S5.4.1 * * *

(b) Meet the requirements of S4.2 (e) and (f) of FMVSS No. 209 (§ 571.209); and

* * * * *

Issued on April 29, 1996.

Ricardo Martinez,

*Administrator.*

[FR Doc. 96–11026 Filed 5–3–96; 8:45 am]

**BILLING CODE 4910–59–P**

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## 49 CFR Part 571

**[Docket No. 95–48; Notice 2]**

**RIN 2127–AF71**

## Federal Motor Vehicle Safety Standards; Wheel Nuts, Wheel Discs, and Hub Caps

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule document, NHTSA rescinds the Federal motor vehicle safety standard on wheel nuts, wheel discs, and hub caps. This action is part of the agency's efforts to implement the President's Regulatory Reinvention Initiative to either eliminate regulations, if determined to be unnecessary, or to make them easier to understand and to apply. The agency takes this action based on several conclusions. It concludes that there is no safety problem. Further, the standard is unavoidably overly design-restrictive. Moreover, to the extent that there are any safety concerns regarding the practices of motorists in installing wheel nuts, wheel discs, and hub caps that have winged projections, the agency believes those concerns are more appropriately addressed by State laws which regulate vehicle use than by a Federal motor vehicle safety standard, which regulates the performance of new motor vehicles and motor vehicle equipment as manufactured.

**DATES:** *Effective Date:* This final rule is effective June 5, 1996.

*Petitions for Reconsideration:* Any petitions for reconsideration of this final rule must be received by NHTSA no later than June 20, 1996.

**ADDRESSES:** Any petition for reconsideration of this final rule should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. Clarke Harper, Office of Crashworthiness, NHTSA, telephone (202) 366–4916, FAX number (202) 366–4329. Mr. Harper's e-mail address is charper@nhtsa.dot.gov.

For legal issues: Ms. Dorothy Nakama, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

Both may be reached at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments should not be sent or faxed to these persons, but should be sent to the Docket Section.

**SUPPLEMENTARY INFORMATION:**

### President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified certain regulations that could be rescinded as unnecessary. Among these regulations is Federal Motor Vehicle Safety Standard No. 211, *Wheel Nuts, Wheel Discs, and Hub Caps* (49 CFR § 571.211). In the following section, NHTSA describes how it reviewed the background of the standard, and explains why it came to the conclusion that the safety problem is a minor one, that Standard No. 211 is unavoidably overly design-restrictive, and that wheel nuts, wheel discs, and hub caps having winged projections are more appropriately addressed by State laws which regulate vehicle use than by a Federal motor vehicle safety standard, which regulates new motor vehicles and motor vehicle equipment. For these reasons, NHTSA rescinds Standard No. 211.

### Background

Standard No. 211 was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards. Since Standard No. 211 applies to motor vehicles and motor vehicle equipment, both vehicle manufacturers and manufacturers of motor vehicle equipment must meet the requirements of Standard No. 211. For many years, Standard No. 211 prohibited all wheel nuts, wheel discs, and hub caps (referred to generically hereafter as ''hub caps'') that incorporate ''winged projections,'' based on a concern that such projections can pose a hazard to pedestrians and cyclists.

On January 15, 1993, NHTSA published in the Federal Register (58 FR 4582) a final rule amending Standard No. 211 to permit ''winged projections'' on hub caps if, when the hub caps are installed on a wheel rim, the projections do not extend beyond the plane of the wheel rim. NHTSA amended Standard No. 211 after concluding that ''winged projections'' that do not extend beyond the plane of the wheel do not compromise pedestrian or cyclist safety. Persons who are interested in a more detailed explanation for that conclusion are referred to the January 1993 final rule and the preceding notice of proposed rulemaking (57 FR 24207, June 8, 1992).

The January 1993 amendment was the culmination of a rulemaking proceeding initiated in response to a petition for rulemaking submitted by several hub cap manufacturers. After the amendment was published, however, NHTSA received information from John Russell Deane III, an attorney representing the petitioners, indicating that the amendment did not provide the regulatory relief that had been requested by the petitioners and anticipated by the agency in issuing the amendment.

