

October 13, 1993, with an effective date of November 12, 1993. 58 FR 52918. Because the Corporation's fiscal year 1994 appropriations act (Pub. L. 103-121, 107 Stat. 1184)—which became law prior to the original effective date of November 12, 1993—operated to delay the effective date of the rule until after October 1, 1994, the Corporation published a notice in the *Federal Register* announcing that the effective date of the final rule was delayed to October 2, 1994, absent superseding action by the Corporation's Board of Directors. 58 FR 65291.

On September 20, 1994, the Corporation's Board voted by notational vote to withdraw the final rule amending 45 CFR Part 1602 so that the rule would not become effective before the Board had an opportunity for further consideration.

Dated: September 22, 1994.

Victor M. Fortuno,  
General Counsel.

[FR Doc. 94-23994 Filed 9-28-94; 8:45 am]  
BILLING CODE 7050-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 94-37; RM-8449]

#### Radio Broadcasting Services; Lihue Kauai, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots Channel 251C to Lihue Kauai, Hawaii, as that community's third local FM service, at the request of Linoahu Entertainment. See 59 FR 27525, May 27, 1994. Channel 251C can be allotted to Lihue Kauai in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 251C at Lihue Kauai are North Latitude 21-58-48 and West Longitude 159-22-30. With this action, this proceeding is terminated.

**DATES:** Effective Nov. 7, 1994. The window period for filing applications for Channel 251C at Lihue Kauai, Hawaii, will be open on November 7, 1994, and close on December 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 94-37, adopted September 14, 1994, and

released Sept. 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 251C at Lihue.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-23785 Filed 9-28-94; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Parts 382 and 391

RIN 2125-AA79, 2125-AC85, 2125-AD06, 2125-AC81

#### Federal Motor Carrier Safety Regulations; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

**SUMMARY:** This document makes technical amendments to indicate that the Office of Management and Budget (OMB) has approved the recordkeeping requirements in the final rules for controlled substances and alcohol use and testing.

**EFFECTIVE DATE:** September 29, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Rombro, Office of Motor Carrier Standards, (202) 366-5615, or Mr. David Sett, Office of Chief Counsel, (202) 366-1392, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45

a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** On December 23, 1993, and February 15, 1994, the FHWA published final rules on controlled substances and alcohol use and testing of commercial motor vehicle drivers (58 FR 68220 and 59 FR 7484). This document makes technical amendments to parts 382 and 391 to indicate that the Office of Management and Budget has approved the recordkeeping requirements of these final rules.

#### Rulemaking Analyses and Notices

Because this final rule simply provides notice to the public that the OMB has approved the information collection requirements of two FHWA rulemakings and does not change these rules in any way, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B), and that good cause exists to dispense with the 30-day delay in effective date ordinarily required under 5 U.S.C. 553(d). In this purely technical action, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. Therefore, the FHWA is proceeding directly to a final rule which is effective upon its date of publication.

#### Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or the regulatory policies and procedures of the DOT. This rulemaking action does not impose any new requirements; it merely provides notice of OMB acceptance of the paperwork requirements of previously published rules. Because it does not amend these rules in any way, this rule will not have any economic impact. Therefore, a full regulatory evaluation is not required.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-162), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes that this rule, in simply technically amending the FMCSRs,

would not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12612 (Federalism Assessment)

The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and certifies that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

#### Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### Paperwork Reduction Act

This technical amendment provides information collection numbers approved by the Office of Management and Budget for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. In §§ 382.101 and 391.87, the OMB has assigned control number 2125-0543, which expires on March 1, 1997.

#### National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 49 CFR Parts 382 and 391

Alcohol testing, Controlled substances testing, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: September 23, 1994.

Theodore A. McConnell,  
Chief Counsel.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

#### PART 382—[AMENDED]

1. The authority citation for part 382 is revised to read as follows:

**Authority:** 49 U.S.C. 31136 and 31302 *et seq.*; 49 U.S.C. 31502; 49 CFR 1.48.

#### § 382.101 [Amended]

2. Section 382.101 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125-0543)

#### PART 391—[AMENDED]

3. The authority citation for part 391 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 31136, and 31502; 49 CFR 1.48.

