rights or would result in a taking of private property.

Executive Order 12866

BLM has determined that the proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The rule is therefore not subject to review by the Office of Management and Budget under section 6(a)(3) of that order.

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Lyndon Werner, Bureau of Land Management, Oregon State Office OR–931, P.O. Box 2965, Portland, Oregon 97208, 503–952–6071.

List of Subjects for 43 CFR Part 5040

Forests and forest products, Land Management Bureau, Public lands.

Dated: November 7, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

For the reasons stated above, and under the authority of 43 U.S.C. 1740, BLM proposes to revise Part 5040, Group 5000, Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 5040—SUSTAINED-YIELD FOREST UNITS [AMENDED]

Sec.

5040.1 Under what authority does BLM establish sustained-yield forest units?
5040.2 What will BLM do before it establishes sustained-yield forest units?
5040.3 How does BLM establish sustained-yield forest units?
5040.4 What is the effect of designating sustained-yield forest units?
5040.5 How does BLM determine and declare the annual productive capacity?

Authority: 43 U.S.C. 1181e; 43 U.S.C. 1740.

§ 5040.1 Under what authority does BLM establish sustained-yield forest units?

BLM is authorized, under the O. and C. Lands Act and the Federal Land Policy and Management Act, to divide the lands it manages in western Oregon into sustained-yield forest units. BLM establishes units that contain enough forest land to provide, insofar as practicable, a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations.

§ 5040.2 What will BLM do before it establishes sustained-yield forest units?

Before BLM designates sustained-yield forest units, it will:

(a) Hold a public hearing in the area where it proposes to designate the units. BLM will provide notice, approved by the BLM Director, to the public of any hearing concerning sustained-yield forest units. This notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the forest units are situated. BLM may also publish the notice in a trade publication; and

(b) Forward the minutes or meeting records to the BLM Director, along with an appropriate recommendation concerning the establishment of the units.

§ 5040.3 How does BLM establish sustained-yield forest units?

After a public hearing, BLM will publish a notice in a newspaper of general circulation in the county or counties affected by the proposed units, stating whether or not the BLM Director has decided to establish the units. If the BLM Director determines that the units should be established, BLM will include in its notice information on the geographical description of the sustained-yield forest units, how the public may review the BLM document that will establish the units, and the date the units will become effective. BLM will publish the notice before the units are established.

§ 5040.4 What is the effect of designating sustained-yield units?

Designating new sustained-yield forest units abolishes previous O. and C. master unit or sustained-yield forest unit designations.

§ 5040.5 How does BLM determine and declare the annual productive capacity?

(a) If BLM has not established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to the O. and C. lands, treating them as a single unit.

(b) If BLM has established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to each separate forest unit.

(c) If it occurs that BLM has established sustained-yield forest units for less than all of the O. and C. lands, then BLM will determine and declare the annual productive capacity as follows:

(1) BLM will treat sustained-yield forest units as in paragraph (b) of this section; and

(2) BLM will treat any O. and C. lands not located within sustained-yield forest units as a single unit.

[FR Doc. 96–29306 Filed 11–14–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–117, N.1]

Federal Motor Vehicle Safety Standards; Power-operated Window, Partition and Roof Panel Systems

RIN 2127–AG36

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to a petition for rulemaking from Michael Garth Moore, Esq. requesting two amendments to Standard No. 118, *Power-operated window, partition, and roof panel systems.* This document denies one request, but grants the other. It denies the petitioner's request to commence rulemaking to require that all power windows automatically reverse power when they encounter resistance because the agency has concluded that such a requirement would be unreasonably costly. This document grants the petitioner's other request and proposes to require each power operated window, interior partition, and roof panel in a motor vehicle to be equipped with a switch designed so that contact by a form representing a child's knee would not cause the window, partition or panel to close.

DATES: Comments are due January 14, 1997.

ADDRESSES: Comments should refer to the Docket Number referenced above and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4:00 p.m.). Do not send originals of comments to any person named below.

FOR FURTHER INFORMATION CONTACT:

(Technical information) Richard Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5280; FAX: 202–366–4329);

(Legal information) Paul Atelsek, Office of Chief Counsel, NHTSA (Phone: 202–366–2992; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background Information
II. Petition for Rulemaking
III. Agency Determination
A. Mandatory Automatic Reversal Feature
B. Special Switches

I. Background Information

Standard No. 118 specifies requirements for power operated window, partition, and roof panel systems [1] to minimize the likelihood of death or injury from their accidental operation. It applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4536 kilograms or less.

Standard No. 118 has two sets of requirements: One addressing operating mechanisms whose design is such that one can presume they will be operated only when a driver is present or close enough to a vehicle to supervise children inside and another addressing mechanisms whose design is such that the presence of child supervision cannot be presumed. Paragraph S4 of the standard lists specific conditions under which power windows may close without further restriction because driver presence can be presumed. The most familiar condition is the presence of the ignition key in the ''on'', ''start'' or ''accessory'' position. The other listed conditions include actuation after the key is removed but before either front door has opened and the use of short range remote controls requiring continuous activation.

Paragraph S5 addresses window operating mechanisms which can be operated in circumstances in which adult supervision cannot be presumed by requiring an automatic window reversal safety feature to prevent high squeezing forces on persons caught in a closing window. This paragraph responds to industry interest in using remote controls of unrestricted range and automatic window closing devices. It also contains a provision stating that windows using this feature are not subject to the window closing restrictions of paragraph S4. While the agency is not aware of any vehicle presently equipped with a window reversal system certified to comply with paragraph S5, it presumes that industry is designing practical systems that will be certified with this provision in the future.

II. Petition for Rulemaking

On September 26, 1995, Michael Garth Moore, an attorney in Hilliard, OH, petitioned NHTSA to amend Standard No. 118 in two ways. First, the petitioner requested that the agency require all power windows be equipped with the automatic reversal safety feature of paragraph S5 of Standard No. 118. Currently, as noted above, the requirement for an automatic reversal safety feature applies only to power windows designed to be closed with remote controls of unrestricted range and to power windows equipped with automatic closing devices. Mr. Moore stated that automatic reversal features are proven technology and economically feasible for mandatory installation. The petitioner further stated that while it is difficult to determine the magnitude of the child injury/fatality problem, preventing even one catastrophic injury or fatality is warranted, given the minimal costs associated with such a requirement.

Mr. Moore's second request was that the agency modify the Standard to prevent inadvertent closure of power windows. The petitioner believed that if its request were adopted, inadvertently placing pressure on the area of the controls would not cause power windows to close, unless the vehicle occupant applied the pressure with his or her fingers in a manner intended to operate the window. To accomplish this, Mr. Moore asked the agency to require that power window switches meet two requirements. First, he asked that manufacturers be required to protect the switches either by shielding them or by placing them in a less accessible location, such as in a recess. Second, he asked that the manufacturers design switches so that ''pressure on any control can only cause the window/partition/roof panel to open'' thereby preventing inadvertent window closure. The petitioner did not specify the circumstances about which he was concerned (i.e., when the key was in the accessory position). The petitioner claimed that such features would protect a child left in a vehicle with the engine running or with the key in the accessory position, since the child would no longer be able to inadvertently close a power window by kneeling or standing on the arm rest or console and contacting the switch. The petitioner was concerned that there was a risk of death or severe injury if the inadvertent closing occurs while a child's head or limb is protruding from the window or sunroof opening.

III. Agency Determination

A. Mandatory Automatic Reversal Feature

After reviewing Mr. Moore's request to require that all powered windows be equipped with an automatic reversal feature, NHTSA has determined that such a requirement would be unreasonably expensive and not practicable with present technology. Based on discussions with manufacturers, the agency estimates that the consumer cost of the present automatic window reversal device is approximately $100 per window for force sensing technology. The cost for a vehicle with four power windows would thus be $400. The petitioner did not provide any information to substantiate his claim that such automatic reversal systems are less costly. Also, the present devices prevent reliable window closure in the presence of snow, ice, and even the friction of cold or tight weatherstripping. Consequently, the present window reversal safety devices operate only during express-up window closure and are overridden by the normal closure mode.

The compliance costs of a performance requirement takes on greatly added significance when it is considered for adoption as a universal mandatory requirement as opposed to a requirement associated with a compliance option, especially a relatively rarely selected option. In the latter case, a manufacturer can decide whether to choose that option and assume the costs of the requirements associated with it. For example, Standard No. 118 permits manufacturers to design power windows to close through the operation of remote controls of unrestricted range or weather sensors if the manufacturers equip those windows with a complying automatic reversal system. When such a requirement is included in a standard as a condition to choosing a particular option, the cost effectiveness of the requirement is not a primary issue.

In the former case, a manufacturer cannot choose not to bear the cost. Although manufacturers technically could choose not to provide power windows, the realities of the market are that this is not really a choice available to manufacturers with respect to many models, particularly the upper end ones. For those models, the petitioner's request to require that all power windows be equipped with automatic reversal systems is an example of a universal mandatory requirement. In the context of such a requirement, cost effectiveness is a primary issue as it bears on the requirement's satisfaction of the statutory requirements for practicability and reasonableness.

The purpose of paragraph S5's automatic reversal requirement is to make it possible to provide

[1] The term ''power window'' is used throughout this document to include all power operated windows, interior partitions and roof panels.

manufacturers with more design freedom regarding additional methods for closing power windows by ensuring that those methods meet minimum levels of safety. Manufacturers have been able to take only limited advantage of that freedom because of the technological limitations and high costs of currently developed automatic reversal systems. For example, the most expensive models of several German luxury automobiles have express-up power windows with an automatic reversal device, but these devices operate on the principle of force sensing and cannot satisfy the petitioner's expectations for several reasons.

The devices cause the closure force of windows to be limited when they are in the express-up mode, but a force low enough to protect passengers is insufficient to close the windows reliably. Snow, ice, and even the friction of cold or tight weatherstripping can prevent window closure. Consequently, the reversal device is disabled during the normal speed operation of the window to ensure closure, and it is not used on rear side windows. Also, the automatic reversal devices in these German automobiles were designed to conform to a German performance standard that affords less protection to small limbs than does Section S5 of Standard No. 118, because it allows considerable window movement after an obstruction is encountered. Therefore, the present technology for window reversal fails to deliver both the safety performance desired by the petitioner and the practicability to close windows under common driving conditions.

Based on the above considerations, NHTSA has concluded that the present technology for automatic window reversal does not provide the safety performance desired by the petitioner. Further, it would not be practicable to redesign that technology so as to provide that performance and retain the ability to close windows under certain common conditions, such as ice and snow. Finally, regardless of the performance limitations of the present technology, the cost of complying with a mandatory requirement is currently too great. Accordingly, the agency denies the request for rulemaking concerning automatic reversal systems.

B. Special Switches

After reviewing Mr. Moore's request to amend Standard No. 118 with respect to shielding the switch which operates a power window, NHTSA has decided to propose amending the Standard. Specifically, the agency is proposing that, if a switch used to close a power operated window is contactable by a rigid spherical ball 25 mm (1″) in diameter, pressing that ball in a nondestructive way against the switch in any direction shall not cause the window to close. As detailed below, a 25 mm ball is considered by the agency to be generally representative of the bent knee of a child under the age of six. The agency believes that this proposed requirement would accomplish goals of the petitioner's request to protect against the inadvertent closure of powered windows. The agency requests comments about the appropriateness of this proposed requirement and whether a 25 mm ball is representative of the size and shape of a hard, rounded object such as a child's knee or flat softer tissue such as a foot sole, arm, or and leg.

NHTSA believes that the proposal is appropriate because children by their nature are curious, and they often put limbs and heads through open windows, while leaning, sitting, standing or kneeling on arm rests and consoles containing switches that control power windows and sunroofs. A simple switch improvement would reduce accidental window raising by children. Nevertheless, it cannot protect unsupervised children from the consequences of willful window activation.

NHTSA has only limited information about the number of unattended children injured by closing windows. NHTSA does periodically receive calls from lawyers, doctors, and the public describing deaths and serious injuries of unattended children in power window accidents. However, the agency has not been able to determine conclusively the number of such accidents since they are not reported in the traffic accident tracking systems maintained by NHTSA. A one year census performed by the United States Consumer Product Safety Commission of selected hospital emergency rooms for power window injuries identified only 10 cases in which people were injured by the unintentional closing of a powered window. Most were of minor severity, and none involved unattended children. While this number of reported cases may be extrapolated to an estimate of about 500 injuries annually nationwide, it provides no information to assess the benefits that shielded switches would provide unattended children.

NHTSA believes that the proposed requirement is practicable since a large proportion of newly designed vehicles with power windows already have switches that are recessed or that must be lifted rather than pressed in order to actuate the system to close. Given adequate lead time, the agency believes that the cost to manufacturers and their customers of installing power window switches that comply with this requirement would be negligible. From a human factors perspective, such switches are a simple expedient to address the most preventable as well as potentially serious type of power window accident.

Notwithstanding the petitioner's request to require both that the switches be redesigned so that their mode or direction of operation [2] guards against inadvertent window closing and that switches be either shielded or recessed, NHTSA has decided not to propose that manufacturers take both approaches, since either approach would be sufficient by itself to minimize the incidence of unintentional closings of power windows.

NHTSA recognizes that the automotive industry has equipped many new vehicle lines with switches designed to prevent inadvertent window closure, but it is unaware of any industry consensus standard or other performance standard which influences the design of such switches. Absent such information, the agency has decided to propose a 25 mm ball contact test as a simple but objective performance criterion which it believes distinguishes the new safety switches from the older designs criticized by the petitioner. The test ball's size and shape represents the portions of the body that might inadvertently come in contact with a power window switch, e.g., hard, rounded objects such as a child's knee or flat soft tissue such a foot soles, arms and legs. The ball test would enable the agency to distinguish between safe and unsafe switch designs. The intent of the proposal is to increase the incorporation of good switch designs already in use rather than to require further switch design changes that might be unreasonably costly.

In general, the agency would prefer to establish performance requirements for power window safety switches on the basis of industry consensus standards reflecting the present trend toward their use in many vehicles of newer design. Federal law generally requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies when such technical standards are available; see section 12(d) of Pub. L. 104–113. If relevant standards exist or are under consideration by organizations such as the Society of Automotive Engineers

[2] An example is a switch that must be pulled or lifted in a inward direction, roughly perpendicular to the inside plane of the door.

(SAE) and the Japanese Society of Automotive Engineers (JSAE), then NHTSA anticipates relying on those consensus requirements in its further consideration of this issue.

While there would be additional compliance and certification cost resulting from this requirement, such costs are minimized by the simplicity of the test and would be an incidental increment to the cost of power windows.

Proposed Effective Date

The amendments would be effective three years after publication of the final rule in the Federal Register. A long lead time is appropriate to allow power window safety switches to become part of vehicle redesign plans, thereby eliminating the cost of altering existing vehicle designs to the extent possible.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to accelerate a design trend already under way to make power window switches safe against inadvertent closure by children. It is anticipated that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation, especially if the lead time were sufficient to avoid changes in vehicles whose designs have been finalized.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of switches for power windows would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons stated above and below, I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, the long leadtime is expected to reduce the costs to negligible levels.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested that 10 copies be submitted.

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

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

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

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

2. Section 571.118 would be revised by adding new section S6, which would read as follows:

§ 571.118 Standard No. 118; Power operated window, partition and roof panel systems.

* * * * *

S6. Switches. Any switch that can be used to close a power operated window, partition, or roof panel system shall not cause such window, partition or system to begin closing when the switch is contacted in any non-destructive manner by a rigid spherical ball of 25 mm diameter.

* * * * *

Issued on November 8, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–29368 Filed 11–14–96; 8:45 am]

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