DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–3278]

RIN 2127–AF74

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

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

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document denies two petitions for reconsideration of NHTSA's March 1996 final rule rescinding the Federal Motor Vehicle Safety Standard on reflecting surfaces. Neither petitioner has raised any new issues nor presented any new evidence that were not considered in the final rule.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

For technical issues: Mr. Richard Van Iderstine, Office of Crash Avoidance. Mr. Van Iderstine's telephone number is (202) 366–5280, and his FAX number is (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 107 was promulgated as one of the initial Federal Motor Vehicle Safety Standards (32 FR 2408, February 3, 1967). The standard specified reflecting surface requirements for certain ''bright metal'' components in the driver's forward field of view: the windshield wiper arms and blades, inside windshield mouldings, horn ring and hub of the steering wheel assembly, and the inside rearview mirror frame and mounting bracket. The specular gloss of the surface of these components was required to be less than 40 units when tested. (''Specular gloss'' refers to the amount of light reflected from a test specimen.)

II. Rescission of Standard No. 107

A. Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on June 26, 1995 (60 FR 32935), NHTSA proposed to rescind Standard No. 107, on the grounds that market forces and product liability concerns have eliminated the need for its requirements. NHTSA rejected the possibility of extending the standard's specular gloss limitations to non-metallic surfaces, and to the instrument panel.

In the NPRM, NHTSA stated its belief that market forces continue to favor matte finishes and surfaces for components in the driver's field of view, and are reinforced by product liability concerns. As evidence of the impact of these factors, NHTSA cited the virtual disappearance of horn rings and metallic windshield mountings and the use of matte finishes on unregulated components. The agency also noted that nonmetallic materials are typically lighter weight than metallic ones.

NHTSA concluded that as a result of the use of nonmetallic components in the driver's field of view, glare from those components has been substantially reduced. Increased use of non-metallic materials (hard plastic or rubber) for parts such as windshield wiper arms and blades, steering wheel assembly hubs, and inside rearview mirror frame and mounting brackets, has virtually eliminated the metallic components that are regulated by the standard.

The decreasing tendency to use metal is also evident with respect to components not regulated by Standard No. 107. Since 1987, vehicle interior styling practices have favored a combination of hard plastic and other materials that do not reflect sufficient light to create glare. NHTSA stated its belief that market forces will continue to favor these materials in the future.

In the NPRM, NHTSA tentatively concluded that although it believed future market forces would favor nonreflecting surfaces, it was possible that motor vehicle designs, styles, and preferred materials would change. If such changes should result in motor vehicle components that may produce distracting glare in the driver's line of sight, NHTSA stated that it ''intends to review the situation'' through its statutory authority over safety related defects. 60 FR 32936.

B. Comments

Seven comments were received in response to the NPRM. All commenters supported the proposed rescission, except for the Advocates for Highway and Auto Safety (Advocates), and the State of Connecticut (Connecticut). The Insurance Institute for Highway Safety (IIHS) supported rescission but objected to NHTSA's reliance on product liability considerations and recall procedures as rationales for rescission.

C. Final Rule and Petitions for Reconsideration

On March 21, 1996, NHTSA issued a final rule rescinding Standard No. 107 (61 FR 11587). NHTSA concluded that Standard No. 107 could be rescinded without adversely affecting safety. This conclusion was based on the agency's finding that vehicle manufacturers had established a practice of using nonglossy materials and matte finishes on unregulated components as well as the components regulated by Standard No. 107. Since manufacturers have elected to use nonglossy surfaces on components not regulated by the standards, NHTSA concluded that rescinding Standard No. 107 would not result in the return of the glossy surfaces that prompted the agency to issue the standards. In reaching this conclusion, NHTSA also noted that the virtual elimination of metallic components within the driver's forward field of view had already reduced the effective scope of the standard ''to the level of insignificance.'' 61 FR 11587.

Subsequent to issuance of the final rule, petitions for reconsideration were submitted by the Center for Auto Safety (CAS) and Dr. Merrill Allen, neither of whom had commented on the NPRM. CAS asserted that NHTSA's rescission of Standard No. 107 ''cannot stand'' for the following four reasons:

(1) NHTSA provided no satisfactory basis and explanation for ''reversing course'' and rescinding a safety standard.

(2) NHTSA relied on factors Congress did not intend NHTSA to consider, which are not adequate substitutes for continued enforcement of Standard No. 107. In particular, NHTSA's reliance on ''market forces'' is ''implausible and run[s] counter to the evidence in the rulemaking record.''

(3) There are ''identified market segments'' which are eager to supply an apparent demand for bright metal interior components. Rescinding Standard No. 107 would encourage this demand.

(4) NHTSA's final rule ignores information in the record reflecting the need to extend the Standard to reduce glare from currently unregulated sources and is therefore ''arbitrary, capricious, and an abuse of discretion.''

In making its first two arguments, CAS relied on the legal standard for rescinding a Federal Motor Vehicle Safety Standard established in the 1983 U.S. Supreme Court decision *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co., Inc.* (463 U.S. 29) (hereafter cited as *State Farm*). NHTSA

will address each of CAS' assertions below.

III. Review of CAS' Petition

1. Legal Standard for Review Established by the Supreme Court

In its petition for reconsideration, CAS stated its view of the legal principles established in *State Farm*. In essence, CAS argues that NHTSA's rescission of Standard No. 107 was ''arbitrary and capricious'' and did not meet *State Farm's* principles for rescinding a Federal motor vehicle safety standard (FMVSS). In *State Farm*, the Supreme Court cited *Citizens to Preserve Overton Park* v. *Volpe* (401 U.S. 402, 414 (1971)) to the effect that an agency's actions in promulgating motor vehicle safety standards may be set aside if found to be ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' (463 U.S. at 41)

The Supreme Court noted that revoking a standard constitutes a reversal of the agency's former views as to the proper course: ''There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.'' (463 U.S. at 42) Therefore, an agency changing its course by rescinding a rule must supply ''a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.'' (463 U.S. at 42)

At the same time, the Supreme Court recognized that ''regulatory agencies do not establish rules of conduct to last forever'' (citing *American Trucking Assns., Inc.* v. *Atchison, T. & S.F.R. Co.* (387 U.S. 397, 416 (1967)) and that an agency must be given latitude to ''adapt their rules and policies to the demands of changing circumstances'' (citing *Permian Basin Area Rate Cases,* 390 U.S. 747, 784 (1968)). (463 U.S. at 42) The Supreme Court further stated that the presumption from which judicial review should start is against changes in current policy that are not justified by the rulemaking record. (See 463 U.S. at 42)

A. NHTSA Has Not ''Reversed Course'' in Rescinding Standard No. 107

The CAS's first assertion under *State Farm* is that in rescinding Standard No. 107, it has ''revers[ed] course'' without a satisfactory basis and explanation. NHTSA, however, looks at the rescission of the Standard as the logical end result of the rulemaking history of Standard No. 107.

The Supreme Court described the rulemaking record of the Standard at issue in *State Farm* as follows: ''Over the course of approximately 60 rulemaking notices, the requirement has been imposed, amended, rescinded, reimposed, and now rescinded again.'' (463 U.S. at 34) CAS tries to analogize the facts in the rescission of Standard No. 107 to the facts in *State Farm,* and argues that the fact of rescinding Standard No. 107 (i.e., a Standard that had been in effect for thirty years) makes NHTSA's actions ''arbitrary and capricious.''

In contrast to the facts in *State Farm,* the history of Standard No. 107 shows no pattern of frequent changes. Despite opportunities to do so, NHTSA has never determined that expanding Standard No. 107 would meet the need for safety. The rescinded Standard No. 107 was the same Standard promulgated in 1967.

In an NPRM dated November 13, 1987 (52 FR 43628), NHTSA considered whether to extend Standard No. 107's specular gloss limitations to non-metallic surfaces. NHTSA considered three issues: (1) Whether there are safety benefits in retaining Standard No. 107; (2) whether there is justification to apply the specular gloss requirement to non-metallic versions of the components already covered by Standard No. 107; and (3) whether there is a need to expand Standard No. 107 to other component parts (such as instrument panel pads).

On the first issue, NHTSA concluded the Standard No. 107's limits on highly reflective components, (i.e., possible sources of glare), still addressed a safety problem for drivers. On the second issue, NHTSA proposed to extend the standard to non-metallic components, tentatively determining that the problem posed by glossy non-metallic components was indistinguishable from the problem posed by glossy metallic components. On the third issue, NHTSA declined to propose extending Standard No. 107 to other vehicle components, since it found no data showing that glare from unregulated components has presented a safety problem.

In 1989, NHTSA terminated the rulemaking after finding no evidence to substantiate a safety problem with glare from non-metallic surfaces. (54 FR 35011, August 23, 1989).

In 1991, the CAS petitioned NHTSA to add the instrument panel surface as a newly regulated item in Standard No. 107. CAS believed that such an action would ''significantly limit dashboard reflections in windshields'', and limit ''veiling glare'' as a ''major source of vision impairment.'' NHTSA denied CAS's petition (see 56 FR 40853, August 16, 1991), after determining that there was no evidence of a visibility problem that warranted rulemaking.

The agency could find no information showing that dashboard reflections constituted a safety hazard. At the time (i.e., in 1991), a search of the NHTSA consumer complaint file found only 23 complaints that were related to light refections from the dashboard in over 138,000 complaints (0.017 percent). NHTSA determined that the insignificant number of complaints reinforced the agency's prior determinations that there is no need to expand the scope of Standard No. 107. Therefore, NHTSA found no safety need to add to the components covered by Standard No. 107.

B. NHTSA relied on Appropriate Factors, including Market Forces, in Rescinding Standard No. 107

In its second argument under *State Farm,* CAS asserted that NHTSA relied on factors that Congress did not intend it to consider, which are not adequate substitutes for continued enforcement of Standard No. 107. In particular, CAS pointed to the President's Regulatory Reinvention Initiative as a factor Congress did not intend NHTSA to consider, and described NHTSA's reliance on ''market forces'' as ''implausible'' and ''counter to the evidence in the rulemaking record.''

In *State Farm,* the Supreme Court cited the *Permian Basin Area Rate Cases* (390 U.S. 747, 416 (1967)) for the principle that an agency must be given latitude to ''adapt their rules and policies to the demands of changing circumstances.'' (463 U.S. at 42). NHTSA did not decide to rescind Standard No. 107 precipitously. It decided to rescind the Standard after observing long-term changes in the composition of components in vehicle interiors (whether or not the component was regulated by Standard No. 107). It used its knowledge of the motor vehicle industry to determine that cost of materials (a ''market force'') is an important consideration for vehicle manufacturers, and would continue to be so. NHTSA also noted that since rubber and plastics tend to cost and weigh less than metals, vehicle manufacturers would likely continue to use less expensive materials in the components specified in Standard No. 107.

Although CAS cites the President's Regulatory Reinvention Initiative (RRI) as a factor that Congress did not intend NHTSA to consider, the RRI only provided NHTSA an opportunity to revisit an important issue first raised in the 1987 NPRM: does Standard No. 107 continue to address a safety problem for

drivers? NHTSA determined that the answer was now no.

An updated search conducted in 1995 of NHTSA's consumer complaint file found 52 complaints that were related to dashboard glare in over 241,000 complaints (0.021 percent). The 0.021 rate is about the same as the 1991 complaint rate of 0.017 percent. This updated search indicated the number of complaints related to dashboard glare continues to be minuscule.

CAS also alleged in a December 17, 1996 letter to NHTSA's Administrator that the count of 52 complaints of veiling glare from the dash was understated. According to that letter, CAS had determined there were at least 150 complaints of veiling glare among the more than 241,000 complaints. Thus, instead of representing 0.021 percent of complaints from the public, as acknowledged by NHTSA, CAS believed veiling glare actually represents 0.063 percent of the complaints NHTSA has received from the public.

NHTSA used a standardized computer keyword search of its complaints to arrive at its count of 52 relevant complaints. Even if NHTSA were to accept the CAS count of 150 dashboard glare complaints as accurate, the agency would still reiterate its previously-stated conclusion—so few complaints from the public about an aspect of design that has never been regulated on any of the hundreds of millions of vehicles on the road can reasonably be said to show there is no need for the agency to expend its limited resources to try to address dashboard glare, because the available evidence (NHTSA's complaints) indicate the public finds this to be an insignificant safety problem.

NHTSA saw no safety value in 1995 to continue to regulate components (such as windshield wiper blades, the steering wheel hub and interior mirror frame and mounting bracket) that still exist on new motor vehicles. Observing the types of components actually used in today's vehicles, the agency concluded that none of those components is a potential source of reflecting surface distraction in the driver's field of view.

In new vehicles in the late 1990's, the inside windshield metal moldings and horn rings are no longer provided. As for the other specified components, vehicle manufacturers have redesigned windshield wiper arms and blades so that many of them are recessed below the view of the driver when not in use. The arms and blades are usually black and finished with a matte surface. Manufacturers have placed air bags in steering wheel hub assemblies so that the hubs cannot be made of ''bright metal'' if the air bags are to deploy properly. The mirror frame and mounting bracket are made out of plastic.

NHTSA notes that in the almost thirty years that Standard No. 107 was in effect, vehicle manufacturers were not prohibited from installing vehicle components (including those specified in Standard No. 107) made out of metals with a matte or burnished surface. Styling considerations have apparently never introduced such dull metals into components in the line of sight of the driver or elsewhere in the vehicle interior in any significant volume. Lack of dull metals indicates that regardless of styling and other cosmetic considerations, vehicle manufacturers are choosing to reduce costs by minimizing metallic components in vehicles.

For these reasons, NHTSA's rescission of Standard No. 107 was not arbitrary and capricious but the result of a reasoned analysis, based on its observations of the new vehicle market.

2. ''Identified Market Segments'' Have Obtained Bright Metal Parts in the Aftermarket Despite Standard No. 107

In addition to issues arising from *State Farm*, CAS asserted that there are ''identified market segments'' with a demand for bright metal interior components. CAS stated its belief that the demand includes components regulated under Standard No. 107. CAS asserted that at least one manufacturer is eager to serve these markets and to respond to this and any other such consumer demand. But for Standard No. 107, CAS states that the manufacturer (Vehicle Improvement Products (VIP)) and others would freely serve these markets. As evidence, CAS pointed to VIP's comment in response to the June 26, 1995 NPRM that there is a demand for ''polished and/or chrome plated steering wheel surfaces'' as a contradiction to NHTSA's assertion that there is no market for bright metal components.

NHTSA believes that CAS's comment does not acknowledge a difference in applicability of the Standard between the new vehicle manufacturer and the after market equipment manufacturer. Standard No. 107 applied to new vehicles only, and did not regulate the actions of after market equipment manufacturers. Standard No. 107 applied to ''passenger cars, multipurpose passenger vehicles, trucks, and buses.'' The Standard imposed restrictions on specified equipment in new vehicles. The Standard never prohibited sales of aftermarket equipment, including the components specified in Standard No. 107, that were made of bright metal that exceeded a specified specular gloss. Further, even in a new vehicle, the Standard did not generally regulate ''steering wheel surfaces,'' it regulated only the hub of the steering wheel assembly.

Thus, even when Standard No. 107 was in effect, the Standard did not restrict equipment manufacturers, including VIP from selling shiny metallic steering wheels in the aftermarket, even if the steering wheel hubs did not meet the specular gloss limitations of Standard No. 107. (Whether a business could install a shiny metallic steering wheel hub without violating 49 U.S.C. § 30122, by making safety devices and elements inoperative, is not an issue within the scope of this rulemaking. However, NHTSA would not have had any authority over an owner installing a shiny metallic steering wheel hub in his or her own vehicle.)

CAS also pointed to the State of Connecticut's comments (in response to the June 1996 NPRM) that small aftermarket parts manufacturers are ''quick to respond to market demands without fully evaluating all of the safety aspects on which their component would have an affect.'' Connecticut also commented that states can require vehicles to be maintained in compliance with FMVSS's to prevent such things as bright metal windshield wiper blades to be installed. It argued reliance on the FMVSS ''quells market demand before the liability factors would surface.''

In response to CAS's comments about Connecticut's views, we first note that CAS has not refuted the principal basis for the rescission: The evident and universal practice by vehicle manufacturers of designing their vehicles to avoid the use of metallic (or nonmetallic) components with glossy surfaces, whether or not regulated. Based on that practice, we do not believe that there will be a demand for original equipment glossy components on new vehicles. In the absence of any demand, there would be unlikely to be more than a negligible supply of those components produced by aftermarket manufacturers.

As earlier stated, when Standard 107 was in effect, the Standard did not prohibit a business from manufacturing glossy metallic vehicle components for the aftermarket or prevent an individual owner from installing, for example, a shiny steering wheel hub on his or her vehicle. Even so, the agency is not aware of any significant instances of

such manufacture or installation. Restrictions on equipment on registered vehicles and changes that owners may make on their own vehicles are matters of State law.

3. Standard No. 107 Was Never Intended to Address Glare Generally, and the Standard Will Not Be Reinstated and Expanded to Address ''Veiling Glare''

CAS asserted that the Association of International Automobile Manufacturer's (AIAM) comment to the June 1995 NPRM, that since Standard No. 107 ''does not cover all components for which manufacturers have needed to reduce glare,'' and ''[i]n the absence of any concern [by NHTSA] that manufacturers have not addressed glare from these other components,'' the Standard is not necessary, should have ''triggered alarm bells at the Agency as it contemplated rescinding the only standard regulating interior compartment glare.''

CAS appears to believe that NHTSA has not considered the issue of potential glare from sources other than the components regulated in Standard No. 107. NHTSA does not agree, since the agency has in the past carefully looked at glare issues outside of Standard No. 107. As earlier stated, the NPRM (60 FR 32935, June 26, 1995) outlined NHTSA's past review of whether Standard No. 107's specular gloss limitations should be extended to non-metallic surfaces, or to other vehicle components. A summary of this discussion was provided earlier. For the reasons previously explained, NHTSA decided there is no evidence of any safety need to extend the scope of Standard No. 107. In addition, as has been previously noted, there is no evidence in the record of any significant use of unregulated components with glossy finishes by vehicle manufacturers.

CAS also suggests that the agency's desire to reduce glare from shiny metallic components arises from an underlying generalized concern about interior compartment glare. CAS therefore urges that Standard No. 107 be reinstated and expanded to address veiling glare, i.e., the reflection cast by light-hued and/or glossy surfaced dashboards onto the windshield.

As previously noted, Standard No. 107 never regulated veiling glare. On August 16, 1991 (56 FR 40853), NHTSA denied a petition from the CAS to amend Standard No. 107 by including the instrument panel surface as a regulated item, limiting ''veiling glare'' as a ''major source of vision impairment.'' Since Standard No. 107 did not regulate veiling glare, CAS's comments on veiling glare are outside the scope of this rulemaking action and are not relevant to a petition for reconsideration of rescission of Standard No. 107.

IV. Dr. Allen's Petition

In a submission dated May 2, 1996, Dr. Merrill J. Allen, Professor Emeritus of Optometry of Indiana University (Bloomington, Indiana) petitioned NHTSA to reconsider rescinding Standard No. 107. Dr. Allen asserted that ''Standard No. 107 needs to be strengthened, not rescinded.'' He estimated that crashes will increase more than 10 to 15% by rescinding Standard No. 107, but provided no information how he formulated this estimate. He urged NHTSA to reinstate Standard No. 107 and to amend the Standard by specifying a black flock or velvet finish on all motor vehicle dash panels, to minimize veiling glare.

Dr. Allen has not raised any new issues or presented any new evidence not considered in previous rulemakings. As previously noted, the veiling glare issue was addressed in 1991 by NHTSA in response to a rulemaking petition from CAS. NHTSA denied CAS's petition (56 FR 40843, August 16, 1991), after determining that there was no visibility problem which warranted Federal rulemaking. Further, since Standard No. 107 never regulated it, veiling glare is not germane to the rescission of the Standard.

V. Denial of Petitions for Reconsideration

NHTSA has considered the issues raised in the petitions for reconsideration filed by the CAS and by Dr. Allen. Because they presented no new evidence or issues, the petitions for reconsideration are denied.

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

Issued on: December 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–34085 Filed 12–31–97; 8:45 am]

BILLING CODE 4910–59–P