[11] D010 waste generated by this facility may be treated by Heritage Environmental Services, LLC. at their treatment facility in Indianapolis, Indiana.

[12] D010 waste generated by this facility may be treated by Chemical Waste Management, Chemical Services, LLC. at their treatment facility in Model City, New York.

Note: NA means Not Applicable.

[FR Doc. 04–25716 Filed 11–18–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–19625]

RIN 2127–AH96

Federal Motor Vehicle Safety Standards—Motor Vehicle Brake Fluids

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

ACTION: Final rule.

SUMMARY: This document amends our standard on brake fluids by removing the evaporation test and modifying the corrosion test. We are removing the evaporation test because we have concluded that it is unnecessary, given changes in brake system designs and in brake fluid formulations since the test was developed. We are modifying the corrosion test to improve test repeatability and reproducibility.

DATES: *Effective Date:* The effective date of this final rule is: November 21, 2005, except for the removal of S5.1.8, S6.8, S6.8.1, S6.8.2, S6.8.3, and S6.8.4 from § 571.116, which will be effective January 18, 2005. *Petitions for reconsideration:* Petitions for reconsideration of this final rule must be received not later than: January 3, 2005.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2992). Ms. Nakama's fax number is: (202) 366–3820.

For other issues: Mr. Sam Daniel, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4921). Mr. Daniel's fax number is: (202) 366–7002.

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I. Proposed Rule

Federal Motor Vehicle Safety Standard (FMVSS) No. 116, *Motor Vehicle Brake Fluids,* specifies requirements for fluids for use in hydraulic brake systems of motor vehicles, containers for these fluids, and labeling of the containers. The purpose of the standard is to reduce failures in the hydraulic braking systems of motor vehicles that may occur because of the manufacture or use of improper or contaminated fluid.

On January 16, 2001, we published in the **Federal Register** (66 FR 3527) [1] a notice of proposed rulemaking (NPRM) to make technical modifications in two of the standard's tests, the evaporation test and the corrosion test. We believed the proposed modifications would improve repeatability and reproducibility [2] of the tests, and thus improve the enforceability of the standard. We also requested comments concerning the retention of the evaporation test.

A. Evaporation Test

FMVSS No. 116 specifies various performance requirements relating to evaporation that must be met when brake fluid is tested according to a specified procedure that involves heating the brake fluid in an oven for an extended period of time. Among other things, the loss by evaporation must not exceed 80 percent by weight. See S5.1.8 and S6.8 of the standard.

In the NPRM, we stated that for a number of years, we have been concerned that the evaporation test may allow too much variability in test results. Because of this, we sponsored a study titled ''Evaporation Test Variability Study,'' which was published in May 1993. The study sought to identify and evaluate parameters of the brake fluid evaporation test procedure of FMVSS No. 116 that influence the high variability of results between laboratories. It also sought to develop procedural improvements to increase the precision and reproducibility of brake fluid evaporation measurements. This included validating procedural modifications through conducting an interlaboratory round robin program using four designated brake fluids.

The study identified four means by which test result variability could be reduced: (1) Using a rotating shelf in the oven with a 6 rpm sample rotation, (2) specifying the location of the shelf supporting the sample within the oven, (3) controlling the oven temperature monitoring point, and (4) using oven calibration fluid for purposes of oven standardization. A copy of the study is available in the docket at NHTSA–2001–8633–2.

After we published the study, the Society of Automotive Engineers (SAE) committee on brake fluids initiated work to consider revising its evaporation test procedure to address these points. The SAE evaporation test procedure is set forth as part of Motor Vehicle Brake Fluid—SAE J1703 JAN95. The SAE committee developed a draft procedure that uses a rotating shelf oven, defines shelf placement, and includes temperature monitoring. The committee did not reach agreement on an oven calibration fluid because of concerns about lot variability.

[1] Docket No. NHTSA 00–8633.

[2] In order for a test to have good repeatability, there must not be undue variability in results when the same test is replicated at the same site. In order for a test to have good reproducibility, there must not be undue variability in results when the same test is replicated at different sites.

