

Weaverville is located within the prohibited co-channel minimum distance separation of 280.8 kilometers (174.5 miles) to the Sacramento-Stockton television market, one of the designated television markets affected by the Commission's current freeze on allotments and applications pending the outcome of an inquiry into the use of advanced television systems in broadcasting. (See *Order, Advanced Television Systems and Their Impact on Existing Television Broadcasting Service*, 52 Fed. Reg. 28346, July 29, 1987). However, Channel 32 is allotted to Weaverville in compliance with the terms of the freeze *Order* at a restricted site. Interested parties should note that any application submitted for Channel 32 at Weaverville which does not specify a site beyond the "freeze zone" governing the allotment will not be accepted for filing.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under California, is amended by adding Weaverville, Channel 32.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 94-37; Notice 2]

RIN 2127-AF 22

#### 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 adopts amendments to the Federal Motor

Vehicle Safety Standard on lighting to replace the currently incorporated SAE J576c with the more recent SAE J576 JUL91 as the referenced standard on plastics materials, to replace ASTM D 1003-61 with the more recent ASTM D 1003-92 in the test procedures, and to allow alternative processing techniques, sample sizes and thickness tolerances to those presently specified. These amendments represent the choice of Option 1 from the notice of proposed rulemaking published in November 1994.

**DATES:** The effective date of the final rule is March 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kenneth O. Hardie, Office of Rulemaking, NHTSA (202-366-6987).

**SUPPLEMENTARY INFORMATION:** Heraeus DSET Laboratories, Inc. ("DSET"), of Phoenix, Arizona, petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Specifically, DSET asked that paragraph S5.1.2 be amended "to update the test specimen processing requirements of plastic material used for optical parts such as lenses and reflectors." Currently, these materials are required to conform to Society of Automotive Engineers (SAE) Recommended Practice J576c, May 1970. DSET wants NHTSA

to allow alternative processing techniques besides injection molding to produce test specimens, to allow test specimen sizes other than a 3 inch diameter disc and to change the specimen thickness tolerances from  $\pm 0.005$  inch to  $\pm 0.010$  inch.

Those requirements for injection molding and for the diameter and thickness of the test specimen are set forth in J576c, May 1970.

NHTSA granted the petition and published a notice of proposed rulemaking in response to it on November 2, 1994 (59 FR 54881). The notice proposed two alternative amendments of S5.1.2 as a means of implementing its grant of DSET's petition. The agency asked commenters for their views on each of the alternatives.

*Option 1.* This option would substitute SAE J576 JUL91 for SAE J576c, May 1970, and make conforming amendments in the text of S5.1.2. Option 1 would also replace American Society for Testing and Materials (ASTM) D 1003-61 with ASTM D 1003-92 with respect to measurement of haze (which, as currently specified, would not exceed 7 percent). A specimen thickness tolerance of  $\pm 0.25$  mm (0.010 in.) would also be allowed as there is no technical reason to limit the test

specimen thickness tolerance to  $\pm 0.005$  in., and the value proposed by NHTSA as recommended by DSET appears to be a more reasonable tolerance for test specimens.

*Option 2.* This option would retain the current SAE and ASTM specifications but would allow processing techniques other than injection molding to produce equivalent test specimens, test specimens other than a disc of 3-inch diameter, and a test specimen thickness tolerance of  $\pm 0.010$  inch.

Seven comments were received, five of which supported Option 1. These were from Flxible Corporation ("Flxible"), Transportation Safety Equipment Institute ("TSEI"), Robert Bosch, GmbH ("Bosch"), American Automobile Manufacturers Association ("AAMA"), and Ford Motor Company ("Ford"). Miles, Inc. opposed Option 1 and supported Option 2. The Plastics Division of General Electric Corporation ("GE") did not express a preference for either alternative.

Each of the commenters supporting Option 1 had a different concern. Flxible suggested that NHTSA adopt the base number of each SAE and ASTM standard/recommended practice, with the suffix notation "Latest Revision." In the company's view, this would eliminate the need to revise older materials and ensure that the safety standards reflect contemporary industry practice.