#### § 391.87 [Amended]

4. Section 391.87 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125-0543)

[FR Doc. 94-24079 Filed 9-28-94; 8:45 am]

BILLING CODE 4910-22-P

#### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 93-31, Notice 02]

RIN 2127-AE78

#### Federal Motor Vehicle Safety Standards; Warning Devices

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Federal Motor Vehicle Safety Standard No. 125, *Warning Devices*. As amended, the standard applies only to those warning devices that do not have self-contained energy sources and that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. Previously, the standard applied to all warning devices that do not have self-contained energy sources and that are designed to be carried in motor vehicles. This final rule provides warning device manufacturers with greater design flexibility and regulatory relief.

**DATES:** The amendments made by this final rule are effective October 31, 1994. Petitions for reconsideration of this final rule must be filed by October 31, 1994.

**ADDRESSES:** Petitions for reconsideration of this final rule should refer to the

docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth O. Hardie, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hardie's telephone number is: (202) 366-6987.

#### SUPPLEMENTARY INFORMATION:

#### Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 125, *Warning Devices*, specifies requirements for warning devices that do not have self-contained energy sources (nonpowered warning devices) and that are designed to be carried in motor vehicles and placed on the roadway to warn approaching traffic of the presence of a stopped vehicle. The standard does not apply to devices designed to be permanently affixed to the vehicle. The purpose of the standard is to reduce deaths and injuries due to rear-end collisions between moving traffic and disabled or stopped vehicles. The standard specifies that the warning devices are to be triangular, open in the center, covered with orange fluorescent and red reflex reflective material, and capable of being erected on the roadway. The characteristics are intended to assure that the warning device can be readily observed during daytime and nighttime lighting conditions, have a standardized shape for quick message recognition, and perform properly when deployed.

Standard No. 125 proscribes manufacturers from marketing other nonpowered warning devices with physical or performance characteristics differing from the standard's specifications. Some, including P.C.S. Safety Corporation, that petitioned for rulemaking to amend Standard No. 125, have contended that the standard is too design restrictive since it prohibits other nonpowered warning devices which may adequately warn approaching drivers of a disabled vehicle.

#### Notice of Proposed Rulemaking

On May 10, 1993, NHTSA published in the *Federal Register* a notice of proposed rulemaking (NPRM) (See 58 FR 27514). In the NPRM, NHTSA proposed to amend Standard No. 125 by making the standard applicable only to those warning devices that do not have self-contained energy sources and that

are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 lbs. As a rationale for the proposed change, NHTSA tentatively concluded that no longer applying Standard No. 125 to nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 pounds or less would provide greater freedom for manufacturers in designing nonpowered warning devices for the general public and would relieve an unnecessary regulatory burden on industry. NHTSA also tentatively concluded that Standard No. 125 should continue to apply to nonpowered warning devices for use in vehicles subject to Federal Highway Administration (FHWA) regulations and to any comparable state regulations, since the FMVSS and FHWA's regulations complement one another. The Federal Motor Carrier Safety Regulations (FMCSR) (49 CFR parts 350-399) of the Federal Highway Administration (FHWA) are applicable to commercial motor vehicles (vehicles that have a GVWR greater than 10,000 pounds) and their operators.

NHTSA further noted that although it regulated nonpowered warning devices designed to be carried in a motor vehicle, the agency has not required that vehicles be equipped with such warning devices. In the May 1993 NPRM, NHTSA also cited two NHTSA-funded studies of warning device efficacy in support of its tentative conclusion that nonpowered warning triangles may not be effective in reducing disabled vehicle-related accident rates. Neither study addressed vehicles stopped on the road. The studies addressed vehicles stopped on the shoulder of the road. (Since many public comments addressed the studies' findings, the studies are more fully discussed below in the section on NHTSA's response to public comments.) In the NPRM, NHTSA further stated its belief that additional data on the efficacy of the nonpowered warning triangles could be collected only after significant expenditure of agency resources. Even if NHTSA devoted its resources to collecting data, it believed the findings resulting from the data might not demonstrate a safety benefit.

NHTSA also acknowledged concern about problems that might occur if nonpowered warning devices designed for use in passenger cars were no longer subject to Standard No. 125. NHTSA invited comments and supporting technical information about any potential problems which commenters might envision.

This rulemaking also responds to a petition for rulemaking from P.C.S. Safety Corporation. P.C.S. apparently wishes to market a nonpowered warning device that does not meet Standard No. 125 specifications. P.C.S. petitioned NHTSA to amend Standard No. 125 to permit the marketing of its device.

#### Public Comments and NHTSA Response

In response to the NPRM, NHTSA received comments from 16 commenters. Two commenters supported the proposal. One supporter was Dr. Andrew Huang, an inventor of an alternate warning device, without a self-contained energy source, that is designed to be carried in motor vehicles. If the proposal becomes final, Dr. Huang's device would be permitted to be produced for use in vehicles that have a GVWR of 10,000 lbs. or less. Ford Motor Company, the other supporter, stated that the proposal would potentially benefit motor vehicle safety by removing design restrictions that may result in warning devices whose designs and costs are more suitable for purchase and use by drivers of light duty vehicles. Another inventor, Mr. Carl Monk, wrote in favor of changes to specifications for Standard No. 125, since "no one can read the required instructions for assembly at night without lights" and in emergencies, nighttime assembly may be necessary.

Thirteen commenters opposed the proposal to make Standard No. 125 applicable only to nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 pounds. Most commenters provided reasons for their opposition. Although the comments varied, the commenters' reasons for opposing the proposal can generally be categorized as follows:

1. Studies show Standard No. 125's equilateral triangle design provides the most effective warning of a disabled vehicle.
2. Greater design freedom will dilute the distinctiveness of the warning triangle, and will result in increased motorist confusion, with a potential for increased collisions.
3. NHTSA's not regulating nonpowered warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less would result in state regulation of such warning devices. Motorists would be discouraged from using warning devices, for fear that the use of a particular device would be permitted in one state, but not in other states.

The three issues raised by opposing commenters, additional minor issues,

and NHTSA's response to each issue are discussed below.

#### 1. Studies On Efficacy of the Standard No. 125 Warning Triangle as a Warning Device

Federal Mogul Corporation, K.D. Lamp Company, Sate-Lite Manufacturing, Transportation Safety Equipment Institute (TSEI), Dr. Merrill Allen of Indiana University, and Dr. Helmut Zwahlen of Ohio University, all disagreed with NHTSA's conclusion that studies did not show efficacy of the Standard No. 125 warning device (warning triangles). Sate-Lite and TSEI, in particular, disagreed with NHTSA's position that two NHTSA-funded studies support the conclusion that warning triangles may not be effective in reducing disabled-vehicle related accident rates.

The two studies at issue are: *Study of Safety-Related Devices—Emergency Warning Devices for Disabled Vehicles*, of August 19, 1986 (prepared by NHTSA's Office of Crash Avoidance Research); and *Analysis of the Dismounted Motorist and Road-Worker Model Pedestrian Safety Regulation*, August 1982 (prepared by Ulmer, Leaf, and Blomberg). Among other subjects, both studies discussed field experiments conducted by M.J. Allen, S.D. Miller, and J.L. Short of Indiana University. The field experiments simulated disabled vehicles that were parked on the shoulder of a roadway whose speed limit was 65 mph. The experiments tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including warning triangles and flares.

The experiments were based on the assumptions that if warning devices were effective, they would induce measurable decreases in passing vehicle speed and increases in lateral separation between the moving and disabled vehicle and that such measurable changes would signify a decrease in accident potential. In a 1971 Allen, Miller and Short experiment, it was determined that at night, the warning triangles induced a reduction in passing vehicle speed of only 1.5 mph on average. During the day, none of the emergency warning device configurations (i.e., flares alone, flares and triangles, triangles alone, etc.) induced any reduction in passing vehicle speed or any increase in lateral separation, when compared to the situation when no warning devices were placed behind the disabled vehicle. The 1971 Allen *et al* experiment showed that although flares and triangles were about equally effective, the single most effective daytime condition for reducing

speed was three triangles placed at 2, 48, and 100 paces behind the vehicle. This condition, however, only induced a speed reduction of 3-4 mph compared to the disabled vehicle-only condition.

In Standard No. 125, NHTSA does not specify the number of triangles that should be deployed with a stopped vehicle. Figure 2 of Standard No. 125 depicts only one triangle deployed behind the stopped vehicle. At no time during the history of Standard No. 125, has NHTSA ever considered the use of more than one triangle for vehicles with a GVWR of 10,000 lbs. or less.

In 1975, Miller performed a follow-up study along the same roadway. As in the earlier field experiment, disabled vehicles, parked on the shoulder of the roadway, were simulated. Miller's experiment tried to evaluate the responses of passing motorists to a stopped vehicle and warning devices, including triangles and flares. In his follow-up study, Miller added a four-way flasher activation (on the disabled vehicle) as a condition. Miller concluded that during the day, the use of four-way flashers or warning triangles generally had no effect on speed. The 1975 Miller study also indicated that at night, four-way flashers were more effective than warning triangles in inducing a reduction in passing vehicle speed and an increase in lateral separation in the disabled vehicle situation.

In their comments, both TSEI and Sate-Lite cited the August 1986 and August 1982 studies as showing efficacy of the warning triangles. Both TSEI and Sate-Lite appeared to believe that NHTSA believes powered warning devices are more effective than nonpowered warning triangles because the powered devices may induce greater speed reductions and greater lateral separations with respect to passing vehicles. NHTSA has no position on the efficacy of warning devices with self-contained energy sources, since it has no data regarding their effectiveness.

In the NPRM, NHTSA stated that the 1986 and 1982 studies about warning devices evaluated the response of passing motorists to such devices, based on the assumption that measurable changes in passing vehicle speed and lateral separation between the moving and the disabled vehicle signify a decrease in accident potential. While studies based on this assumption may not fully evaluate warning device effectiveness, they do evaluate the response of some drivers when confronted with a warning device.

Sate-Lite in its defense of retaining warning triangle applicability for vehicles with a GVWR of 10,000 lbs. or

less, stated that the effectiveness or primary function of the warning triangle is not necessarily to halt traffic, reduce speed or alter driving activity such as lateral movement, as suggested by NHTSA's discussion of the field experiments' data on the two studies at issue. Sate-Lite stated that the purpose of the warning triangle is to impart awareness to the approaching driver of the presence of a parked or disabled vehicle. Sate-Lite in its discussion of this issue adopted the perspective that the passing motorists may, in fact, have reacted to the warning triangle, assessed the situation, and proceeded past the test site without adjusting speed or separation because the drivers judged that no hazard was involved (or that the motorist reacted well before the site and then resumed normal course and speed). Sate-Lite suggested that an apparently normal parked vehicle that is off the roadway would not be considered hazardous and would cause no overt driving response (although it might prompt changes in visual search behavior or in readiness to respond; changes not detectable by remote measurement).

NHTSA does not find Sate-Lite's interpretation of the field experiments' data to favor use of the warning triangle. Sate-Lite's interpretation does not indicate whether the drivers may have slowed down in advance of the vehicle because they saw just the stopped vehicle or the warning triangle and the stopped vehicle. If it cannot be shown that the Standard No. 125 warning triangle changes driver behavior any more than just the presence of the stopped vehicle, there does not appear to be any demonstrable safety benefit in using the warning triangle.

Dr. Helmut Zwahlen also disagreed that speed reduction and lateral displacement correctly measure accident reduction potential of a warning device. He asserted that more guidance about the roadway conditions ahead, such as that provided in a warning triangle, provides more comfort in driving. However, Dr. Zwahlen provided no criteria for measuring a warning device's accident reduction potential, and except for data showing that the triangle shape is the one most recognizable from a distance, provided no data on the Standard No. 125 warning triangle's efficacy in accident avoidance or reduction.

Dr. Merrill Allen (one of the Indiana University researchers cited in the NHTSA-funded studies) expressed concern that NHTSA has interpreted his research as not supportive of warning triangles. Dr. Allen commented that in reviewing "hundreds" of accident cases

with vehicles stopped in the lane of traffic, he had never seen a case where an accident occurred with the warning triangles in place. Dr. Allen did not specify the number of instances where he observed triangles in place.

NHTSA notes that the Indiana University experiments, with Dr. Allen as a participant, observed a different situation, where warning triangles were used in association with a vehicle on the shoulder of the road. Dr. Allen in his comments, acknowledged that his research (involving vehicles on the shoulder of the road) was "not representative of the major purpose of the warning, namely place a vehicle and triangles or flares in the lane of travel." Dr. Allen offered no references to studies or other evidence of efficacy in using warning triangles for vehicles stopped in the lane of travel. NHTSA is aware of no reliable quantitative statistics relating to the effectiveness of emergency warning devices in preventing accidents with disabled vehicles on or off the roadway. The most meaningful studies that NHTSA is aware of are similar to Dr. Allen's experiments of measuring changes in passing vehicle speed and lateral separation. It continues to be NHTSA's belief that these studies are not supportive of warning triangles' efficacy in reducing disabled vehicle related accident rates.

Apparently in the belief that a FHWA rulemaking concerning fuses/flares is related to NHTSA's proposal to amend Standard No. 125, some commenters described in detail the superiority of warning triangles over fuses/flares as warning devices. Several commenters, including TSEI, Sate-Lite, Federal Mogul, Cortina Tool and Molding, and Dr. Zwahlen, cited a April 1992 *Consumer Reports* article that favorably compared the warning triangle with several powered warning devices. NHTSA, however, has no comment on *Consumer Reports'* research, or other evidence comparing warning triangles with flares, fuses, or other powered warning devices. The agency does not believe that the information about powered warning devices has any bearing upon this rulemaking, which addresses only nonpowered warning devices.

NHTSA does not disagree with commenters that state the equilateral triangle may be the most effective warning device. However, after reviewing the public comments, which did not offer new, probative research information, NHTSA still is not convinced that using the warning triangle is effective either in giving

motorists advance warning of a stopped vehicle or in reducing accidents.

## 2. Greater Design Flexibility

Federal Mogul, Mr. Jerry Wachtel, K.D. Lamp, Sate-Lite, Cortina Tool and Molding, TSEI, James King and Co., Inc., Dr. Helmut Zwahlen, and Advocates for Highway and Auto Safety each commented that greater flexibility in warning device design, permitting warning devices other than the Standard No. 125 device, will lessen the recognizability of the warning triangle as a symbol of a stopped vehicle. They appeared to state that less recognizability will result in increased motorist confusion, possibly resulting in more collisions.

James King stated that it has manufactured Standard No. 125 warning devices since 1989. James King commented that regulation to ensure uniformity is necessary because the general public cannot assess warning device effectiveness, and that "ineffective reflectors" do not look significantly different from effective ones. James King's comment, favoring Standard No. 125's specification of a nonpowered warning device in a triangular shape, appears to presume that the Standard No. 125 warning device is effective, and warning devices that do not comply with Standard No. 125 are ineffective. However, no data is available to NHTSA that supports the view that warning devices that do not conform to Standard No. 125 will be less effective in preventing accidents than warning devices that do conform to Standard No. 125. NHTSA is conducting this rulemaking to relieve an unnecessary regulatory burden on industry because of the design restrictive nature of Standard No. 125, and because research data suggest that the standard has produced no benefits. Additionally, this final rule will result in greater design freedom for manufacturers to provide the public with warning devices, should the public so desire, without an adverse effect on safety.

James King also appears to believe that because it would manufacture nonpowered Standard No. 125 warning devices designed to be carried on motor vehicles subject to the Federal Highway Administration's regulations, it would face unfair competition from devices that (to the layperson) appear to comply with Standard No. 125, but really do not. For the following reasons, NHTSA does not believe James King would be at such a disadvantage. When this final rule becomes effective, James King would have more flexibility, since it could then manufacture any

nonpowered warning device designed to be carried in vehicles with a GVWR of 10,000 lbs. or less. If it decides to manufacture nonpowered warning devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., James King, and its competitors, must manufacture devices to Standard No. 125 specifications. Anyone manufacturing a nonpowered device designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs., that does not meet Standard No. 125 specifications may be subject to an enforcement action by NHTSA. Further, section 393.95 of title 49 of the Code of Federal Regulations is enforced by the FHWA. Section 393.5 states that all bidirectional emergency reflective triangles deployed by commercial motor vehicle operators must satisfy the requirements of Standard No. 125.

Dr. Zwahlen commented that the safety device industry should be kept within a narrow band of performance, physical specifications and test procedures. Dr. Zwahlen stated that he had conducted independent research that showed that the triangle shape was the most recognizable from a distance, comparing the triangle with five other shapes, each with an area of 18 sq. inches. NHTSA does not dispute Dr. Zwahlen's contention that the triangular shape may be the most recognizable shape from a distance. However, Dr. Zwahlen's research appears to presume that drivers use warning devices. Dr. Zwahlen has not shown that drivers are carrying and using warning devices of any type. A 1993 NHTSA survey (discussed below) indicates that few, if any, passenger car and light truck drivers, in fact, use any warning devices when their vehicles are stopped. If drivers do not carry and use warning devices, there is limited practical significance to the fact that the triangular shape is the most recognizable.

Although Standard No. 125 applies to devices designed to be carried in all vehicles, the standard does not require that new vehicles be equipped with them. Further, the agency cannot require that the device be carried in used motor vehicles. As a result, since there is no NHTSA requirement that they carry and use the devices, drivers of passenger cars and light trucks rarely use Standard No. 125 devices when their vehicles are stalled.

That the warning devices are rarely used by passenger car and light truck drivers was indicated in a 1993 survey by two NHTSA engineers. Traveling on approximately 700 miles of highway in the Washington, DC area and between

DC and Newport News, Virginia, the engineers counted a total of 74 stopped vehicles. Based on personal observation, the engineers classified each vehicle type. Of the 74 vehicles, the engineers determined 65 stopped vehicles were passenger cars or light trucks. The engineers observed that no warning device of any type was used for 62 of these, flares were used for 2, and two orange cones were used for the remaining one. None of the drivers of the stopped passenger cars or light trucks used the Standard No. 125 warning device. All of the remaining 9 vehicles were heavy trucks. No device was used for 6 of them; the Standard No. 125 device was used for the other 3 vehicles.

Since it appears use of the warning devices is infrequent with vehicles with a GVWR of 10,000 lbs or less, NHTSA does not believe permitting additional types of nonpowered warning devices will result in motorist confusion or in more collisions. If the usage rate suggested in the NHTSA survey is typical, there would appear to be no possibility of a significant adverse effect on safety if Standard No. 125 were amended to apply only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. In fact, as suggested in Ford Motor Company's comment, if there were no standards for devices designed to be carried in motor vehicles under 10,000 pounds GVWR, nonprofessional drivers, having a greater variety of nonpowered items to choose from, may be motivated to carry a warning device of some sort when they have none now.

## 3. Potential State Regulation of Warning Devices

TSEI and the American Trucking Associations (ATA) commented that the NPRM, if made final, might result in each state regulating warning devices, since there would no longer be a Federal standard regulating nonpowered devices. TSEI expressed a belief that state regulation would discourage customers from using warning devices, for fear of purchasing a device whose use is permitted in one state, but prohibited in another. ATA favors an NHTSA-promulgated uniform standard for warning devices designed to be carried in vehicles not subject to the Federal Highway Administration's regulations, in order to preclude states from issuing "differing and conflicting standards." It urged no changes in the applicability of Standard No. 125 until NHTSA develops a standard applicable to warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less.

