

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, cost ceiling amounts on restructuring projects and, when necessary, a cost amortization schedule. Cost ceilings may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205-70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205-70(e).

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

SUBPART 242.12—NOVATION AND CHANGE-OF-NAME AGREEMENTS

3. Sections 242.1202 and 242.1204 are added to read as follows:

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall ensure agreements are executed promptly.

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 231.205-70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

“(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or

Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under part 31 of the Federal Acquisition Regulation (FAR) or part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) and/or the National Aeronautics and Space Administration (NASA), and the requirements included in DFARS 231.205-70 are met. These costs and the contracting parties' responsibilities shall be addressed in a Memorandum of Understanding to be negotiated between the cognizant contracting officer and the Transferee. The Memorandum of Understanding will specify the types and treatment of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD and/or NASA. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth cost ceiling amounts on restructuring projects and the period to which such costs shall be assigned.”

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket 93-40; Notice 3]

RIN 2127-AE88

Temporary Exemption From Motor Vehicle Safety Standards

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

ACTION: Technical correction; final rule.

SUMMARY: This notice corrects a grammatical error in the language of the certification label required for a vehicle temporarily exempted from compliance with the Federal motor vehicle safety standards.

DATES: The effective date of the final rule is February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On October 29, 1993, NHTSA amended 49 CFR 555.9(c)(1), the certification requirements for motor vehicles that have been temporarily exempted from

compliance with one or more of the Federal motor vehicle safety standards, to conform it to the requirements of 49 CFR 567.4(g)(5) for nonexempted vehicles by including a reference to the Theft Prevention Standard (58 FR 58103).

As amended, the manufacturer of an exempted vehicle, under paragraph 555.9(c)(1), shall:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) Instead of the statement required by Sec. 567.4(g)(5) of this chapter, the following statement shall appear:

“THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY AND THEFT PREVENTION STANDARDS (and, if a passenger car), BUMPER STANDARD IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. (listing the standards by number and title for which an exemption has been granted) EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.”

Michael Grossman, representing Automobili Lamborghini, telephoned NHTSA to comment that this wording would require an exempted manufacturer of a passenger car to certify in part to “* * * THEFT PREVENTION STANDARDS, BUMPER STANDARD. * * *” He recommended that NHTSA correct this grammatical error by incorporating the language of the general certification requirement at Sec. 567.4(g)(5) with the exception now in effect under which the exempted standards are listed. NHTSA concurs with this comment, and is amending paragraph 555.9(c)(1) in an appropriate manner. A manufacturer of an exempted vehicle shall now:

(c) Meet all applicable requirements of Part 567 of this chapter, except that—

(1) The statement required by paragraph 567.4(g)(5) of this chapter shall end with the phrase “except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.”

This amendment also addresses a recent observation by Chrysler Corporation that vehicles other than passenger cars, such as its electric vans which are covered by a Temporary Exemption, are not yet subject to 49 CFR Part 541 *Federal Motor Vehicle Theft Prevention Standard*, and its recommendation that the parenthetical reference to passenger cars should precede and not follow the reference to the theft prevention standard in paragraph 555.9.

Although the wording of the two labels varies slightly, the variation is not substantive. The agency therefore has no objection if exempted manufacturers wish to exhaust their present supply of labels with the old wording.

The notice also revises the authority citation for Part 555 to reflect the recodification in Title 49 of the United States Code of the statutory provisions previously in Title 15.

Effective Date

Because the amendment is technical in nature and has no substantive impact, it is hereby found that notice and comment thereon are unnecessary. Further, because the amendment is technical in nature and has no substantive impact, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendment is effective February 6, 1995. As the amendment makes no substantive change, it does not affect any of the impacts previously considered in the promulgation of part 555.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This rulemaking action has not been considered under Executive Order 12866. However, it has been determined to be not significant under the Department of Transportation's regulatory policies and procedures. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. Manufacturers subject to the final rule are not affected by the technical correction.

Regulatory Flexibility Act. The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Although manufacturers who receive temporary exemptions are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that there will be no cost to conform to the final rule. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new exempted motor vehicles will not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism). This rulemaking action has been analyzed in accordance with the principles and criteria contained in

Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment. Manufacturers subject to this regulation must already provide a certification label for their vehicles. The rule will not have an effect upon fuel consumption.

Civil Justice. This rule does 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. Section 30161 of Title 49 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.

List of Subjects in 49 CFR Part 555

Imports, Motor vehicle safety, Motor vehicles.

PART 555—TEMPORARY EXEMPTIONS FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 555 is amended as follows:

1. The authority citation for part 555 is revised to read as follows:

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

2. Section 555.9 is amended by revising paragraph (c)(1) to read as follows:

§ 555.9 Temporary exemption labels.

* * * * *

(c) * * *

(1) The statement required by § 567.4(g)(5) of this chapter shall end with the phrase "except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____."

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Issued on December 28, 1994.

Ricardo Martinez,
Administrator.

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49 CFR Part 571

[Docket No. 80-9; Notice 10]

RIN 2127-AE86

Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule.

SUMMARY: This notice amends the trailer conspicuity requirements of Motor Vehicle Safety Standard No. 108 to provide clarifications of the existing rule with respect to tank trailers and to the width of retroreflective conspicuity sheeting.

DATES: The final rule is effective February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Vehicle Safety Standards, NHTSA (202-366-6346).

SUPPLEMENTARY INFORMATION: Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* was amended on December 10, 1992, to add S5.7 *Conspicuity Systems*, and associated Figure 30, requirements establishing a visibility enhancement scheme for large trailers (57 FR 58406). In response to petitions for reconsideration, S5.7 was amended on October 6, 1993 (58 FR 52021).

The requirements, which became effective December 1, 1993, have been the subject of a number of questions which the agency has answered through interpretation letters. After due consideration, NHTSA has decided that incorporating these interpretations into the standard by making minor changes in the regulatory text and Figure 30 would better serve the needs of trailer manufacturers and users. These changes are not intended to create additional burdens on any person, and should not be interpreted as requiring a change in practice by any manufacturer who has been certifying conformance to S5.7 and Figure 30 of Standard No. 108 on the basis of Standard No. 108 as it existed before the effective date of these amendments.

Upper Rear Treatment of Tank Trailers

The notice proposing conspicuity treatment for trailers (December 4, 1991, 56 FR 63474) contained an alternative that dealt specifically with trailers such as tank trailers whose rear configuration was other than rectangular. On such trailers, under proposed S5.7.1.4.1(d), the conspicuity treatment would "be applied to follow the contours of the rear in the uppermost and outermost areas of the rear of the trailer body on