While this is an attractive notion, there are legal constraints against it. The SAE and ASTM materials per se are only guidelines and advisory in nature. Once they are incorporated into the Federal motor vehicle safety standards, they become "the law of the land", and a manufacturer must comply with them or face civil sanctions. Under the Administrative Procedure Act, a regulation imposing a substantive burden cannot be adopted in the absence of adequate public notice and an opportunity to comment. Under the approach suggested by Flxible, automatic updating of the safety standards to incorporate the latest SAE and ASTM revisions would occur with no prior public notice or opportunity to comment, and hence violate the Administrative Procedure Act. Further, NHTSA has found that many updated and revised materials change the previous materials in substantive ways. Some changes may not be in the interests of safety; the elimination of the heat test from SAE J576 JUL91 is one example of this. Other changes may increase, rather than reduce, a substantive burden upon industry. Regulated persons and the public must

be apprised of these changes before they are adopted.

NHTSA may, however, adopt an updated version without prior notice where there appears to be no substantive change since such an adoption is in the nature of a technical amendment. The agency is adopting an updated version in this final rule on the basis of a comment from TSEI. Under proposed paragraph S5.1.2(e), after exposure to the heat test, the samples shall conform to the color requirements of SAE J578a October 1966. TSEI pointed out that current paragraph S5.1.5 references SAE J578c February 1977. It recommended that NHTSA change both references to the specification of J578 MAY88.

NHTSA has compared the 1988 and 1977 versions of J578 with that of 1966. It finds no substantive difference between the 1966 and 1977 versions. The 1988 version, however, contains a third method of color measurement to be used "as a referee approach when the commonly used methods produce questionable results." In addition, the Appendix in the latter has added a section of "Color Measurements of Gaseous Discharge Lighting Devices." NHTSA ought to have comment on these changes before adopting SAE J578 MAY88, and, for this reason, has not followed TSEI's suggestion. On the other hand, because of the lack of substantive change between the other two versions, paragraph S5.1.2(e) is added with an update of the J578 reference to 1977 from the 1966 version which was proposed.

The wording of present paragraph S5.2.1 concerned Ford and AAMA. Under this paragraph, phrases such as "It is recommended that" and "should be," which appear in materials incorporated by reference, are to be read as setting forth mandatory requirements. Ford and AAMA commented that these phrases should not be interpreted as applying to SAE J576 JUL91. In NHTSA's view, the result of adopting Ford's and AAMA's comments would be to make compliance of plastic materials used for optical parts a voluntary affair. This would defeat the purpose of the rulemaking.

Proposed paragraph S5.1.2(e) would require test samples, after the heat test, to "show no discernable change in shape and general appearance when compared with an unexposed specimen." This language comes from J576 itself, with the exception that the SAE uses "significant" rather than "discernable." Ford and AAMA objected to this substitution, arguing that it would establish a higher standard to be met by plastics, and that there is

no need to change language that has been a requirement for years. They recommended use of the word "significant." In their view, a change that is "discernable" is not necessarily one that is "significant."

In its proposal, NHTSA had no intention of increasing the burden on any regulated party. The agency proposed the word "discernable" with care, because it is objective, while "significant" is not. Motor vehicle safety standards are required by law to be "objective", 49 U.S.C. 30111(a). The agency has concluded that "discernable" is more appropriate for a requirement specifically expressed in the text of Standard No. 108 (as compared with one incorporated by reference). However, NHTSA wishes to make clear that it views the words as essentially synonymous in this context. If a post-test change in shape or general appearance is discernable, NHTSA considers that to be significant. Such a change indicates the potential for degradation of a lens in use, with a corresponding effect upon color and photometrics of the lamp on which it is installed. To add even greater objectivity, the final rule expresses the requirement as "discernable to the naked eye." Should a change be discernable to the naked eye after testing, and a manufacturer believe that such a change is not "significant," the manufacturer may file a Part 573 Noncompliance Notification Report simultaneously with an application to NHTSA for a determination that the change resulting from that testing is inconsequential to motor vehicle safety.

GE did not choose between the alternatives in its comment. It did, however, recommend the adoption of SAE J576 JUL91 in its entirety, and that NHTSA not carry over the heat test from the previous version of J576. In its view, the heat tests of SAE J575 are adequate until further work is done on thermal issues suitable for incorporation into J576.

Having considered the comments in response to the NPRM, NHTSA is amending Standard No. 108 to add the two new paragraphs proposed, maintaining the performance requirements required of plastic materials by SAE J576c for the heat test and specifying positioning of test samples during the test. These have been omitted by the SAE from J576 JUL91. NHTSA has chosen to retain the existing heat test as one that is familiar to industry and one which meets the need for motor vehicle safety. It is a minimum requirement, intended to establish a margin of safety between the temperatures at which plastic reflectors

and lenses may fail from internal heat, and temperatures on the exterior surface induced by exposure to sunlight. Lamp manufacturers use J575 or similar tests to determine whether the particular design characteristics of their lamps require use of premium materials in the lenses. It is a test of the finished lens as installed on the lamp, rather than a test of the materials used in finished products. Use of material with insufficient high temperature performance can result in reflectors that lose color and reflectivity.