More recently, however, the SAE committee voted to eliminate the evaporation test from its standard. Members of the committee believed that the requirement is outdated. The test was developed at a time when brake fluids did not have as good resistance to evaporation as today's brake fluids, and vehicle braking systems were not sealed. Members of the committee also believed that the evaporation test is redundant with the boiling point test, which evaluates similar brake fluid properties. The test was first deleted from the 2002 edition of SAE J1703.

Particularly given that the evaporation test included in FMVSS No. 116 was originally developed by SAE, we addressed in the NPRM the issue of whether the test should be retained in our standard. In the NPRM, we tentatively concluded that the evaporation test should be retained in FMVSS No. 116, noting that even though today's brake fluids may well have better resistance to evaporation than those in use when the test was originally developed, deletion of the test from FMVSS No. 116 could permit the introduction of inferior brake fluids into the United States market. We also noted that even if current brake fluid manufacturers would be unlikely to introduce such products, such introduction could come from new market entrants. For these reasons, we tentatively decided to retain the evaporation test in Standard No. 116, but requested comments on this issue.

In the NPRM, we stated that assuming that the evaporation test was retained in FMVSS No. 116, we believed it was appropriate to improve the repeatability and reproducibility of the test. We stated our belief that while there are unresolved technical issues concerning oven calibration fluid, the repeatability and reproducibility of the evaporation test can be improved by adopting the other means for reducing test result variability that were identified by the NHTSA-sponsored report and included in the SAE committee draft procedure. Accordingly, in the NPRM, we proposed to amend the test procedure to specify use of a rotating shelf oven, define shelf placement, and specify temperature monitoring.

B. Corrosion Test

FMVSS No. 116's corrosion test involves placing six metal strips (steel, tinned iron, cast iron, aluminum, brass and copper) in a standard brake wheel cylinder cup in a test jar, immersing the entire assembly in the brake fluid being tested, and then heating the fluid for an extended period of time. The metal strips and wheel cylinder cup represent the materials that comprise brake system components that are in contact with brake fluid (master cylinders, brake lines, caliper pistons, wheel cylinders, etc.).

A variety of performance requirements must be met at the end of the corrosion test procedure. Among other things, the metal strips are examined for weight change, which must not exceed specified percentages. See S5.1.6 and S6.6 of the standard.

In the NPRM, we stated that while we do not have as much information concerning variability of the corrosion test as we do for the evaporation test, we identified a change in the specification concerning how the metal strips are prepared prior to testing that we believe would improve repeatability and reproducibility. The standard currently specifies that each of the strips, other than the tinned iron strips, is to be abraded with wetted silicon carbide paper grit No. 320A until all surface scratches, cuts and pits are removed, and then polished with grade 00 steel wool.[3] In the NPRM, we stated our belief that less variability would result if the strips were further abraded with wetted silicon carbide paper grit No. 1200, instead of being polished with grade 00 steel wool, and if a visual acuity requirement for evaluating the presence of surface scratches, cuts and pits were specified.

We stated that if these changes were made, the repeatability and the reproducibility of the Corrosion test might be improved, since the steel wool might produce slight surface irregularities due to interaction with dissimilar metals that the No. 1200 silicon carbide paper would not. The visual acuity requirement would ensure removal of all surface scratches, cuts and pits that are visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches).

II. Comments on the Proposed Rule and NHTSA's Decisions

In response to the NPRM, we received comments from: ABIC Testing Laboratories, Inc. ABIC); Case Consulting Laboratories, Inc. (Case); Castrol International (Castrol); Clariant GmbH (Clariant); Continental Teves AG & Co.oHG (Continental); DaimlerChrysler Corporation (DaimlerChrysler); Dr. Jos Morsink (a member of the SAE Motor Vehicle Brake Fluids Standards Committee) of Shell Chemicals (Shell); Society of Automotive Engineers of Japan (JSAE); Toyota Motor North America, Inc. (Toyota); and from Tammy T. Shannon, Ph.D. and Gregory A. Carpenter (Brake Fluid Technologists and Members of the SAE Motor Vehicle Brake Fluids Standards Committee) of Union Carbide (Union Carbide). We also received a February 14, 2003 submission from members of the SAE Brake Fluids Committee and other brake fluid experts.

A. Comments on Evaporation Test and NHTSA's Decision

Several commenters on the NPRM argued that the evaporation test should be removed from FMVSS No. 116. Continental stated that it agrees with the decision of ''the SAE Committee to cancel the evaporation test.'' DaimlerChrysler recommended that the evaporation test be removed, stating ''the test is simply obsolete, given the vastly improved brake fluids and sealed braking systems of today.'' DaimlerChrysler stated that the boiling point test would ''reveal most of the fluid property weaknesses targeted by the evaporation test,'' providing the agency with ''reasonable assurance that substantially inferior brake fluids would not be introduced to the U.S. market.''

Castrol provided several reasons why it believes the evaporation test should be removed. Castrol stated that since brake systems now tend to be sealed, evaporation is no longer an issue as it was in the past. Castrol stated further that although in some countries, there are brake fluid products (based on fluids such as water and diacetone alcohol) that would not meet the evaporation test requirements, it believes these fluids would not meet other FMVSS requirements. Castrol concluded that if these ''new marketers were to enter the U.S. market, they would not be able to claim FMVSS 116 standards with these inferior fluids.''

Clariant and Shell provided similar explanations of why the SAE Brake Fluids Standards Committee voted to remove the evaporation test, stating ''it has not been just an ad hoc decision.'' Clariant and Shell stated that the Committee, after considering data from many support laboratories, concluded that the evaporation test was not reliable enough. Shell stated that although the repeatability improves by using a rotating oven, the reproducibility ''stays below an acceptable performance level.'' That company also stated that the evaporation test can be considered as outdated since it originates from a time that volatile alcohol was used as part of a brake fluid formulation. Clariant and

[3] Tinned iron strips are not abraded or polished during preparation for corrosion testing because the tin coating is very thin and the test strips are highly polished to begin with.

Shell expressed the view that concerns about evaporation test testing for potential vapor lock are addressed by the equilibrium reflux boiling point (ERBP) requirements.

Union Carbide expressed the view that the evaporation test is ''outdated,'' and that brake fluid evaporation leading to vapor lock is ''not a danger in modern braking systems.'' Union Carbide expressed the view that even with the proposed changes to the evaporation test, the ''results are unacceptable in repeatability and reproducibility.''

In a submission to NHTSA dated February 14, 2003, a member of the SAE Brake Fluids Committee provided background information concerning why the committee decided to recommend deletion of the evaporation test. The document was a summation of inputs from various SAE Brake Fluids Committee members, knowledgeable brake/brake fluid experts, and general automotive/historical references.[4] The document stated that the evaporation test ''is not a practical test, due to continuing lack of repeatability and reproducibility much less functional variability'' and the fact that today, brake systems are sealed to minimize brake fluid evaporation. The document stated that brake systems are also sealed to meet the requirements in FMVSS Nos. 105, *Hydraulic and Electric Brake Systems,* and No. 135, *Passenger Car Brake Systems.* FMVSS Nos. 105 (at S5.4.2) and 135 (at S5.4.2) require that brake fluid reservoirs contain sufficient fluid to operate brake systems normally when the friction components (pads and linings) are worn. FMVSS Nos. 105 (at S7.18(c)) and 135 (at S7.17(b)) also require that the brake system show no signs of leakage during inspection after completion of testing. According to the document, these requirements ensure that the braking system is highly resistant to brake fluid evaporation. The agency believes that the requirements in FMVSS Nos. 105 (at S5.4.2) and 135 (at S5.4.2) do not directly assure that brake fluid is highly resistant to evaporation because a sufficiently large master cylinder reservoir will provide adequate brake fluid to meet these requirements.

The February 14, 2003 document also stated that in FMVSS No. 116, the stroking properties test (at S5.1.13 and S6.13), subjects brake fluid to conditions similar to those in the evaporation test. Also, the stroking properties test simulates brake fluid function in a vehicle brake system, which the evaporation test does not do. The stroking properties test requires that brake fluid be maintained at a higher temperature for a longer period of time than the evaporation test procedures (evaporation test at 100 degrees Celsius for 46 hours; the stroking properties test at 120 degrees Celsius for approximately 70 hours). Therefore, in order to meet the stroking properties test, the brake fluid must be highly resistant to evaporation. It should be noted that under certain conditions, the evaporation test requires that brake fluid be heated continuously for 7 days. However, the stroking test could be used to evaluate brake fluid evaporation rate.

The evaporation test at S5.1.8(b) specifies that the ''residue from the brake fluid after evaporation shall contain no precipitate that remains gritty or abrasive * * *'' The February 14, 2003 document also cited S5.1.6, Corrosion; S5.1.9, Water tolerance; and S5.1.10, Compatibility, as tests in FMVSS No. 116 that could be used, with minor modifications, to evaluate the ''grittiness'' of the brake fluid.

Castrol and the February 14, 2003 document stated that paragraph S5.1.1. Equilibrium Reflux Boiling Point (ERBP) and paragraph S5.1.2, Wet ERBP, also assess the ability of the brake fluid to resist evaporation. The boiling point tests determine the boiling point temperature of new brake fluid (ERPB) and when water has been added, 3 percent by weight (wet ERBP). The boiling point tests and the evaporation test evaluate similar brake fluid properties.

Several other commenters to the NPRM, including ABIC, Case, Toyota, and JSAE, favored retaining the evaporation test, and suggested how the evaporation test could be made more objective, with the comments focusing on improving repeatability and reproducibility by providing more specifications for the oven. ABIC stated that the evaporation test ''is the only test procedure, which gives an indication of the grittiness of the fluid tested.'' ABIC suggested that an ''open, bared type'' shelf be used to hold the brake fluid test samples in the oven used in the evaporation test. ABIC expressed the view that the ''open, bared type'' shelf would allow adequate heat and airflow to rise up from the bottom of the shelf. ABIC further stated that in some ovens used to test brake fluid samples, the shelves were ''almost a solid piece of metal,'' absorbing heat. ABIC stated that this build up of heat under the tested samples may be another reason for individual differences in evaporation loss between samples tested.

Case cited the May 1993 NHTSA-sponsored report as supporting improvement in Evaporation test results. Case stated that the ''rotating shelf modification and standardized positioning of temperature sensors will produce much better agreement within and between laboratories.''

Toyota commented that the size of the oven and the area and shape of the oven's vent hole should be specified because without such detailed specifications, the test equipment may vary between laboratories used by NHTSA and the industry. JSAE commented that other factors such as ''oven capacity or vent area'' may affect the evaporation results. Neither commenter gave specifications for the ovens or the vent areas that it believes would result in a more repeatable and reproducible evaporation test.

After careful consideration of the comments, we have decided to remove the evaporation test. As discussed earlier, in preparing the NPRM, we considered whether the test should be retained in FMVSS No. 116, particularly in light of the decision by the SAE Brake Fluids Committee to remove the test from the SAE standard. We indicated in the NPRM that we were concerned that removal of the test could permit the introduction of inferior brake fluids into the United States market, even if current brake fluid manufacturers would be unlikely to introduce such products.

On further consideration of this issue, however, we are persuaded that the evaporation test is unnecessary given changes in brake system designs and in brake fluid formulations since the test was developed, and that other tests in the standard will prevent the introduction of inferior brake fluids into the United States market. In particular, we note that the evaporation test dates back to a time when hydraulic brake systems were vented and when brake fluid contained alcohol or castor oil (substances with lower boiling point temperatures than present day brake fluid formulas). Present day brake fluid formulas do not contain alcohol or castor oil. Moreover, FMVSS No. 116 includes other tests, such as the boiling point test, the stroking test, the corrosion test, and the water tolerance test, which will prevent the introduction of inferior brake fluids into the United States market.

We have also factored continuing problems related to repeatability and reproducibility into our decision. While it might be possible to address these problems by further research, we believe it would not be a good use of our resources to conduct such research given the evidence that there is no longer a safety need for this test in FMVSS No. 116.

[4] Brake TEC, ''Re: FMVSS No. 116–Evaporation Test'' Docket No. NHTSA–2000–8633–13.

B. Comments on Corrosion Test and NHTSA's Decision

Commenters provided a variety of views on whether and on how the corrosion test should be changed. Two commenters, Case and Union Carbide, recommended that the proposed changes to the corrosion test be made final.

Castrol, DaimlerChrysler, Clariant, and JSAE gave qualified support for the proposed changes to the corrosion test. Castrol suggested that the corrosion test be amended by eliminating the step of ''finishing'' the test strips following the preparation and cleaning of the surface with the 320A silicon carbide paper, in other words, to follow the procedure currently specified in SAE J1703. In general, Castrol recommended compatible national and international standards.

DaimlerChrysler stated that it does not have the ''technical experience or knowledge that would allow for fair judgment of the proposed test strip preparation method.'' It noted that NHTSA should ''take care that the quantitative results of corrosion testing are not significantly altered due to changes in testing methodology, as such an alteration would necessitate reconsideration of compliance as well.''

Clariant agreed with the proposed change from steel wool to the ''wetted silicon carbide paper grit No. 1200.'' However, it stated that the surface of the test specimen with the ''wetted silicon carbide paper grit No. 1200'' will be rougher than after the steel wool polish step, resulting in ''higher corrosion rates'' reported than before.

The JSAE suggested the following additional procedures: taking more time for abrading with the ''No. 1200 papers'' after the ''No. 320 paper;'' and adding several steps ''(*i.e.*, by using No. 320, No. 600, No. 800, and No. 1200) between the No. 320 and No. 1200 steps.'' JSAE did not suggest the length of time to be spent abrading, using each of these papers, or the total length of time to be spent using all of these suggested papers.

Continental did not oppose the proposed changes to the Corrosion test, noting that the change from steel wool to silicon paper will not adversely affect the test results and will result in consistent test strip preparation.

Toyota recommended that the current corrosion test be retained, arguing that it is repeatable and reproducible. It stated that it has found that variations in this test are minimal enough that the performance of the brake fluid may be assessed accurately. That company also stated that it has found that the testing variability improvements using the proposed test are unobservable, and submitted data from several tests in support of that position. Toyota argued that changing the test would result in an unnecessary burden on manufacturers.

Shell asked for evidence that use of silicon carbide paper (as proposed in the NPRM) would result in less variability in test results. ABIC recommended that NHTSA ''may want to evaluate other abrading materials before they make a final recommendation.''

In response, NHTSA notes that testing conducted to date with the new test apparatus does not indicate significant changes in test results from previous tests. However, the agency believes the new procedure will improve the enforceability of FMVSS No. 116. Also, the agency does not believe that additional changes in test apparatus will significantly change the test results.

After carefully considering the comments, we have decided to adopt the proposed modification to the corrosion test. We believe this change will produce more consistent test results and thereby improve repeatability and reproducibility.

We note that SAE standards J1703 and J1704 currently specify that the metal strips be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because of the potential for the steel wool to react with some metal strips in a manner that could cause galvanic corrosion to occur. This type of reaction would not occur in a brake system environment and should therefore be avoided in a corrosion test.

While we have considered specifying abrading with 320A paper only, as suggested by Castrol, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. Abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components.

We do not believe it is necessary to specify additional abrading steps, as suggested by JSAE. We believe the new visual requirements for test strip inspection should ensure that the test strips are sufficiently smooth.

While it is possible, as suggested by Clariant, that the test's modification could in some cases result in slightly more corrosion, the available information, including that provided by ABIC, Toyota, and SAEJ, indicates that results from the current and new procedure are comparable. We do not believe this minor test change will cause any manufacturer to have to reformulate or otherwise change its brake fluid.

We do believe, however, that the change will result in less variation of test strip condition prior to testing, thereby improving repeatability and reproducibility. Moreover, by eliminating the use of steel wool, it will address the potential problem of electrolysis. Therefore, we believe it is appropriate to adopt the change as proposed.

III. Statutory Bases for the Final Rule

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. Id. Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 116. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public

comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following two decisions in this final rule. First, we have decided to remove the evaporation test from FMVSS No. 116. Because the evaporation test was initially adopted into FMVSS No. 116 to meet the need for motor vehicle safety, we indicated in the NPRM that we were concerned that removal of the evaporation test could permit the introduction of inferior brake fluids into the United States market, even if current brake fluid manufacturers would be unlikely to introduce such products.

After reviewing the public comments and upon further consideration of the evaporation test issue, we are persuaded that the evaporation test is unnecessary given changes in brake system designs and in brake fluid formulations since the test was developed, and that other tests in FMVSS No. 116 will prevent the introduction of inferior brake fluids into the United States market. In particular, we noted that the evaporation test dates back to a time when hydraulic brake systems were vented and when brake fluid contained alcohol or castor oil (substances with lower boiling point temperatures than present day brake fluid formulas). Present day brake fluid formulas do not contain alcohol or castor oil. Moreover, FMVSS No. 116 includes other tests, such as the boiling point test, the corrosion test, the water tolerance test, and the stroking test, which will prevent the introduction of inferior brake fluids into the United States market.

Second, after carefully considering the comments, we have decided to adopt the proposed modification to the corrosion test. We believe this change will produce more consistent test results and thereby improve repeatability and reproducibility. We note that the current corrosion test (which is revised in this final rule) of Standard No. 116 is based on an SAE recommended practice. SAE standards J1703 and J1704 currently specify that metal strips used in the corrosion test be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because steel wool has the potential to react with some metal strips in a manner that could cause electrolysis to occur. An electrolytic reaction would not occur in a brake system and should therefore be avoided in a corrosion test. We have changed the SAE recommended procedure as follows. While we considered specifying abrading with 320A paper only, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. We have concluded that since abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components, adding the extra step of abrading the test strips with the 1200 paper would meet the need for motor vehicle safety.

IV. Effective Dates

In the NPRM, we proposed to make the amendments proposed in the NPRM effective one year after publication of a final rule in the **Federal Register**. We received no comments on the effective date issue. Therefore, as proposed in the NPRM, and in accordance with 49 U.S.C. 30111(d) *Effective date of standards,* the provisions in this final rule making changes to the corrosion test take effect one year from the date of publication of this final rule in the **Federal Register**. In this final rule, we have determined that there is no longer a safety need for the evaporation test. Therefore, in order to timely remove cost and regulatory burdens associated with testing for brake fluid evaporation (for which NHTSA has determined there is no longer a safety need), the provisions regarding the evaporation test will be removed sixty days from the date of publication of this final rule in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. It was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' Further, it is not significant for the purposes of the DOT policies and procedures.

This final rule does not affect the stringency of Standard No. 116, but instead improves the repeatability and reproducibility of the existing corrosion test and removes an outdated test that is no longer needed for safety.

Since, in this final rule, we have removed the evaporation test and made only minor changes to the corrosion test, the costs of the final rule are minimal. We estimate that there are five to 10 brake fluid manufacturers that provide brake fluid for the United States market, including OEM and aftermarket brake fluid, and a somewhat larger number of packagers of brake fluid. The brake fluid manufacturers will need to conduct testing to determine that their products meet the new requirements after these amendments become effective. However, the testing costs should not increase significantly because this final rule requires changes in relatively inexpensive test equipment. There may be a slight cost savings, as the brake fluid manufacturers no longer need ensure that their brake fluids meet the evaporation test. For these reasons, the final rule is unlikely to result in any change in the cost of brake fluid.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for this certification is that, as discussed above, the final rule does not affect the stringency of Standard No. 116, but instead removes the standard's evaporation test, to improve enforceability. Cost savings resulting from brake fluid manufacturers no longer having to conduct an evaporation test are unlikely to result in any change in the cost of brake fluid. Therefore, the changes made in this final rule will not have any significant economic impacts on small businesses, small organizations or small governmental jurisdictions.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have substantial direct effects on the States, on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to brake fluid manufacturers, not to the States and local governments.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act (UMRA) of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this final rule has any retroactive effect. We conclude that it does not have such an 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.

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action will not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in comments to the docket number cited in the heading of this notice.

J. Executive Order 13045 Economically Significant Rules Disproportionately Affecting Children

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of those criteria.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [5] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. We note that this final rule's removal of the evaporation test from FMVSS No. 116 is consistent with the decision of the SAE Brake Fluids Standards Committee to remove the evaporation test from the SAE standard. We further note that the current corrosion test (which is revised in this final rule) of Standard No. 116 is based on an SAE recommended practice. SAE standards J1703 and J1704 currently specify that metal strips used in the corrosion test be prepared for testing by abrading with 320A paper only. The SAE Committee eliminated the preparation step involving steel wool because steel wool has the potential to react with some metal strips in a manner that could cause electrolysis to occur. An electrolytic reaction would not occur in a brake system and should therefore be avoided in a corrosion test. We have changed the SAE recommended procedure as follows. While we considered specifying abrading with 320A paper only, we believe this preparation leaves the test strips in a rough condition that is not representative of the surface conditions of metals used to fabricate brake system components. We have concluded that since abrading or polishing with the 1200 paper results in a surface finish more similar to that of brake system components, we are adding the extra step of abrading the test strips with the 1200 paper.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

[5] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 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 571.116 is amended by:

■ a. Removing and reserving S5.1.8;

■ b. Revising S6.6.3(e);

■ c. Revising in S6.6.4(a), the first and third sentences;

■ d. Removing and reserving S6.8;

■ e. Removing S6.8.1;

■ f. Removing S6.8.2;

■ g. Removing S6.8.3; and

■ h. Removing S6.8.4.

The revisions read as follows:

§ 571.116 Standard No. 116; Motor vehicle brake fluids.

* * * * *

S6.6.3 * * *

(e) *Supplies for polishing strips.* Waterproof silicon carbide paper, grit No. 320A and grit 1200; lint-free polishing cloth.

* * * * *

S6.6.4 * * *

(a) * * * Except for the tinned iron strips, abrade corrosion test strips on all surface areas with 320A silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids) until all surface scratches, cuts and pits visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches) are removed. * * * Except for the tinned iron strips, further abrade the test strips on all surface areas with 1200 silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids), again using a new piece of paper for each different type of metal. * * *

* * * * *

Issued on: November 9, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–25446 Filed 11–18–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–11875; Notice 2]

RIN 2127–AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on rear impact guards (underride guards). Under the current requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters ''DOT.'' In response to petitions for rulemaking, the agency issued a notice of proposed rulemaking (NPRM) proposing to allow manufacturers to place the label on the rear impact guard where it may be less exposed to damage, provided that the label does not interfere with the required retroreflective sheeting and is readily accessible for visual inspection. No comments were received. Thus, in this document, the agency is adopting the proposal as set forth in the notice of proposed rulemaking.

DATES: This final rule is effective January 18, 2005.

Petitions: Petitions for reconsideration must be received by January 3, 2005.

ADDRESSES: Petitions for reconsideration should refer to DOT Docket No. NHTSA–2002–11875 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Huntley, Office of Vehicle Safety Standards, (Telephone: 202–366–0029) (Fax: 202–493–2739) (E-Mail: *Michael.Huntley@nhtsa.dot.gov*).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202–366–2992) (Fax: 202–366–3820) (E-Mail: *George.Feygin@nhtsa.dot.gov*).

You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, NHTSA published a final rule establishing two Federal motor vehicle safety standards (FMVSSs) to address the problem of rear underride crashes.[1] Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or ''underrides'' the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck. The final rule established two standards that operate together to reduce the number of injuries and fatalities resulting from underride crashes.

The first standard, FMVSS No. 223, ''Rear impact guards,'' specifies performance requirements that rear impact guards (underride guards) must meet before they can be installed on new trailers. It specifies strength requirements and test procedures that NHTSA uses to determine compliance with those requirements. FMVSS No. 223 also requires the underride guard manufacturer to provide instructions on the proper installation of the guard. Finally, the underride guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the underride guard was manufactured, and the letters ''DOT''. The letters constitute certification by the manufacturer that the underride guard meets all the performance requirements of FMVSS No. 223. The standard requires manufacturers to place the label on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard, so that, as the guard is mounted on the vehicle, the label will be readily visible to Federal Motor Carrier Safety Administration (FMCSA) inspectors.

The second standard, FMVSS No. 224, ''Rear impact protection, requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more to be equipped with an underride guard meeting FMVSS No. 223. FMVSS No. 224 specifies requirements regarding the location of the underride guard relative to the rear of the trailer. It also requires that the underride guard be mounted on

[1] *See* 61 FR 2003.