In response to the TSEI and ATA comments, the issue of state regulation of warning devices was indirectly addressed above in section 2, *Greater Design Flexibility*. As noted in section 2, it appears that use of the Standard No. 125 warning device is infrequent. Since driver use of the devices is infrequent in the absence of state regulation, it does not appear that the presence of such regulation would have any significant effect.

#### 4. Other Issues Raised by Commenters

Two commenters, Dr. Allen and Dr. Zwahlen, recommended that NHTSA amend Standard No. 125 to require the warning triangles be carried in and used with motor vehicles. These recommendations are outside the scope of the NPRM. Further, as explained in the NPRM, NHTSA has not required that vehicles be equipped with Standard No. 125 warning triangles because NHTSA has never conclusively determined that the warning triangles are effective. Since NHTSA believes obtaining data on warning triangle efficacy (necessary to support rulemaking to mandate carrying of warning devices) would be expensive and very likely would not result in findings that conclusively support a safety benefit in using triangles, it has not conducted research on warning triangle efficacy. Without such data, the agency is not inclined to require that vehicles be equipped with Standard No. 125 warning triangles.

The Advocates for Highway and Auto Safety commented that NHTSA should focus more on traffic control functions that Standard No. 125 warning triangles provide under emergency conditions, rather than on design features of the warning triangle. They offered several suggestions for how the warning triangles can be improved to better serve traffic control functions. The Advocates' comments address issues that go beyond the scope of the current rulemaking. Thus, NHTSA has not adopted the Advocates' suggestions.

Finally, TSEI asserts that a regulatory flexibility analysis of the effect of this rulemaking on small businesses should have been conducted. TSEI objected to NHTSA's proposal to make Standard No. 125 applicable only to devices designed to be carried in buses and trucks that have a GVWR greater than 10,000 lbs. TSEI's point appeared to be that it was inequitable for NHTSA to propose not to regulate warning devices designed to be carried in passenger cars, after the industry (mainly small manufacturers) tried, "at great cost" to make its devices meet Standard No. 125 specifications. Thus, TSEI requested a

regulatory flexibility analysis (pursuant to 5 U.S.C. §§ 603 and 604) to assess the economic impact of this rulemaking on small entities.

For the following reasons, NHTSA believes this rulemaking may have a slight beneficial effect on small warning device manufacturers, but will not have a significant economic impact on a substantial number of small entities. First, not regulating warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less potentially creates a market for new types of nonpowered warning devices. Because of their expertise in Standard No. 125 devices, warning device manufacturers should be able to take advantage of this lessening of regulations and manufacture comparable devices that drivers of vehicles with a GVWR of 10,000 lbs. or less will buy. However, because use of any warning devices for drivers of vehicles with a GVWR of 10,000 lbs. or less is not mandated, NHTSA does not anticipate significant market demand for these devices.

Second, it appears that there is limited potential for significant loss of sales. Based on its 1993 road survey, NHTSA believes that the current demand for Standard No. 125 devices among drivers of vehicles with a GVWR of 10,000 lbs. or less is apparently very small. Further, the simple fact that other types of nonpowered warning devices may now be manufactured for those vehicles does not mean that sales of those devices will come at the expense of the triangular nonpowered warning devices. Additionally, although a recent Federal Highway Administration final rule (FHWA Docket No. MC-93-19), gives fuses and liquid burning flares equal status with triangles for use as emergency warning devices (with exceptions), this NHTSA final rule does nothing to change the FHWA's requirements for use of bidirectional reflective triangles with commercial motor vehicles that have a GVWR greater than 10,000 lbs. Thus, there appears to be no significant economic impact on small warning device manufacturers as a result of this rulemaking.

#### Effective Date

In the NPRM, NHTSA proposed that if the proposed rule were made final, the effective date for the final rule would be 30 days after the final rule is published. NHTSA received no comments on the proposed early effective date. This rule relieves a restriction in Standard No. 125. The Standard no longer specifies any restriction on warning devices designed

to be carried in motor vehicles with a GVWR of 10,000 lbs. or less. The lessening of the regulatory restriction will provide drivers of vehicles with a GVWR of 10,000 lbs. or less with greater choices of warning devices to be purchased, and permit manufacturers more flexibility in designing and selling warning devices designed for vehicles with a GVWR of 10,000 lbs. or less. Since this rule relieves a regulatory restriction, NHTSA has concluded that the rule should take effect sooner than 120 days after the issuance of the rule. The agency finds for good cause that this rule should become effective 30 days after it is published.

As earlier noted, this rulemaking responds to a petition for rulemaking from P.C.S. Safety Corporation. On the rule's effective date, if P.C.S.'s nonpowered warning device is designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less, the P.C.S. device will be permitted to be manufactured and sold.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This action was not reviewed under E.O. 12866, Regulatory Planning and Review. NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures and determined that it is not "significant." This action relieves a regulatory restriction by narrowing the application of the safety standard on nonpowered warning devices so that it is applicable only to devices designed to be carried in motor vehicles that have a GVWR greater than 10,000 lbs. Previously, the standard applied to all nonpowered warning devices designed to be carried in motor vehicles. The net economic impact of this action on manufacturers of nonpowered warning devices designed to be carried in motor vehicles with a GVWR of 10,000 lbs. or less is expected to be slight. The final rule imposes no new or additional requirements. For these reasons, the agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that by permitting

alternative warning devices designed to be carried in vehicles with a GVWR of 10,000 lbs. or less, small warning device manufacturers will have an opportunity to sell these alternative devices, as well as the triangular nonpowered warning devices, to the owners of those vehicles. At the same time, since Standard No. 125 specifies warning devices for buses and trucks that have a GVWR greater than 10,000 lbs., and operators of such vehicles are required to carry the devices, manufacturers of Standard No. 125 devices will continue to have a market for their devices. Accordingly, the agency has not prepared a regulatory flexibility analysis.

#### *Executive Order 12612 (Federalism)*

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

#### *National Environmental Policy Act*

The agency has also considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and has determined that the rule will not significantly affect the human environment.

#### *Paperwork Reduction Act*

This rule specifies that the warning devices be marked with certain information, that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. The information collection requirements for 49 CFR Part 571.125 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127-0506, (Warning Devices (Labeling)) and has been approved for use through March 31, 1994. A request for an extension of this collection of information is pending at OMB.

#### *Executive Order 12866 (Civil Justice Reform)*

This final rule will not have any retroactive effect. Under 49 U.S.C. section 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. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### **List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

#### **PART 571—[AMENDED]**

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

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

2. In § 571.125, S3 is revised to read as follows:

#### **§ 571.125 Standard No. 125; Warning devices.**

\* \* \* \* \*

S3. *Application.* This standard applies to devices, without self-contained energy sources, that are designed to be carried in buses and trucks that have a gross vehicle weight rating (GVWR) greater than 10,000 pounds. These devices are used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

Issued on: September 23, 1994.  
 Christopher A. Hart,  
 Deputy Administrator.  
 [FR Doc. 94-24055 Filed 9-28-94; 8:45 am]  
 BILLING CODE 4910-59-P-M

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 301**

[Docket No. 9312335-4107; I.D. 092294A]

#### **Pacific Halibut Fisheries**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of inseason action.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

**DATES:** Area 4A and 4B were reopened effective September 12, 1994, 12:00 noon, Alaska Daylight Time (ADT), through September 14, 1994, 12:00 noon, ADT. Area 4D was closed effective 3 p.m. ADT August 6, 1994 through December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Steven Pennoyer, telephone 907-586-7221; William W. Stelle, Jr., telephone 206-526-6140; or Donald McCaughan, telephone 206-634-1838.

**SUPPLEMENTARY INFORMATION:** The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery (50 CFR 301.4). The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

#### **Inseason Action**

1994 Halibut Landing Report No. 15

Commercial Fishery Update In Area 4

The IPHC estimates the following catches for the mid-August fishing periods in Area 4.