

suspension, or modification under section 251(f). Moreover, because GTA appears to be the sole provider of local exchange and exchange access services in Guam, we tentatively conclude that GTA has market power, economies of density, connectivity, and scale, and control of the local network comparable to that possessed by entities that are incumbent LECs under section 251(h)(1). Consequently, treating GTA as an incumbent LEC may well be a prerequisite for the development of competition in the local exchange and exchange access markets in Guam. Thus, we tentatively conclude that treating GTA as an incumbent LEC for purposes of section 251 would be consistent with the public interest, convenience, and necessity.

20. For similar reasons, we also tentatively conclude that treating GTA as an incumbent LEC would be consistent with the purposes of section 251. Section 251's primary purpose is to foster competition that otherwise would not likely develop in local exchange and exchange access markets. It is possible that failing to treat GTA as an incumbent LEC would stifle competition in Guam.

21. Having tentatively concluded that GTA has market power, economies of density, connectivity, and scale, and control of the local network, and that treating GTA as an incumbent LEC would be consistent with the public interest, convenience, and necessity and the purposes of section 251, we further conclude tentatively that the circumstances here satisfy the requirements of section 251(h)(2)(C). We invite comment regarding these tentative conclusions.

#### 4. Proposal to Treat GTA—and Possibly Others—as an Incumbent LEC

22. For all of the reasons explained above, we tentatively conclude that the relevant facts and circumstances meet the requirements of section 251(h)(2) for treating GTA as an incumbent LEC for purposes of section 251. Accordingly, we propose to provide for the treatment of GTA as an incumbent LEC for purposes of section 251. We seek comment regarding this tentative conclusion and proposal. We also seek comment whether LECs situated similarly to GTA exist and, if so, whether we should adopt the same rule with respect to such class or category of LECs.

#### B. Procedural Matters

##### 1. Ex Parte Presentations

23. With respect to the rulemaking proposal in Part IV, *supra*, to treat GTA

as an incumbent local exchange carrier pursuant to section 251(h)(2), this is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as required by the Commission's rules. See generally 47 CFR 1.1201, 1.1203, and 1.1206.

##### 2. Initial Regulatory Flexibility Analysis

24. Section 603 of the Regulatory Flexibility Act, as amended, 5 U.S.C. 603, requires an initial regulatory flexibility analysis in NPRM and comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. section 605(b). Our proposal in Part IV, *supra*, to treat GTA as an incumbent local exchange carrier pursuant to section 251(h)(2) will affect only GTA and the limited number of entities that seek to interconnect with GTA's network or resell GTA's services. Even if all of these entities can be classified as small entities, we do not believe that they constitute a "significant number of small entities" for purposes of the Regulatory Flexibility Act. Therefore, we certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 605(b). A copy of this certification also will be published in the **Federal Register**.

##### 3. Comment Filing Procedures

25. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 7, 1997 and reply comments on or before July 28, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554. Parties should also file copies of any documents filed in this docket with Janice Myles of the Common Carrier Bureau, 1919 M Street, NW, Room 544,

Washington, DC 20554, and with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC 20554.

#### II. Ordering Clauses

26. *It is ordered* That, pursuant to sections 1, 2, 4, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 251, and 303(r), the Notice of Proposed Rulemaking contained herein, is hereby adopted.

27. *It is further ordered* That the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-14119 Filed 5-29-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 93-02; Notice 15]

RIN 2127-AF51

#### Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Containers

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes deleting the material and manufacturing process requirements in Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*. The proposal is based on the most recent proposed voluntary industry standard. The agency believes that such an amendment would facilitate technological innovation, without any detriment to safety.

**DATES:** Comments must be received on or before July 14, 1997.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

*For non-legal issues:* Mr. Charles Hott, NPS-12, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Telephone 202-366-0247) (FAX 202-366-4329).

*For legal issues:* Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202-366-2992) (FAX 202-366-3820) (Internet mshaw@nhtsa.dot.gov)

**SUPPLEMENTARY INFORMATION:**

**I. Final Rule Establishing FMVSS No. 304**

On September 26, 1994, NHTSA published a final rule addressing the safe performance of compressed natural gas (CNG) containers<sup>1</sup> (59 FR 49010). The final rule established a new Federal motor vehicle safety standard (FMVSS) FMVSS No. 304, *Compressed Natural Gas Fuel Container Integrity*. The Standard specifies pressure cycling, burst, and bonfire tests for the purpose of ensuring the durability, initial strength, and venting of CNG containers. In addition, the Standard specifies material and manufacturing process and labeling requirements for CNG fuel containers. FMVSS No. 304 took effect on March 27, 1995.

FMVSS No. 304 is patterned after the American National Standards Institute's (ANSI's) voluntary industry standard known as ANSI/NGV2. ANSI/NGV2 was developed by the Natural Gas Vehicle Coalition (NGVC). ANSI/NGV2 and FMVSS No. 304 specify detailed material and manufacturing process requirements for different types of CNG containers, including those made with aluminum alloys. For each type of container, ANSI/NGV2 and FMVSS No. 304 specify a unique safety factor for determining the internal hydrostatic pressure that the container must withstand during the burst test. In

<sup>1</sup> When used as a motor fuel, natural gas is stored on-board a vehicle in cylindrical containers at a pressure of approximately 20,684 kPa (3,000 psi). Among the terms used to describe CNG fuel containers are tanks, containers, cylinders, and high pressure vessels. The agency will refer to them as "containers" throughout this document.

addition, a container must meet the applicable material and manufacturing requirements as well as the burst test.

