explanation provided in the remarks section of the form. A new test shall then be conducted, using an EBT for both the screening and confirmation tests.

(8) If the procedures of paragraph (d)(3)–(d)(5) of this section are followed successfully, but the device is not activated, the STT shall discard the device and swab and conduct a new test, in the same manner as provided in paragraph (d)(7) of this section. In this case, the STT shall place the swab into the employee's mouth to collect saliva for the new test.

(9) The STT shall read the result displayed on the device two minutes after inserting the swab into the device. The STT shall show the device and its reading to the employee and enter the result on the form.

(10) Devices, swabs, gloves and other materials used in saliva testing shall not be reused, and shall be disposed of in a sanitary manner following their use, consistent with applicable requirements.

(e) In the case of any screening test performed under this section, the STT, after determining the alcohol concentration result, shall follow the applicable provisions of § 40.63 (e)(1)–(2), (f), (g), and (h). The STT shall also enter, in the ''Remarks'' section of the form, a notation that the screening test was performed using a non-evidential breath testing device or a saliva device, as applicable. Following completion of the screening test, the STT shall date the form and sign the certification in Step 3 of the form.

§ 40.103 Refusals to test and uncompleted tests.

(a) Refusal by an employee to complete and sign the alcohol testing form required by § 40.99 (Step 2), to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise to cooperate in a way that prevents the completion of the testing process, shall be noted by the STT in the remarks section of the form. This constitutes a refusal to test. The testing process shall be terminated and the STT shall immediately notify the employer.

(b) If the screening test cannot be completed, for reasons other than a refusal by the employee, or if an event occurs that would invalidate the test, the STT shall, if practicable, immediately begin a new screening test, using a new testing form and, in the case of a test using a saliva screening device, a new device.

§ 40.105 Inability to provide an adequate amount of breath or saliva.

(a) If an employee is unable to provide sufficient breath to complete a test on a non-evidential breath testing device, the procedures of § 40.69 apply.

(b) If an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device), the STT, as provided in § 40.101 of this Part, shall conduct a new test using a new device. If the employee refuses to complete the new test, the STT shall terminate testing and immediately inform the employer. This constitutes a refusal to test.

(c) If the new test is completed, but there is an insufficient amount of saliva to activate the device, STT shall immediately inform the employer, which shall immediately cause an alcohol test to be administered to the employee using an EBT.

§ 40.107 Invalid tests.

An alcohol test using a non-evidential screening device shall be invalid under the following circumstances:

(a) With respect to a test conducted on a saliva device—

(1) The result is read before two minutes or after 15 minutes from the time the swab is inserted into the device;

(2) The device does not activate;

(3) The device is used for a test after the expiration date printed on its package; or

(4) The STT fails to note in the remarks section of the form that the screening test was conducted using a saliva device;

(b) With respect to a test conducted on any non-evidential alcohol testing device, the STT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording on the form of the test result.

§ 40.109 Availability and disclosure of alcohol testing information about individual employees.

The provisions of § 40.81 apply to records of non-evidential alcohol screening tests.

§ 40.111 Maintenance and disclosure of records concerning non-evidential testing devices and STTs.

Records concerning STTs and non-evidential testing devices shall be maintained and disclosed following the same requirements applicable to BATs and EBTs under § 40.81 of this Part.

[FR Doc. 95–9552 Filed 4–19–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–104; Notice 2]

RIN 2127–AF45

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

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

ACTION: Final rule.

SUMMARY: This notice amends the Federal motor vehicle safety standard on lighting to allow the photometric conformance of rear center highmounted stop lamps to be determined by a grouping of test points. This action is consistent with the agency's requirements for other lamps and will lessen the testing burden for manufacturers.

DATES: The effective date of the final rule is May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202–366–5280).

SUPPLEMENTARY INFORMATION: Dennis Moore of Livermore, California, petitioned for rulemaking to amend Standard No. 108 to allow ''a 'Zonal' approach * * * for Compliance Photometric Testing of 3rd Brake Lights which has already been adopted for Tail Lights, Regular Brake Lights and Turn Signals.'' Under S5.1.1.6 of Standard No. 108, taillamps and parking lamps need not meet the minimum photometric values specified for each of the test points of the relevant SAE Standards incorporated by reference, provided that the sum of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c. In addition, the more recent SAE Standards for stop lamps and turn signal lamps that have been incorporated into Standard No. 108 no longer specify values for individual test points (though including them as photometric design guidelines). Instead, they specify required values for ''zones'' only.

In contrast, the applicable photometric values for center highmounted stop lamps (CHMSLs) are those of Figure 10 of Standard No. 108 and are for individual test points. Moore viewed this as an anomaly. He believes that laboratory test results vary so greatly that CHMSLs must be overdesigned to ensure compliance at each test point. As a result, they draw more power and have a shorter life expectancy. He argued that because

CHMSL bulbs burn out faster ''and are generally located in an area that is inconvenient'', they are not replaced.

NHTSA granted Mr. Moore's petition and published a notice of proposed rulemaking on November 25, 1994 (59 FR 60596). The notice proposed a revised Figure 10 which would establish zonal photometrics that are the sums of the minimum current photometric test point values. Comments on the proposal were submitted by Truck-Lite, Stanley Electric Co. Ltd., Ford Motor Co., General Motors, Chrysler Corporation, Mercedes-Benz of North America, Volkswagen of America, and American Automobile Manufacturers Association. Comments were received after the due date from Koito Mfg., Transportation Safety Equipment Institute (TSEI), and Advocates for Highway and Auto Safety (Advocates).