Mr. Deane stated that certain preambular language in the January 1993 final rule suggested that manufacturers may manufacture and distribute hub caps incorporating winged projections only if the manufacturer is sure the product does not fit ''any other combinations'' of axles and wheel rims which would result in the projections extending beyond the plane of the wheel. He stated, however, that a typical decorative hub cap incorporating winged projections has a standardized attachment design which is identical to wingless hexagonal cap attachment designs. In other words, the method of attaching adapters to wheels is essentially standardized. Thus, the winged hub caps could be installed on any wheels, not only on deep wheels on which they would not extend beyond the plane of the wheel, but also shallower wheels on which the projections would protrude beyond such plane. Mr. Deane therefore concluded that ensuring compliance of decorative hub caps incorporating winged projections on all wheels would be virtually impossible, and that the practical effect of the amendment is to continue to prevent the manufacture and distribution of hub caps incorporating winged projections.

After reexamining the regulatory language, NHTSA concluded Mr. Deane was correct. The regulatory language requires that each hub cap with winged projections, as used in any *physically compatible* combination of axle and wheel rim, may not extend beyond the plane of the wheel. NHTSA determined the dilemma could be addressed only by amending the regulatory language, not,

as Mr. Deane suggested, by issuing a letter of clarification. (A more detailed explanation of the issue is provided in NHTSA's June 19, 1995 notice of proposed rulemaking (60 *FR* 31947).)

Notice of Proposed Rulemaking To Rescind Standard No. 211

In reviewing Standard No. 211 under the President's directive, NHTSA was faced with a regulation that had the practical effect of preventing the manufacture of all hubcaps with winged projections, notwithstanding the fact that the agency concluded that such hubcaps only pose a potential safety concern when used in circumstances in which the winged projections extend beyond the plane of the wheel. NHTSA strongly believes that its safety standards should not be overly design-restrictive and therefore considered whether the current standard, or any safety standard, is both an effective and appropriate means of addressing the safety of winged projections that extend beyond the plane of the wheel.

The agency tentatively concluded that the language of Standard No. 211 is not an appropriate means to ensure safe use of hub caps incorporating winged projections. Therefore, on June 19, 1995 (60 *FR* 31947), NHTSA published a notice of proposed rulemaking (NPRM) to rescind Standard No. 211. In the NPRM, NHTSA tentatively concluded that the potential safety concern primarily relates to how hub caps with winged projections are installed, rather than how they are manufactured, and that the issue is therefore more appropriately addressed by the States than by a Federal motor vehicle safety standard. The agency therefore proposed to rescind Standard No. 211.

First, NHTSA stated its belief that, because of product liability considerations, it is in the interest of vehicle manufacturers not to install unsafe hub caps, such as those with winged projections extending beyond the plane of the wheel, on their new vehicles. Vehicle manufacturers can ensure that winged hub caps are not installed in unsafe hub cap/wheel combinations since they can control which combinations are authorized. The only potential safety concern therefore relates to the availability and installation of aftermarket winged hub caps.

Second, as discussed above, the regulatory dilemma facing NHTSA is that hub caps with winged projections that are safe for relatively deep wheels, since the projections do not extend beyond the plane of those wheels, might be unsafe on other, shallower wheels. While the agency recognizes that a total ban on hub caps with winged projections would ensure safety, it would also be overly restrictive on vehicle and hub cap design.

The agency proposed to solve this dilemma by ceasing to regulate the manufacture of hub caps incorporating winged projections and leaving it to the States to regulate the installation of hub caps incorporating winged projections. The potential safety problem is not how such hub caps are manufactured but instead how they are installed; i.e., whether they are installed on wheels shallow enough to cause the winged projections to extend beyond the plane of the wheel. While NHTSA does not have the authority to regulate the use of vehicles, the States do. Moreover, all States already regulate the use of vehicles and, to the extent that the States determine that regulations are needed in this area, they can issue ones which are not unnecessarily design-restrictive. The States can do this by simply prohibiting the installation or use of hub caps incorporating winged projections on wheels so shallow that the projections extend beyond the plane of the wheel.