FMVSS No. 304 specifies certain material and manufacturing characteristics for aluminum containers using alloy 6010 and alloy 6061, based on the specifications set forth in ANSI/NGV2. The material characteristics specify the percentage of various elements, including magnesium, silicon, copper, and manganese. In establishing the specifications applicable to aluminum alloys, the Natural Gas Vehicle Coalition relied on the *Aluminum Association Standards Data* document (Sixth Edition 1979).

**II. Petitions Requesting Modification to FMVSS No. 304**

On November 24, 1995, NHTSA issued a final rule amending the labeling and the bonfire test requirements in FMVSS No. 304. (60 FR 57943) In that notice, the agency stated that it decided to defer consideration of two rulemaking petitions to add additional aluminum alloys to FMVSS No. 304, until the new version of the ANSI/NGV industry standard was issued. Northwest Aluminum Association requested that the standard be amended to add 6069 aluminum alloy, and Luxfer requested the addition of a 7000 series alloy. The agency noted that the new ANSI/NGV2 industry standard may not specify CNG fuel container material and may be more performance-oriented than the current version, thus allowing manufacturers more flexibility to improve container design with respect to cost and performance. The agency also noted that adopting some of the new provisions of the revised voluntary industry standard may eliminate the need to add the two new aluminum alloys to FMVSS No. 304.

NHTSA is waiting for ANSI to issue its revision of the CNG container standard. In October 1996, the ANSI committee working on the revised standard completed its revisions and sent the revised document to its members for review. The proposed revision of ANSI/NGV2 would remove all material and manufacturing restrictions. Nevertheless, it would retain impurity limits for certain materials. Based on NHTSA's understanding of the draft, the tentative industry consensus is to eliminate the material and manufacturing requirements, but there is continued disagreement about certain environment testing procedures.

**III. NHTSA Proposal**

Based on this new information, NHTSA has decided to propose amending Standard No. 304 to eliminate the detailed material and manufacturing process requirements in S5. The agency has tentatively determined that CNG fuel container manufacturers should be allowed to use materials other than those materials currently listed in the standard. Such an amendment would provide manufacturers with the flexibility to design lighter weight, higher capacity fuel containers using the latest innovations, without the need to petition the agency to change the standard each time a new material or manufacturing process is developed.

NHTSA notes that today's proposal to remove the material and manufacturing requirements would be consistent with the proposed revision to ANSI/NGV, which has removed the design restrictions that were in the 1992 version of NGV2 on which FMVSS No. 304 was initially modeled. The proposed revision allows for materials and manufacturing processes that meet the performance requirements of the industry standard.

NHTSA believes that removing the material and manufacturing process requirements would have no detriment to safety. The CNG containers would still be subject to FMVSS No. 304's performance requirements, including those that evaluate initial strength and resistance to degradation over time. In addition, such containers would be subject to recall if they failed for any reason, including the degradation of material.

Based on these considerations, NHTSA has decided to propose deleting the following sections from the standard:

\* Section S5.2 *Material designations*. This section specifies the material requirements for the various types of CNG fuel containers.

\* Section S5.3 *Manufacturing processes for composite containers*. This section specifies the manufacturing process for each type of composite CNG fuel container.

\* Section S5.4 *Wall thickness and Section S5.5 Composite Reinforcement for Type 2, Type 3, and Type 4 containers*. These sections contain the design criteria for specifying the wall thicknesses and stresses for each type of CNG fuel container. These sections also specify procedures for designing CNG fuel container walls along with the theoretical formula for calculating maximum wall stress.

\* Section S5.6 *Thermal Treatment*, and S5.7 *Yield Strength*. These sections

contain detailed manufacturing process requirements for chrome-moly and carbon-boron steels, including specifying the temper temperatures for each steel.

#### Leadtime

The statute under which the agency conducts its vehicle safety rulemaking requires that each order (i.e., final rule) shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead time given that this amendment would delete certain requirements and thus would have no mandatory effect on manufacturers. Based on the above, the agency has tentatively concluded that there is good cause for an effective date 30 days after publication of the final rule. NHTSA requests comments about whether a 30 day effective date is appropriate or whether more lead time is necessary.

#### Rulemaking Analyses and Notices

##### 1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would not significantly effect costs or benefits. It would also provide greater flexibility to CNG container manufacturers.

##### 2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. CNG container manufacturers typically would not qualify as small entities. Further, the proposed changes would have only a minimal impact on the costs or benefits associated with FMVSS No. 304, since the agency does not anticipate that manufacturers would significantly modify their current manufacturing practices. Accordingly, no regulatory flexibility analysis has been prepared.

##### 3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

##### 4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

##### 5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), 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 105 of the Act (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.

#### Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A

request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

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

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*, in Title 49 of the Code of Federal Regulations at part 571 as follows:

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

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

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

##### § 571.304 Standard No. 304, Compressed Natural Gas Fuel Container Integrity [Amended]

2. Section 571.304 would be amended by removing S5.2, S5.3, S5.4, S5.5, S5.6, and S5.7.

Issued on: May 22, 1997.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

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