The positioning of test samples will allow the sample to droop if its strength is adversely affected by the test.

In order to retain the current 3-year outdoor exposure time test requirements for plastic lenses used or covered by another material and not exposed directly to sunlight, NHTSA is adding a new paragraph S5.1.2(g) to specify that paragraph 3.3.3.1 of SAE J576 JUL91 does not apply as regards protected materials. For the same reason, NHTSA is not adopting paragraph 3.3.3.2. of SAE J576 JUL91 which allows an accelerated 6-month outdoor exposure test time. New paragraph S5.1.2(g) will not change the stringency or flexibility of the standard as it exists, but will ensure that the integrity of plastic materials is maintained by not permitting a lesser exposure time for materials which may be protected when in use.

Miles, Inc., a manufacturer of polycarbonate resin used as a material in lenses and reflectors, objected to Option 1. In its view, this alternative places an additional testing burden on the resin manufacturer, as compared with the present requirements. For this reason, it supported Option 2. Specifically, Miles opposes SAE J576 JUL91 because of Section 3.1 *Materials to be Tested*. This section reads:

Outdoor exposure tests shall be made on each material \* \* \* offered for use in optical parts \* \* \*. Concentrations of polymer components and additives such as plasticizer, lubricants, colorants, weathering stabilizers, and antioxidants in plastic materials and/or coatings may be changed without outdoor exposure testing if: the changes are within the limits of composition represented by higher and lower concentrations of these polymer components and additives have been tested in accordance with 3.3 and found to meet the requirements of Section 4.

Miles interprets this language to mean that changes in dye concentrations would only be permissible if samples containing lower and higher concentrations of dye had been exposure tested. Miles believes that this, in effect, would double the samples to

be tested when compared with the present requirements.

The present requirements are those of section 3.1 of SAE J576c, May 1970. These state, in pertinent part, that "[a] test of one color and formulation shall cover variations in dye concentration, but shall not cover changes in dye materials or changes in polymers." Miles interprets this as meaning that a new exposure test need not be conducted under the 1970 version if the only change in the product is a variation in dye concentration. Its present practice is to test for exposure materials incorporating new dyes only at the expected concentration level of the dye. One exposure test covers each new dye, but Miles will accept the test results as valid when there are small variations in dye concentration.

Miles is correct that SAE J576c allows a single test to cover variations in dye concentration. SAE J576 JUL91 may be interpreted as calling for the testing of two samples by specifying that dye concentrations in material to be used in motor vehicle optical parts must fall within the upper and lower limits of dye concentrations tested if there are variations in dye concentration. Miles believes the newer requirement will double its testing burden.

NHTSA does not agree that this is the inevitable result of the adoption of this portion of SAE J576 JUL 91. What paragraph S5.1.2 is intended to ensure is that lenses and reflectors, as manufactured for use on motor vehicles, are fabricated from plastic materials that meet SAE J576. The key issue is whether the equipment satisfies the performance requirements of the standard, not the number of tests conducted on the materials used in the equipment. Ultimately, the manufacturer of the vehicle in certifying compliance with all applicable Federal motor vehicle safety standards, is certifying that the lenses and reflectors on the vehicle are made from plastics materials that meet J576. If the lens or reflector is manufactured as replacement equipment, the certification responsibility is that of the manufacturer of the equipment. Thus, it is incumbent upon the vehicle or equipment manufacturer to assure itself that the materials it obtains from the plastics manufacturer comply with SAE J576 (and, furthermore, not to change the composition of the plastics materials so obtained in a manner that would cause it to be noncomplying). The documentation needed for such assurance, including the quantum of testing performed by the plastics manufacturer and by the vehicle or equipment manufacturer, is a decision

that each equipment or vehicle manufacturer must make under the particular circumstances. NHTSA, of course, expects manufacturers to exercise reasonable care in certifying their products, and, in the event of a noncompliance, the manufacturer may claim that it had no reason to know, despite exercising reasonable care, that the vehicle or equipment failed to comply. However, the allocation of that responsibility is a matter of contract between the manufacturer with the Federal certification responsibility and its plastic materials supplier. Plastic materials are not completed items of motor vehicle equipment subject to Standard No. 108 so the Federal certification responsibility does not fall upon Miles. If Miles or other materials manufacturers are satisfied, based on their extensive experience with dyes, that changes in dye concentration would not cause the plastic material to fail the specified performance requirements, they may be able to persuade their purchasers that additional testing is not needed.