Third, NHTSA stated its belief that rescission of Standard No. 211 would not compromise safety since the potential safety problem addressed by the standard has always been virtually nonexistent. Moreover, the agency stated its belief that, should there be any significant increase in the installation of hubcaps with winged projections in a manner that causes injuries to pedestrians, the States could address that problem through their motor vehicle use regulations.

Public Comments on the NPRM and NHTSA's Response

NHTSA received comments from the Insurance Institute for Highway Safety (IIHS), the Association of International Automobile Manufacturers (AIAM), Chrysler Corporation, the State of Connecticut and John Russell Deane III, on behalf of Consolidated International Automotive, Inc., Dayton Wheel Products and Gorilla Automotive Products. Mr. Deane enclosed copies of letters from 22 automotive parts manufacturers, wholesalers and retailers, all of which expressed support for rescinding Standard No. 211.

AIAM, Chrysler, Mr. Deane and the wheel industry representatives either favored rescission or did not oppose rescission of Standard No. 211. AIAM stated that since pedestrian safety is also a concern in Japan and Europe, ''[I]f the Standard were to be removed AIAM member companies would not provide wheel nuts, wheel discs, or hub caps that present a hazard.'' Mr. Deane agreed with NHTSA that product liability concerns will induce vehicle manufacturers not to install unsafe hub caps and will compel aftermarket manufacturers and installers to inform consumers of the ''intended use combinations'' and to install the equipment in accordance with that information. Mr. Deane did not specify what he meant by ''intended use combinations.'' NHTSA presumes that Mr. Deane meant limits recommended by hub cap manufacturers on combinations of wheel rims, axle lengths, and wheel depths, that are to be used in conjunction with a given hub cap incorporating winged projections. The automotive parts manufacturers and distributors did not provide any supporting data or raise any issues.

IIHS and Connecticut opposed rescinding Standard No. 211 and provided numerous reasons for their opposition. NHTSA addresses each of IIHS' and Connecticut's comments below.

*Should NHTSA Retain Standard No. 211 and Impose More Design Restrictions*

IIHS asserts that the way to protect the public from ''hazards created by a design that is safe in some configurations but not in others, is to limit the design choices to the safe ones.'' IIHS was concerned that NHTSA balanced the manufacturers' interests in having more design choices for hub caps versus public safety and decided in favor of the manufacturers. IIHS argues that no ''scintilla'' of evidence supports NHTSA's proposal. Similarly, Connecticut stated it would be ''[m]ore appropriate to relax the current standard in a way that would be less design restrictive.''

Neither IIHS nor Connecticut provided any data to show a safety problem associated with winged projections on wheels. Additionally, neither of them suggested how the agency might amend Standard No. 211 to make it less design restrictive and ''limit the design choices to the safe ones.'' As explained in the background section, NHTSA has attempted to find out how to limit design choices to the ''safe ones'' for the past three years. Since the agency has not been able to find a means other than outright prohibition of the hub caps incorporating winged projections and has found no evidence of a safety problem, the appropriate course of action is to rescind Standard No. 211.

*State Law Issues*

Two state law issues were raised in the public comments. First, the IIHS stated: ''The availability of potential state regulatory action and possible product liability suits to replace an existing [FMVSS] is not a sufficient basis to justify rescinding the standard.''

The factors mentioned by IIHS are not the primary basis for the rescission, but are additional considerations that weigh in favor of rescission. The primary issue is safety. IIHS believes that there is a risk to safety and that it is posed by the vehicle or equipment design. NHTSA believes that the design of the vehicle or equipment itself would not inherently create a risk to pedestrian or cyclist safety. It is the particular combination of components as assembled by consumers that determines whether a risk to safety is created.

NHTSA believes that Standard No. 211 as originally written (i.e., completely banning hub caps incorporating winged projections of any design) was unduly restrictive and that State regulation offers a less burdensome, more targeted alternative for achieving the same end. As stated in the NPRM, the same end could be achieved by States placing restrictions on the installation of winged hub caps on shallow wheels.

The second state law issue was raised by Connecticut. Connecticut stated that in the absence of Standard No. 211, the States would have to regulate. As a result, a vehicle manufacturer may have to meet as many as 50 different State requirements.

As stated in the NPRM (see 60 *FR* at 31948), NHTSA believes that States can issue regulations that do not directly regulate hub cap design but rather prohibit inappropriate installation of any wheel devices with winged projections, e.g., installation so that the projections extend beyond the plane of the wheel. If each State enacted a similar law prohibiting such installation, there would not be ''50 different state requirements.''

*Product Liability*

Connecticut appears to state that small aftermarket parts manufacturers are often unaware of or not concerned with product liability issues. According to the commenter, such small manufacturers are often not concerned about product liability because they are not aware of the possibility of liability until after the fact, i.e., until after they have been sued.

As NHTSA already noted in its response to IIHS, product liability factors are not the primary basis for this action. Further, the agency does not believe that small manufacturers or other small businesses are unresponsive to the potential product liability implications of hub caps incorporating winged projections being used in an unsafe manner, and causing injury. The prospect of product liability lawsuits is faced by any company doing business in the United States. As earlier noted, Mr. Deane, who represents many hub cap manufacturers, dealers, and suppliers, agreed with NHTSA that product liability concerns will induce vehicle manufacturers not to make any unsafe installations of hub caps incorporating winged projections and will induce aftermarket manufacturers and installers to inform consumers of suggested safe combinations and to install the equipment in accordance with safe use.

*Possibility of Reintroducing a Winged Hub Cap Problem*

IIHS commented that: ''NHTSA's proposal could reintroduce a problem that was eliminated by the original standard almost 30 years ago.''

NHTSA does not agree with IIHS' concern. IIHS offers no evidence to support its position. Data available to NHTSA indicate that a ''reintroduction'' of a problem is unlikely, because it has never been established that a problem existed in the first instance. In the 1992 NPRM to amend Standard No. 211, NHTSA examined various data sources to determine the extent of injuries from contact by pedestrians, motorcyclists, and bicyclists with wheels and hub caps, and to assess the potential for injuries if winged projections were incorporated on hub caps. NHTSA concluded: ''The data * * * do not indicate that since 1979, significant injury has been caused to pedestrians or cyclists as a result of accidental contact with wheels or hub caps.'' (57 *FR* at 24208). NHTSA has received no data or other information refuting the conclusions in the 1992 NPRM. No data relevant to the potential injury issue were offered in response to the June 1995 NPRM.

Effective Date

In the NPRM, NHTSA proposed that if a final rule rescinding Standard No. 211 is published, the effective date for the final rule be 45 days after publication in the Federal Register. The only commenter addressing this issue, Mr. Deane, favored the final rule taking effect 30 days after its publication in the Federal Register. NHTSA received no comments opposing an effective date 30 days after Federal Register publication. Thus, the agency determines that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest.

Rulemaking Analyses and Notices

*1. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The final rule does not impose any costs or yield any significant savings. It instead relieves a restriction and thereby provides vehicle and equipment manufacturers with greater flexibility in the design and installation of wheel nuts, wheel discs, and hub caps. Moreover, consumers will likely have a greater choice of hub cap styles. The impacts will be so minimal that preparation of a full regulatory evaluation is not warranted.

*2. Regulatory Flexibility Act*

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As explained above, the rule will not impose any new requirements but will relieve a restriction for hub caps with winged projections. The final rule will likely have a small beneficial effect on small manufacturers and dealers of motor vehicle equipment, since they will have greater flexibility in the types of hub caps they may manufacture and sell. Similarly, persons who purchase aftermarket hub caps will likely have a greater choice. For these reasons, small businesses, small organizations and small governmental units which purchase motor vehicles will not be significantly affected by the final rule. Accordingly, a final regulatory flexibility analysis has not been prepared.