All commenters except Advocates supported the proposal, many noting that it was reasonable and consistent with the needs for motor vehicle safety. They concurred with NHTSA's conclusion that the change would reduce design and testing burdens.

Truck-Lite and TSEI recommended that NHTSA also reference SAE J1957 JUN93, a standard specifically written for CHMSLs required by Standard No. 108. In its opinion, the only major difference is that the SAE specifies a maximum intensity of 130 cd while Standard No. 108 allows 160 cd. The lower maximum is that established by Canada. An amendment would permit homologation with the requirements of that country.

NHTSA has decided not to adopt J1957 as the referenced standard on CHMSLs. An amendment is not necessary to permit a lamp to be designed and sold in both the Canadian and U.S. markets. This is, in fact, being done, according to Truck-Lite, simply by designing to the lower maximum level of 130 cd. SAE J1957 does not address light truck CHMSLs, which are required by NHTSA. Finally, much of the sections on ''Installation Requirements'' and ''Guidelines'' differ from the requirements of Standard No. 108 and, in some instances, are likely to increase the burden upon vehicle manufacturers. These manufacturers have not been given notice and an opportunity to comment upon a possible adoption of SAE J1957. If a manufacturer wishes to submit a formal petition for rulemaking to substitute SAE J1957, NHTSA will consider the matter further.

Advocates argued that NHTSA should not make the proposed change because the agency had not verified that zonal compliance rather than test point compliance would not derogate from safety. Relying on the petitioner's claim that CHMSL's are overdesigned, Advocates believes that the production performance level establish the safety norm which CHMSLs should meet.

The Federal motor vehicle safety standards set minimum performance levels requisite for safety. Lamp manufacturers generally design somewhat above the minimum photometric levels to ensure that all production units comply, rather than designing at the minimum where the vagaries of production could result in some production lamps being below the minimum. It may be this design philosophy to which the petitioner refers. But production lamps manifesting a design above the minimum is true for other lamps as well, including those for which zonal compliance is already permitted. The agency has concluded that Advocates' point is not well made.

Effective Date

The effective date of the final rule is May 22, 1995. Since the final rule is, in essence, permissive and relaxes a regulatory burden, it is hereby found for good cause shown that an effective date for the amendment to Standard No. 108 that is earlier than 180 days after its issuance is in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to simplify compliance with Standard No. 108. Since the rule does not have any significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and stop lamps, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new vehicles and stop lamps will not be affected.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule will have a significant effect upon the environment. The design and composition of center highmounted stoplamps will not change from those presently in production.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

The 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. Section 30163 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 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended 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. 30111, 30115, 30162; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by revising Figure 10 as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

FIGURE 10.—PHOTOMETRIC REQUIREMENTS FOR CENTER HIGH-MOUNTED STOP LAMPS

Individual test points	Minimum intensity (candela)	Zones (test points within zones, see note 2)	Minimum total for zone (canadela)
10U–10L	8	Zone I (5U–V, H–5L, H–V, H–5R, 5D–V)	125
–V	16		
–10R	8		
5U–10L	16	Zone II (5U–5R, 5U–10R, H–10R, 5D–10R, 5D–5R)	98
–5L	25		
–V	25		
–5R	25		
–10R	16		
5D–10L	16	Zone III (5U–5L, 5U–10L, H–10L, 5D–10L, 5D–5L)	98
–5L	25		
–V	25		
–5R	25		
–10R	16		
H–10L	16	Zone IV (10U–10L, 10U–V, 10U–10R)	32
–5L	25		
–V	25		
–5R	25		
–10R	16		
See Note 1	[1] 160		

Note 1: The listed maximum shall not occur over any area larger than that generated by a ¼ degree radius within an solid cone angle within the rectangle bounded by test points 10U–10L, 10U–10R, 5D–10L, and 5D–10R.
Note 2: The measured values at each test point shall not be less than 60% of the value listed.
[1] Maximum intensity (Candela).

Issued on: April 14, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–9839 Filed 4–19–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 950203035–5091–02; I.D. 120594C]

RIN 0648–AH44

Snapper-Grouper Fishery Off the Southern Atlantic States; Hogfish, Cubera Snapper, Gray Triggerfish Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS establishes a daily recreational bag limit of five hogfish per person; limits the harvest and possession of cubera snapper measuring 30 inches (76.2 cm) in total length, or larger, to 2 per day; and establishes a minimum size limit for gray triggerfish of 12 inches (30.5 cm), total length. These measures apply only in the exclusive economic zone (EEZ) off the Atlantic coast of Florida. The intended effects of this rule are to rebuild the snapper-grouper resources and enhance enforcement.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species in the Atlantic Ocean off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act.

In accordance with the framework procedure of the FMP, the Council recommended and NMFS published a proposed rule to change the management measures applicable to certain snapper-grouper species in the EEZ off the Atlantic coast of Florida (60 FR 8620, February 15, 1995). That proposed rule specified the recommended changes and described the need and rationale for the recommended changes. Those descriptions are not repeated here.

No comments were received on the proposed rule. Accordingly, the proposed rule is adopted as final with one change. As a technical change, the title ''Secretary'' is revised to read ''Assistant Administrator'' where it appears in the snapper-grouper regulations. ''Secretary'' and ''Assistant Administrator'' are defined at 50 CFR 620.2 to mean ''the Secretary of Commerce, or a designee'' and ''the Assistant Administrator for Fisheries, NOAA, or a designee,'' respectively. This change more clearly specifies the responsible official.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The reasons were summarized in the preamble to the proposed rule (60 FR 8620, February 15, 1995). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 646 is amended as follows: