rule will have on manufacturers.

NHTSA believes that a common single-wheeled and dual-wheeled pickup truck side marker design expressed in Chrysler Corporation's original petition that led to the 1980 final rule still exists and is currently being utilized. Therefore, NHTSA will not pursue compliance actions against manufacturers that install side marker lamps on vehicles that are greater than 80 inches wide and shorter than 30 feet

that fail to meet the 45 degree inboard photometric requirements of the 2007 final rule, provided that they meet the photometric requirements at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps until this rulemaking is either terminated or adopted as a final rule. NHTSA will consider a manufacturer's certification to FMVSS No. 108 complete if the vehicle that is being certified meets the requirements for side marker lamps that were in place prior to the 2007 final rule.

### III. Costs, Benefits, and the Proposed Compliance Date

Because this proposal only restores an existing requirement to the standard, the agency does not anticipate that there would be any costs associated with this rulemaking action. The agency expects some minor unquantifiable benefits to manufacturers due to their ability to continue to use side marker lamps of the same design on both narrow and wide vehicles under 30 feet in length. Accordingly, the agency did not conduct a separate economic analysis for this rulemaking.

The National Highway and Motor Vehicle Safety Act states that an FMVSS issued by NHTSA cannot become effective before 180 days after the standard is issued unless the agency makes a good cause finding that a different effective date is in the public interest. The agency has tentatively concluded that it is in the public interest for this proposed rule to become effective as soon as possible after the final rule is issued, should the agency decide to issue a rule, because such an effective date would allow regulated parties to avoid unnecessarily modifying the design of their side marker lamps. The agency proposes an effective date of 30 days after the date of issuance of the final rule should one be issued.

### IV. 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.<sup>8</sup> We established this limit to encourage you to write your primary comments in a

<sup>5</sup> 72 FR 68243, (Dec. 4, 2007).

<sup>6</sup> 45 FR 45287, (July 3, 1980).

<sup>7</sup> 74 FR 58213, (Nov. 12, 2009).

<sup>8</sup> See 49 CFR 553.21.

concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal*: go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”

- *Mail*: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery or Courier*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- *Fax*: (202) 493-2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.<sup>9</sup>

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 Office of Management and Budget (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://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

*How can I be sure that my comments were received?*

If you submit your comments by mail and 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**. 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.<sup>10</sup>

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

*Will the agency consider late comments?*

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received 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 materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

## V. Regulatory Notices and Analyses

### A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, “Regulatory Planning and Review.” It is not considered to be significant under E.O.

12866 or the Department’s regulatory policies and procedures.

### B. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA requests public comment on whether (a) “regulatory approaches taken by foreign governments” concerning the subject matter of this rulemaking exist and (b) the above policy statement has any implications for this rulemaking.

### C. National Environmental Policy Act

We have reviewed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

### D. 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 the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of the proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a

<sup>9</sup> Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

<sup>10</sup> See 49 CFR 512.

significant economic impact on a substantial number of small entities. This proposal amends the photometry requirements for side marker lamps on vehicles less than 30 feet in overall length that were changed during the administrative rewrite of the standard. This proposal would not significantly affect any entities because it would restore the requirements for side marker lamps that are currently contained in the standard. Accordingly, we do not anticipate that this proposal would have a significant economic impact on a substantial number of small entities.

#### *E. Executive Order 13132 (Federalism)*

NHTSA has examined today's final 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 rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would 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."

NHTSA rules can preempt in 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 by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." (49 U.S.C. 30103(e)). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the

possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this proposed rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this proposed rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard proposed here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### *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; Feb. 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) specifies whether administrative proceedings are to be required before parties file suit in court; (6) 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 issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

#### *F. Executive Order 12988 (Civil Justice Reform)*

Pursuant to Executive Order 12988, "Civil Justice Reform,"<sup>11</sup> NHTSA has considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

#### *G. 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 a proposed or final rule that includes 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 proposed rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in

<sup>11</sup> 61 FR 4729, (Feb. 7, 1996).

excess of \$100 million annually. The cost impact of this proposed rule is expected to be \$0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

#### H. Paperwork Reduction Act

Under the procedures established by 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. This proposed rule does not contain any collection of information requirements requiring review under the PRA.

#### I. Executive Order 13045

Executive Order 13045<sup>12</sup> applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. This proposed rule does not pose such a risk for children.

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

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American

National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This proposal would not adopt or reference any new industry or consensus standards that were not already present in FMVSS No. 108.

#### K. Executive Order 13211

Executive Order 13211<sup>13</sup> applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, 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. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This proposal amends the photometry requirements for side marker lamps on vehicles less than 30 feet in overall length that were changed during the administrative rewrite of the standard. Therefore, this proposed rule will not have any adverse energy effects. Accordingly, this proposed rulemaking action is not designated as a significant energy action.

#### L. 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.

#### M. 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 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.

#### N. 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 organization, 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.dot.gov/privacy.html>

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

Motor vehicle safety, Reporting and recordkeeping requirements.

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 is revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

2. Section 571.108 is amended by revising paragraph S7.4.13.2 to read as follows:

#### § 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

\* \* \* \* \*

S7.4.13.2 Inboard photometry. For each motor vehicle less than 30 feet in overall length, the minimum photometric intensity requirements for a side marker lamp may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.

\* \* \* \* \*

Issued on: November 28, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2012–29245 Filed 11–29–12; 4:15 pm]

**BILLING CODE 4910–59–P**

<sup>12</sup> 62 FR 19885 (Apr. 23, 1997).

<sup>13</sup> 66 FR 28355 (May 18, 2001).