#### Effective Date

The effective date of the final rule is March 1, 1996.

#### Rulemaking Analyses and Notices

*Executive Order 12866 and DOT Regulatory Policies and Procedures.* This final rule was not 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 update testing procedures. Since the final rule will have no significant cost or other impacts, preparation of a full regulatory evaluation is not warranted.

*National Environmental Policy Act.* NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The final rule will not have a significant effect upon the environment. The composition of plastic materials used in optical parts will not change from those presently in production.

*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 does 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 motor vehicle equipment, 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 vehicle equipment will not be impacted.

*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. 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.

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

Imports, Motor vehicle safety, Motor vehicles

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by revising paragraph S5.1.2, to read as follows:

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

\* \* \* \* \*

S5.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576 JUL91, except that:

(a) Plastic lenses (other than those incorporating reflex reflectors) used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.3 and 4.2 of SAE J576 JULY91 when covered by the outer lens or other material;

(b) After the outdoor exposure test, the haze and loss of surface luster of

plastic materials (other than those incorporating reflex reflectors) used for outer lenses shall not be greater than 30 percent haze as measured by ASTM D 1003-92, *Haze and Luminous Transmittance of Transparent Plastic*;

(c) After the outdoor exposure test, plastic materials used for reflex reflectors and for lenses used in front of reflex reflectors shall not show surface deterioration, crazing, dimensional changes, color bleeding, delamination, loss of surface luster, or haze that exceeds 7 percent as measured under ASTM D 1003-92.

(d) The thickness of the test specimens specified in paragraph 3.2.2 of SAE J576 JUL91 may vary by as much as ±0.25 mm.

(e) After exposure to the heat test as specified in subparagraph (f) of this paragraph, and after cooling to room ambient temperature, a test specimen shall show no change in shape and general appearance discernable to the naked eye when compared with an unexposed specimen. The trichromatic coefficients of the samples shall conform to the requirements of SAE J578c, "Color Specification for Electric Signal Lighting Devices", February 1977.

(f) Two samples of each thickness of each plastic material are used in the heat test. Each sample is supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed for two hours in a circulating air oven at 79 ± 3 degrees C.

(g) All outdoor exposure tests shall be 3 years in duration, whether the material is exposed or protected. Accelerated weathering procedures are not permitted.

\* \* \* \* \*

Issued on August 29, 1995.

**Ricardo Martinez,**  
*Administrator.*

[FR Doc. 95-21865 Filed 9-1-95; 8:45 am]  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

[Docket No. 950206041-5041-01; I.D. 082895A]

**Groundfish of the Gulf of Alaska; Pacific Cod with Jig and Pot Gear for Processing by the Inshore Component in the Central Regulatory Area**

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Pacific cod in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA was closed under § 672.20(c)(2)(ii) on March 22, 1995, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 15521, March 24, 1995). NMFS has determined that as of August 8, 1995, 4,313 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA has not been reached.

Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. All other closures remain in full force and effect.

This action opens the directed fishery for Pacific cod by vessels catching Pacific cod with jig and pot gear for processing by the inshore component in the Central Regulatory Area of the GOA. Directed fishing for groundfish with hook-and-line and trawl gear is currently prohibited (60 FR 26694, May 18, 1995; 60 FR 37600, July 21, 1995; 60 FR 37601, July 21, 1995).

**Classification**

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 29, 1995.

**Richard H. Schaefer,**  
*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95-21948 Filed 8-30-95; 3:43 pm]

BILLING CODE 3510-22-F

**50 CFR Part 672**

[Docket No. 950206041-5041-01; I.D. 082995A]

**Groundfish of the Gulf of Alaska; Trawling in the Western Regulatory Area**

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

**ACTION:** Inseason adjustment; request for comments.

**SUMMARY:** NMFS issues an inseason adjustment closing the season for all groundfish by vessels using trawl gear, except fishing for pollock by vessels using pelagic trawl gear, in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).

**DATES:** Effective 12 noon, Alaska local time (A.l.t.), September 1, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received no later than 4:30 p.m., A.l.t., September 18, 1995.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn. Lori Gravel, or be delivered