*3. Executive Order 12612 (Federalism)*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*4. National Environmental Policy Act*

The agency also has analyzed this final rule for the purpose of the National Environmental Policy Act, and determined that it will not have any

significant impact on the quality of the human environment.

*5. Executive Order 12778 (Civil Justice Reform)*

This final 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, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 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, Rubber and rubber products, tires.

In consideration of the foregoing, 49 CFR part 571 is amended as set forth below:

## PART 571—[AMENDED]

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.

**§ 571.211 [Removed]**

2. Section 571.211 is removed and reserved.

Issued on: April 30, 1996.

Ricardo Martinez,

*Administrator.*

[FR Doc. 96–11114 Filed 5–03–96; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 620

**[Docket No. 960126016–6121–04; I.D. 042996F]**

## General Provisions for Domestic Fisheries; Extension of Emergency Fishing Closure in Block Island Sound

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

**ACTION:** Emergency interim rule; extension.

**SUMMARY:** In response to a request from the State of Rhode Island, NMFS is extending the emergency interim rule that closed a portion of Federal waters off the coast of the State of Rhode Island, in Block Island Sound subsequent to an oil spill. Fishing for and possession of lobsters in a small area east and north of Block Island will remain prohibited.

**EFFECTIVE DATE:** May 1, 1996, through July 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Daniel Morris, (508) 281–9388.

**SUPPLEMENTARY INFORMATION:** On January 19, 1996, an oil barge grounded and spilled more than 800,000 gallons (3.0 million liters) of heating oil into the waters of Block Island Sound, RI. On January 26, 1996, NMFS, at the request of and in conjunction with the State of Rhode Island, prohibited the harvest of seafood from an area of approximately 250 square miles (647 square km) in Block Island Sound. The original area of closure was announced and defined in an emergency interim rule published in the Federal Register on February 1, 1996 (61 FR 3602).

The Federal closure has been twice amended, effective on March 13, 1996 (61 FR 11164, March 19, 1996), and April 9, 1996 (61 FR 16401, April 15, 1996). The latter citation describes the current closure.

Following the oil spill, State officials, in consultation with Federal agencies and the responsible party, developed a protocol for reopening fisheries in the affected area. The protocol sets sampling, inspection, and analysis standards, which, if met, would ensure that seafood is wholesome and would provide a basis for reopening fisheries. In the most recent round of inspection, evidence of oil adulteration was found in lobster samples taken from the closed Federal waters. Therefore, the closure to fishing for and possessing lobsters in a small area east and north of Block Island is extended by 90 days or until the testing protocol is satisfied.

The New England Fishery Management Council (Council) has concurred in the extension of this emergency closure, so long as the extension complements the State's regulations and is implemented at the State's request.

Classification

Extension of the emergency interim rule is intended to prevent oil-adulterated lobsters from reaching consumers. Also, the extension does not change existing regulations. On these grounds, NMFS finds good cause to extend the emergency interim rule in accordance with section 305(c)(3)(B) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). It would be contrary to public interest to provide notice and opportunity for comment or to delay for 30 days the effective date of this action under authority at 5 U.S.C. 553(b)(B) and (d)(3).

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

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

This emergency rule extension is exempt from the procedures of the Regulatory Flexibility Act because this rule is not required to be issued with prior notice and opportunity for public comment.

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

Dated: April 30, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

[FR Doc. 96–11163 Filed 5–1–96; 10:02 am]

BILLING CODE 3510–22–F

## 50 CFR Part 661

**[Docket No. 960429120–6120–01; I.D. 042496C]**

**RIN 0648–AI35**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; 1996 Management Measures and Technical Amendment

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

**ACTION:** Annual management measures for the ocean salmon fishery and technical amendment; request for comments.

**SUMMARY:** NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1996 and for those salmon seasons opening earlier than May 1, 1997. Specific fishery management measures vary by fishery and area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic