FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988), by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final action will be effective September 12, 2022.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 28, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–14512 Filed 7–12–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2022–0061]

RIN 2127–AL93

Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles

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

ACTION: Final rule.

SUMMARY: This final rule amends the test procedure in section S6.7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 141, *Minimum Sound Requirements for Hybrid and Electric Vehicles,* as proposed in the September 17, 2019, notice of proposed rulemaking (NPRM), to specify the single point in time that should be used when determining one-third octave band levels of ambient noise measurements used in compliance tests. The agency has chosen not to adopt the remaining portions of the NPRM, including a proposal which would have allowed manufactures of hybrid and electric vehicles (HEVs) to install a number of driver-selectable pedestrian alert sounds in each HEV they manufacture. The driver-selectable alert sounds proposal is not being adopted because of a lack of supporting data. In addition, this final rule acknowledges that a proposed technical change included in the September 17, 2019, NPRM to correct two dates in NHTSA's phase-in reporting requirements for FMVSS No. 141 is no longer needed. That change was addressed previously by the agency's September 1, 2020, interim final rule that extended the FMVSS No. 141 compliance deadline and phase-in dates by six months. The interim final rule included adjustments to NHTSA's reporting dates, superseding the need for the proposed corrections.

DATES: This final rule is effective on August 12, 2022.

ADDRESSES: All correspondence, comments and other information relating to this document should refer to the docket number shown in the heading and should be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pyne, NHTSA Office of Crash Avoidance Standards, by email to *mike.pyne@dot.gov* or at 202–366–4171, or Mr. Paul Connet, NHTSA Office of the Chief Counsel, by email to *paul.connet@dot.gov* or at 202–366–5547.

SUPPLEMENTARY INFORMATION: On September 17, 2019, NHTSA issued an NPRM to amend FMVSS No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles (the ''quiet vehicles'' rule) to remove the numerical limit on compliant sounds that a manufacturer may choose to install in a vehicle.[1] Under the proposal, a manufacturer would be allowed to install any number of compliant sounds on each HEV make/model/body style/trim they produce for sale in the United States. NHTSA requested comment on that proposal and on whether the safety standard should allow more than one compliant sound and if so, what the allowable number should be.

The NPRM included two other proposed changes, one to amend the FMVSS No. 141 test procedure for measuring ambient sound levels during compliance tests, and the other to correct phase-in reporting dates.

Background

To protect pedestrians and other road users, FMVSS No. 141 requires HEVs to emit a pedestrian alert sound while operating in certain conditions.[2] The alert sound on a given vehicle is allowed to change with vehicle operating speed or direction—the standard defines five different operating conditions: stationary in neutral or forward gear and with constant forward speed less than 10 km/h; reverse; and moving at constant forward speed from 10 km/h up to but not including 20 km/

[1] 84 FR 48866.

[2] Final Rule, Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles 81 FR 90416, effective September 5, 2017; docket No. NHTSA–2016–0125.

h, from 20 km/h up to 30 km/h, and at or just above 30 km/h. Beyond that speed, alert sounds are no longer required by FMVSS No. 141 as other sounds such as tires and airflow produce enough sound to make the vehicle detectable.

Section 5.5 of the standard, titled ''Sameness requirement'', requires any two vehicles of the same make, model, model year, body type, and trim level to have the same pedestrian alert sound per operating condition.[3] The sameness requirement prevents manufacturers from equipping multiple sounds for the same operating condition. Additional details of NHTSA's implementation of the sameness requirement are discussed in the preamble of the FMVSS No. 141 final rule.[4]

The sameness requirement in FMVSS No. 141 originates from section 3(a)(2) of the Pedestrian Safety Enhancement Act (PSEA) of 2010 which states that the Federal regulation ''shall allow manufacturers to provide each vehicle with one or more sounds that comply with the motor vehicle safety standard at the time of manufacture.''[5] Section 3(a)(2) further states that the regulation ''shall require manufacturers to provide, within reasonable manufacturing tolerances, the same sound or set of sounds for all vehicles of the same make and model and shall prohibit manufacturers from providing any mechanism for anyone other than the manufacturer or the dealer to disable, alter, replace, or modify the sound or set of sounds.''[6] The PSEA did not provide any further specifics about the number of sounds that hybrid and electric vehicles may have or how sounds may vary among vehicles of the same make and model.

In the original proposal for FMVSS No. 141, NHTSA interpreted this section of the PSEA to mean that a manufacturer may choose to equip different sounds for the different operating modes described above.[7] In a joint comment to the proposal, several commenters stated that the PSEA permitted the regulation to allow for multiple sounds to be equipped for each operating conditions from which drivers could choose from, and requested the agency to adopt driver-selectable sounds.[8] As discussed in the final rule establishing FMVSS No. 141, NHTSA reaffirmed its understanding that the PSEA language restricted the agency from promulgating a rule that would permit vehicles to be equipped with more than one alert sound for a given operating condition, hence foreclosing the possibility of driver-selectable sounds.[9]

Alliance/Global Petition on Driver-Selectable Sounds

The issue of permitting driver-selectable sounds was raised as one aspect of a multi-part petition for reconsideration that was jointly submitted to NHTSA in 2017 by the Alliance of Automobile Manufacturers (Alliance) and Global Automakers (Global).[10] Their petition requested several amendments, one of which was that NHTSA modify the sameness requirement in section S5.5 of FMVSS No. 141 to allow each HEV to be equipped with multiple compliant pedestrian alert sounds from which a vehicle owner/operator could select according to their preference.[11]

As the agency weighed the petition for reconsideration, the agency concluded that amending the standard to permit driver-selectable sounds would represent a significant—and likely unforeseeable—change in the agency's position. The agency determined that it was in the public's best interest to publish a new proposal on the issue to facilitate comment. The agency published an NPRM in September 2019 soliciting public comment on a proposal to allow unlimited sounds on HEVs, provided the manufacturer certified that each sound complies with the requirements of FMVSS No. 141, as well as related questions including whether the safety standard should be amended to allow only a limited number of sounds.

In their petition, Alliance/Global stated that NHTSA's implementation of FMVSS No. 141 adopted an inflexible approach to ensuring sameness and did not account for specific statutory language in the PSEA that permits multiple alert sounds per vehicle. Alliance/Global stated that the words ''one or more sounds'' in Section 3(a)(2) of the PSEA provide this flexibility. Alliance/Global said that providing a selection of sounds is essential for customer acceptance of HEVs, stating:

> Satisfying our customers is a primary concern for OEMs [Original Equipment Manufacturers]. Since 'one size does not fit all' neither will one alert sound for a given make, model, trim level and model year satisfy all those consumers purchasing all these same vehicles.

The petition also discussed comments submitted to the agency in February 2014 jointly by the Alliance, Global, the American Council of the Blind (ACB), and the National Federation of the Blind (NFB), in which the commenters, including the two advocate organizations, recognized the need to provide consumers with a reasonable number of driver-selectable sound choices for customer acceptance reasons.[12]

In a March 2017 follow-up letter, Alliance/Global supplemented their petition with additional information and included a recommendation that not more than five sounds should be allowed per vehicle. The letter included the following explanation:[13]

> Because every additional driver-selectable choice of sound requires a separate certification test as well as a compliance test, the number of driver-selectable choices provided by manufacturers would naturally be limited for practical reasons. However, to address potential concerns that manufacturers might provide too many optional sounds, we recommend that the number of permitted driver-selectable sounds be limited to no more than five driver-selectable alert sounds for any make, model, trim level, model year vehicle.

Alliance/Global did not provide data in the form of consumer surveys, research, or economic impact analysis to support the request to allow multiple sounds in their petition. Similarly, besides the qualitative explanation mentioned above, the specific recommendation of not-more-than-five sounds per HEV was not accompanied by supporting research or analysis.

[3] Section S5.5.1 of FMVSS No. 141, as published in December 2016, allowed the alert sound to vary by model year as well as make and model (see 81 FR 90472). This was further amended on February 26, 2018, to allow alert sounds to vary by trim level and body style within a make/model/model year (*see* 83 FR 8189).

[4] *See* 81 FR 90416, 90472.

[5] Public Law 111–373, 124 Stat. 4086 (January 4, 2011).

[6] *Id.*

[7] *See* 78 FR 2798, 2804.

[8] *See* 81 FR 90416, 90475.

[9] In the 2016 final rule, NHTSA stated: ''Given our understanding of the PSEA, we are not including provisions requested by these commenters that would allow for driver-selectable pedestrian alert sounds. . . . We believe that this approach is necessary to satisfy the requirements contained in the PSEA language and that allowing a means for owners to select or modify alert sounds . . . would be in conflict with the language of the PSEA. Furthermore, by not allowing driver-selectable sounds, the final rule adheres more closely to the PSEA requirement that vehicles of a given make and model must have the same alert sound.'' 81 FR 90416, 90475.

[10] Docket No. NHTSA–2016–0125–0012. At the time of their petition, Alliance and Global were separate entities. Subsequently, they joined to form a single entity called the Alliance for Automotive Innovation with member companies.

[11] NHTSA issued a final rule on February 26, 2018, to address the other requested actions in the Alliance/Global petition for reconsideration (83 FR 8182). In that petition response, the agency announced that it was planning to publish a notice of proposed rulemaking to allow driver-selectable sounds.

[12] Docket No. NHTSA–2011–0148–0322.

[13] Docket No. NHTSA–2016–0125–0016.

Proposed Rule on Driver-Selectable Sounds

In response to the Alliance/Global petition, NHTSA proposed amending FMVSS No. 141 to allow an unlimited number of pedestrian alert sounds per vehicle for any operating condition. In the proposal, NHTSA acknowledged that the PSEA language regarding the sameness of sounds was subject to more than one interpretation, and that alternative readings of the statute could accommodate an amendment to allow vehicles to be equipped with multiple FMVSS No. 141-compliant sounds for the same operating conditions. The proposal reasoned that consumer preferences depend on subjective factors, such as how a vehicle sounds. The NPRM also suggested that the proposal to allow multiple alert sounds in theory should not impair safety as all additional sounds would still have to comply with FMVSS No. 141.

NHTSA requested comment and supporting information on any safety implications, compliance issues, consumer-acceptance factors, cost issues, or other possible alternatives that were relevant to allowing an unlimited number of compliant driver-selectable sounds in FMVSS No. 141. In particular, the NPRM asked for comments on the potential safety issues related to HEV recognition by pedestrians if a multitude of new compliant driver-selectable sounds are available, and the extent to which having an unlimited number of sounds would lead to the potential for a pedestrian to be unable to identify the sounds as coming from a motor vehicle.[14]

Summary of Comments on the NPRM

NHTSA received comments from a variety of sources, including some in favor of the proposal, some opposing it, and other comments offering additional information, not all of it directly related to the proposal.[15] Fifty-two commenters responded to the NPRM: four were from advocacy groups representing people who are blind, have low vision or other disabilities, including the National Federation of the Blind (NFB), the American Council of the Blind (ACB), the Consortium for Citizens with Disabilities (CCD), and The Seeing Eye; two were from organizations representing the automotive industry, including a joint comment from the Alliance and Global Automakers and a comment from SAE International; one submittal was from an educational institution, the Perkins School for the Blind; and 45 were from individual members of the public.

The NFB commented that a ''reasonable number'' of sounds that meet the requirements should be allowed so that HEVs with alert sounds are more palatable to consumers but did not recommend any specific limit on the number of allowable sounds. The NFB stated that it fully supports the Alliance/Global petition, including the assertion that the number of sounds per HEV will be effectively limited by the cost to certify.

Other advocacy groups including the ACB, The Seeing Eye, and the CCD expressed safety concerns about allowing an unlimited number of sounds. The ACB comment diverged from the position it had supported previously in the joint comment letter of February 2014, discussed above. In response to the NPRM, the ACB urged NHTSA to limit the number of sounds from which car owners can select and stated that uniformity is imperative for safety. The ACB stated, ''a distinguishable and uniform sound is necessary to assist the blind community in quickly identifying hybrid or electric cars.'' ACB said that sounds need to be recognizable as a vehicle, ideally that of a car engine, and said that car owners should not be involved in selecting sounds. The CCD reiterated these same comments.

The Seeing Eye commented, ''For recognition purposes, it is important that all vehicles emit the same standardized sound regardless of manufacturer.'' Furthermore, it said that restricting the number of sounds is not enough, and that clear specifications for the types of sounds are needed.

The Perkins School for the Blind submitted a spreadsheet containing 554 individual comments from students, staff members, and others associated with the school.[16] Of these, more than half (282) consisted of nearly identical responses that included the following statement or a very similar one:

> I believe silent cars should be required to emit a set of clear, consistent and recognizable sounds. These sounds should be researched and set by a national governing body. I feel strongly that owners should not be allowed to select from a menu of sounds.

A few commenters in this group elaborated on that core statement, providing statements of fact, opinions, or personal experiences with quiet vehicles in traffic. The large collection of comments from the Perkins School also included the following:

- In addition to the 282 pro forma comments, 57 comments conveyed a similar message in the commenters' own words; many of these elaborated on the general need for 'silent' vehicles to emit a sound or sounds for pedestrian safety.
- Another 117 comments called for a consistent, recognizable sound or sounds in vehicles so blind persons can detect that a vehicle is nearby. Of these, 109 called for a single, uniform sound.
- Eighty comments were generally supportive of finding a solution to quiet car dangers but did not address the question of allowing multiple sounds.
- Fourteen addressed miscellaneous issues outside the scope of the proposal, and four comments focused on opposing the idea of a menu of sound options (though these seem to have mistakenly assumed that drivers could create their own sounds).

There were 45 comments submitted to the docket by individual members of the public, some of which did not directly address the proposal in the NPRM to allow unlimited driver-selectable alert sounds. Among those that did address the proposal, almost all did not support it. These comments did not provide additional data or research, though some offered anecdotal evidence. Many comments from individuals focused on other issues that were out of scope, including one or more of the following:

- expressing a general like or dislike for the concept of adding noise to HEVs;
- pointing out the beneficial reduction in traffic noise that electric vehicles make possible;
- suggesting that quiet gas-engine vehicles should be subject to the same requirements as HEVs.

Based on statements in some of these comments, it seems likely there was some misunderstanding of either the proposal or NHTSA's existing minimum sound requirements. For example, it was apparent that one or more of the commenters believed that vehicle owners would be allowed to create their own sounds or use random recorded sounds, or that the existing NHTSA regulation specifies a single, universal alert sound for all HEVs. Others did not acknowledge that every additional driver-selectable alert sound allowed under the proposal would have to meet the minimum safety requirements.

The Alliance/Global comment fully supported the proposal for an unlimited number of driver selectable sounds and

[14] The NPRM also noted that an international regulation, United Nations Economic Commission for Europe (ECE) Regulation No. 138 on Audible Vehicle Alerting Systems, allows vehicle manufacturers to define alternative sounds which can be selected by the driver and does not specify a particular limit on the number of alternative sounds that may be provided.

[15] Docket No. NHTSA–2019–0085.

[16] As a general note, some of NHTSA's earliest research on quiet vehicle human factors during the 2011 timeframe utilized volunteers from the Perkins School for the Blind located in Cambridge, MA, to evaluate detectability of different vehicle sounds.

reiterated their position that ''offering drivers a selection of pedestrian alert sounds . . . facilitates an increase in consumer choice and promotes consumer satisfaction and acceptance.'' The comment stated that compliance costs will be prohibitive enough to limit the number of sounds that automakers install in a vehicle and will thus prevent them from offering more than a reasonable number.[17] The Alliance/Global comment did not recommend any specific limit on the allowable number of sounds or mention their previous recommendation of not more than five allowable sounds. They maintained their position that a ''reasonable number of choices should be permitted as long as each selectable choice meets the minimum sound requirements.''

Prior to issuing the NPRM, NHTSA considered alternatives to the proposal to allow an unlimited number of alert sounds. One alternative entailed proposing to allow a limited number of driver-selectable alert sounds. The NPRM did not include that specific proposal, but it sought comment on allowing a limited number and, in that case, how many alert sounds should be allowed. NHTSA did not receive any comments in response to the alternative of allowing a limited number of sounds.

The SAE International provided a comment that did not pertain to the proposed rulemaking on selectable sounds but focused exclusively on the test procedure issue raised in the NPRM concerning ambient noise measurement, as discussed later in this document.

Comment Analysis

The great majority of the comments on the NPRM, including those submitted by organizations and people who are blind or who have low vision, did not favor the proposal to allow HEVs to have an unlimited number of different pedestrian alert sounds. To the contrary, most of those comments were in favor of more uniformity, rather than less, in the number and types of alert sounds allowed on HEVs. In fact, while out-of-scope of the NPRM, at least one organization expressed a preference for permitting only a single, uniform sound for all HEVs regardless of vehicle make or model. These commenters stated that having greater uniformity makes it easier for sight-impaired pedestrians to recognize vehicles, and thus safer for them to navigate in traffic. Several comments from individuals included descriptions of unsafe encounters with quiet vehicles.

The joint comment from the Alliance/Global supported the proposal to amend FMVSS No. 141 to allow HEVs to have an unlimited number of pedestrian alert sounds. Similarly, the comment from the NFB favored providing drivers with a ''reasonable number'' of sounds per vehicle from which drivers could choose a preferred sound.

However, these comments were not accompanied by any data or analysis to show that unlimited sounds would have no impact on pedestrian safety. The Alliance/Global and the NFB did not provide information such as data from research or analyses, like consumer surveys for example, or other information to support an amendment to allow either multiple alert sounds or an unlimited number of sounds. They also did not provide any economic or market analysis to support their contention that allowing multiple alert sounds is likely to increase acceptance of HEVs in the U.S. new-vehicle market. Furthermore, the agency has no specific information of its own that addresses these questions of safety and consumer acceptance.

In addition, the Alliance and the NFB submitted a late comment in the form of a letter to the agency on March 17, 2022. The organizations stated that material, including tutorials, guides, and videos, is currently available online to assist individuals that would like to disable the pedestrian alert sound, a mandated vehicle safety system, required under FMVSS No. 141. The organizations asserted that individuals that dislike the alert sound provided by a vehicle manufacturer may seek to disable the sound but that, if provided the option to choose from alternative sounds, such individuals would be more likely to select one than to disable the system. The organizations suggested that NHTSA should therefore allow up to five driver-selectable sounds as a means to ensure that the benefits associated with the requirements contained FMVSS No. 141 are not eliminated.

The agency notes that these commenters did not provide any data or analysis as part of the late comment to support their claims. FMVSS No. 141 sets requirements that apply to manufacturers, modifiers, repair shops, and others, but does not set requirements for end-users. Furthermore, the use and treatment of vehicles by individual end-users generally is not subject to NHTSA's vehicle safety regulations. However, States may choose to require individuals to maintain vehicles after first sale in such a way that they comply with Federal motor vehicle safety standards. In addition, states regulate insurance companies, which may impose deterrents on individuals to dissuade them from disabling important vehicle safety systems such as the one required by FMVSS No. 141. The organizations did not provide any data or analysis about the potential actions of individuals to intentionally make inoperative a required vehicle safety system, nor did they provide any data or analysis to quantify how their requested action to allow multiple driver-selectable sounds would cause individuals determined to silence their vehicle alert sound required by FMVSS No. 141 to instead just select a different sound from among those that could be installed on their vehicle. The agency finds it speculative to suggest that allowing multiple driver-selectable sounds might dissuade vehicle owners from disabling a safety system required by FMVSS No. 141, especially given that a vocal minority of commenters over the course of several rulemakings have argued that HEVs should not be required to have any alert sound because they prefer quiet vehicles, not that there is a lack of preferrable alternative sounds.

Although the commenters that opposed the proposal also did not provide substantial information in the form of research or analyses to support their position, NHTSA believes it prudent to err on the side of caution and safety in the absence of data or other evidence.

While the current standard does not require a uniform sound across manufacturers or even carlines, by restricting the variation of sounds among make/model/trim groups there is an incentive to manufacturers to apply sounds that appeal to a broader range of tastes. Removing this restriction would allow manufacturers to make more obscure sounds that only appeal to a small minority of HEV owners.

After reviewing the comments, NHTSA also is concerned about the potential compliance and safety impacts of the proposal. There are unanswered questions relating to the cost/benefit impact of unlimited driver-selectable sounds including:

- How can the costs and benefits be accurately determined?
- Is it reasonable to expect costs of certification to be the primary factor in limiting the number of driver-selectable sounds?

[17] The agency notes that, under the self-certification statute in the Motor Vehicle Safety Act, manufacturers have some discretion in how they certify, and there is no explicit requirement for a manufacturer to test each sound. However, in certifying compliance, the manufacturer must exercise reasonable care, and NHTSA would find a vehicle noncompliant if an alert sound failed to meet the standard when tested by NHTSA.

• What is the safety impact? Will HEV recognition be compromised as the number of allowable sounds increases, and can that be quantified?
• Will selectable sounds increase consumer acceptance?
• Will there be unintended consequences, *e.g.,* incentives for manufacturers to develop a larger number of customized sounds that appeal to narrow driver populations?

Considering the comments and all other factors, NHTSA has concluded that there is insufficient data or other compelling information to support amending FMVSS No. 141 to allow more than one pedestrian alert sound per HEV, and there is significant opposition from many commenters to the proposal to allow unlimited driver-selectable sounds.

As a result, the agency has concluded that the existing requirement—that HEVs of the same make, model, model year, body style, and trim level, must have the same alert sound—should remain in effect, and the provisions in S5.5 of FMVSS No. 141 should not be amended at this time.

Accordingly, NHTSA is not adopting the proposal from the September 17, 2019, NPRM relating to driver-selectable alert sounds.

Amendment To Clarify Ambient Noise Measurement Procedure

The NPRM proposed modifying the text of section 6.7.3 in FMVSS No. 141 to remove ambiguity in the procedure for evaluating ambient (background) noise during compliance tests. This issue was raised by the Alliance and Global in an April 2018 letter.[18]

Evaluation of ambient sounds during vehicle compliance tests as required in section S6.7 of FMVSS No. 141 is necessary to ensure ambient noise remains acceptably low and to apply ambient corrections to vehicle measurements. Ambient sound is any background noise that is present at the test site during a vehicle compliance evaluation that is not emitted by the test vehicle itself. Table 8 and Table 9 of FMVSS No. 141 specify ambient noise limits for overall sound level and one-third octave band level, respectively, relative to the sound level of the test vehicle.

In prescribing how ambient one-third octave band levels are to be evaluated for correction of vehicle measurements, section S6.7.3 indicates that the ambient levels used are the minimum levels at any point in time over the required 60 seconds of recorded ambient noise. The wording used in S6.7.3 implies that the levels of different one-third octave bands may be evaluated at different times. This was not NHTSA's intention. The correct method intended by the agency is to evaluate ambient levels of all 13 one-third octave bands at the same point in time for an individual microphone. For each microphone, the point in time used is the unique point during the 60 seconds (or more) of recorded ambient noise when the overall sound pressure level of the ambient is at a minimum for that same microphone, as identified in the preceding step, S6.7.2, in the test procedure. Consequently, the point used for computing the 13 one-third octave bands may vary across microphones but, for a single microphone, all 13 one-third octave bands are computed at the same point in time.

To resolve this, NHTSA proposed amending S6.7.3 to state the intended method of evaluating ambient one-third octave bands more clearly for the purpose of applying corrections to measurements of vehicle sound.

There was one comment submitted on this topic in response to the NPRM, from SAE International (SAE). SAE did not comment on the details of the proposed amendment of S6.7.3, but rather expressed a broader concern with NHTSA's approach to ambient noise measurement more generally. This is something SAE has written to the agency about on a previous occasion.[19] SAE's present comment maintained that FMVSS No. 141 compliance test procedures should not use the minimum ambient sound level. SAE stated the correct method is to ascertain and apply the maximum ambient sound level. However, NHTSA considered that approach in the past and was not persuaded to change the ambient correction methodology in FMVSS No. 141.

Because the SAE comment did not specifically address the proposal to reword S6.7.3 and instead focused on a broader test procedure concern that NHTSA has previously considered but chose not to adopt, the agency is proceeding with a final rule to adopt the amended test procedure as proposed.

An amended S6.7.3 is included below. This amendment is scheduled to take effect 30 days after the date of publication in the **Federal Register**.

Proposed Correction of Phase-In Reporting Dates

The NPRM included a proposal to correct two dates in the part 585 phase-in reporting requirements associated with FMVSS No. 141. However, those changes are no longer necessary.

The FMVSS No. 141 final rule published in December 2016 required vehicle manufacturers to report on their production of compliant HEVs during a one-year phase-in period from September 1, 2018, to August 31, 2019.[20] NHTSA later acknowledged that part 585, subpart N, incorrectly refers to this one-year period in two places as ''the production year ending August 31, 2018'' instead of ''the production year ending August 31, 2019.'' When NHTSA granted a petition for reconsideration in February 2018 to extend the FMVSS No. 141 phase-in and compliance deadlines by one year, the reporting dates in part 585, subpart N, were all adjusted by adding one year.[21] However, because those two dates were off by one year, the adjusted dates also were off by one year. In the NPRM, NHTSA proposed correcting this discrepancy.

On September 1, 2020, NHTSA published an interim final rule (IFR) to extend the FMVSS No. 141 phase-in and compliance deadlines by an additional six months to provide relief to automakers experiencing vehicle manufacturing disruptions resulting from the Covid-19 national health emergency.[22] The IFR included six-month adjustments to the due dates for FMVSS No. 141 phase-in reporting contained in part 585, subpart N.[23] Those newly adjusted reporting dates supersede the corrections NHTSA proposed in September 2019 and obviate the need for any further changes. In addition, the agency did not receive any comments on the proposed date change. Therefore, in this document, NHTSA is making no changes to the phase-in reporting dates.[24]

Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563,

[18] See Docket No. NHTSA–2018–0018–0004.

[19] *See* SAE comment, Docket No. NHTSA–2016–0125–0021, at p. 1.

[20] The reporting requirements and associated due dates for phase-in of compliance with FMVSS No. 141 are contained in 49 CFR part 585, subpart N.

[21] 85 FR 8182.

[22] 85 FR 54273.

[23] As per normal procedure, the interim final rule allowed for public comment. In response to the IFR, there were no comments submitted on the topic of phase-in reporting dates for FMVSS No. 141.

[24] As stipulated in the IFR, the phase-in period for FMVSS No. 141, covering 50 percent of a manufacturer's HEV production, ran from March 1, 2020, through February 28, 2021. Full compliance with FMVSS No. 141, covering 100 percent of each manufacturer's HEV production, began on March 1, 2021.

and the Department of Transportation Order 2100.6, ''Policies and Procedures for Rulemakings.'' This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' Given the minimal impact of the rule, in accordance with the Department's regulatory policies and procedures, we have not prepared a full regulatory evaluation.[25] The agency has further determined that the impact of this rule is so minimal that the preparation of a full regulatory evaluation is not required.

This final rule does not add any cost, as it does not change the scope or applicability of FMVSS No. 141 and does not add new requirements or increase design or production burden for vehicle manufacturers.

This final rule does not have any effect on safety, as the modification of a step in the test procedures related to ambient noise correction does not change the safety requirements in the standard that apply to all pedestrian alert sounds.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. This final rule would directly impact manufacturers of hybrid and electric vehicles. Most manufacturers affected by this final rule are not small businesses. To the extent any manufacturers of hybrid or electric vehicles are small businesses, we do not believe this final rule would have a significant economic impact on any small businesses as this final rule would not impose any additional costs on manufacturers.

C. Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would 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 would not 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.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under chapter 301, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under chapter 301. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e).

Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See Geier v. American Honda Motor Co., 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rulemaking action could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this final rule and finds that this rule prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before

[25] Department of Transportation, Adoption of Regulatory Policies and Procedures, 44 FR 11034 (Feb. 26, 1979).

parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to E.O. 12988, NHTSA notes that the issue of preemption is discussed separately in this final rule. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There is not any new information collection requirement associated with this final rule.

G. 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 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. 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 specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.'' Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the SAE International, and the American National Standards Institute. If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

NHTSA considered and utilized voluntary consensus standards in the development of the FMVSS No. 141 standard. NHTSA utilized SAE J2889 as a basis for the test procedures in FMVSS No. 141, as discussed in the preamble to the original final rule establishing the safety standard in 2016.[26] NHTSA's test procedures include a specific deviation from the J2889 procedures for reasons discussed in the original final rule preamble. That deviation was raised in a comment and is addressed in this final rule document in the discussion of comments pertaining to the amended test procedure.

There are no other voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this final rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

I. National Environmental Policy Act

NHTSA analyzed the original FMVSS No. 141 final rule for the purposes of the National Environmental Policy Act. The agency determined that implementation of that rule would not have any significant impact on the quality of the human environment.[27]

The final rule amends FMVSS No. 141 in a way that would not change the impact for the purposes of the National Environmental Policy Act. Therefore, the agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

J. 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.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products.

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

[26] 81 FR 90416.

[27] Docket no. NHTSA–2016–0125, *https://www.regulations.gov/document?D=NHTSA-2016-0125-0009.*

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.141 by revising paragraph S6.7.3 to read as follows:

§ 571.141 Standard No. 141; Minimum Sound Requirements for Hybrid and Electric Vehicles.

* * * * *

S6.7.3 For each microphone, compute an ambient level for each of the 13 one-third octave bands using the time that is associated with the minimum A-weighted overall ambient identified in S6.7.2 of this section.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–14733 Filed 7–12–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220527–0125; RTID 0648–XC133]

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Extension of Emergency Decisions of the Western and Central Pacific Fisheries Commission

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

ACTION: Temporary specification.

SUMMARY: NMFS is extending the effective date of a temporary specification that implements a short-notice decision of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). NMFS issued temporary specifications on June 11, 2021, to implement short-notice WCPFC decisions regarding purse seine observer coverage, purse seine transshipments at sea, and transshipment observer coverage. NMFS is extending the effective date of the temporary specification on purse seine observer coverage until December 31, 2022. NMFS is also revoking the temporary specification on transshipment observer coverage. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention).

DATES: The temporary specification on purse seine observer coverage is in effect from July 13, 2022 until December 31, 2022. The temporary specification on transshipment observer coverage is revoked from July 13, 2022.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

SUPPLEMENTARY INFORMATION: Under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), NMFS published an interim final rule that established a framework to implement short-notice WCPFC decisions (50 CFR 300.228). NMFS simultaneously issued temporary specifications to implement three short-notice WCPFC decisions until September 14, 2021. Additional background information on the Commission, the Convention, the interim final rule, and temporary specifications, is available in the **Federal Register** document that includes the interim final rule and temporary specifications (86 FR 31178; June 11, 2021). Pursuant to a WCPFC decision, NMFS extended the effective date of the temporary specifications for purse seine observer coverage and transshipment observer coverage until June 10, 2022, and revoked the temporary specification on purse seine transshipment at sea (87 FR 21812; April 13, 2022). Under the interim final rule at 86 FR 31178, temporary specifications can only remain in effect for less than one year. NMFS published a final rule on June 7, 2022, to make final this interim rule, effective on July 7, 2022 (87 FR 34580).

In response to the ongoing COVID–19 pandemic, NMFS published another interim final rule to extend the time period that temporary specifications issued to implement short-notice WCPFC decisions related to the COVID–19 pandemic may remain in effect(87 FR 34584; June 7, 2022). Such temporary specifications may be continued, as appropriate, until December 31, 2023. NMFS simultaneously extended the temporary specifications on purse seine observer coverage and at-sea transshipment observer coverage until July 15, 2022 (87 FR 34584; June 7, 2022).

Based on a recent WCPFC decision, NMFS is now extending the temporary specification on purse seine observer coverage until December 31, 2022, and revoking the temporary specification on transshipment observer coverage.

WCPFC Emergency Decisions

On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until December 31, 2022.

On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID–19, the Commission made an intersessional decision to modify the prohibition on at-sea transshipment for purse seine vessels as follows—purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission decided not to extend that decision past March 15, 2022.

On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission decided not to extend that decision past June 15, 2022.

Extension of Temporary Specification

NMFS is using the framework as set forth at 50 CFR 300.228 to extend the effective date of the temporary specification implementing one of the three recent WCPFC intersessional decisions (WCPFC decision dated April 8, 2020), described above, that is in effect until December 23, 2022. The regulations to implement short-notice WCPFC decisions at 50 CFR 300.228 provide that short-notice decisions related to the COVID–19 pandemic may be continued, as appropriate, until December 31, 2023.

Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until December 31, 2022, unless NMFS earlier rescinds this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry WCPFC